

TE MANA WHATU AHURU



# TE MANA WHATU AHURU

## *Report on Te Rohe Pōtae Claims*

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PRE-PUBLICATION VERSION

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PARTS I AND II

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Waitangi Tribunal  
Te Rōpū Whakamana i te Tiriti o Waitangi  
*Kia puta ki te whai ao, ki te mārama*

The Honourable Nanaia Mahuta  
Minister for Māori Development

The Honourable Andrew Little  
Minister for Treaty of Waitangi Negotiations

The Honourable Kelvin Davis  
Minister for Crown and Māori Relationships

Parliament Buildings  
WELLINGTON

5 September 2018

E ngā Minita, tēnā koutou. Haere e te pūrongo, te kaikawe i te whakaaro o te hunga kua manehurangitia, i te kupu a te hunga ora. Haere hei mātakitaki mā te matahuhua, hei kōrerotanga mā te tini tangata. He hinengaro ka manahau, he hinengaro e manaoho. He oi koia te hua o te pūrongo.

We present to you parts I and II of our report on claims submitted under the Treaty of Waitangi Act 1975 in respect of the Te Rohe Pōtae inquiry district. This district extends from Whāingaroa Harbour to northern Taranaki, and inland to the Waikato River and Taumarunui.

The report addresses 277 claims that have been brought to the Waitangi Tribunal on behalf of a diverse range of groups and individuals. The claims are brought on behalf of iwi, hapū, and whanau, people representing their tupuna, and current-day entities such as trusts, boards, incorporations, and owners of certain land blocks.

Our findings are drawn together, along with the sole recommendation we make at this stage of our inquiry, in the summary at the beginning of the report.

The Tribunal reserves the right to make further recommendations concerning parts I and II once the complete report is finalised.

Nāku noa, nā

A handwritten signature in black ink, appearing to read 'C. R. Fox', written in a cursive style.

Deputy Chief Judge Caren Fox  
Presiding Officer  
Nā Te Rōpū Whakamana i te Tiriti o Waitangi

## PREFACE

This is a pre-publication version of parts I and II of the Waitangi Tribunal's *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims*. As such, all parties should expect that in the published version, headings and formatting may be adjusted, typographical errors rectified, and footnotes checked and corrected where necessary. Maps, photographs and additional illustrative material may be inserted. The Tribunal reserves the right to amend the text of these parts in its final report, although its main findings will not change. It also reserves the right not to address certain issues in these parts of the report, and further parts, until the final report is released. The Tribunal reserves the right to make further recommendations on the matters addressed in parts I and II up to and including in the final published report. The Tribunal reserves the right to refuse any applications to exercise its resumptive powers based on this pre-publication report until the final report is released.

In preparing this pre-publication report, the Tribunal has noted variation in spelling and in the use of macrons for a number of words and phrases referred to in evidence on the record of inquiry, particularly in regard to the names of people and places. Parties are therefore invited to submit corrections to these, or any other words and phrases used in the report. Parties must indicate where in the report the term is used, their desired spelling or macron use, and any relevant explanation or evidence. The Tribunal will consider parties' submissions and incorporate any resulting changes into the final published version of the report.

## HE MAIMAI AROHA

*E kui mā, e koro mā i te pō,  
whakarongo mai!*

*Koutou ngā Manu Ariki Whakataka Pōkai  
o Maniapoto, o Te Rohe Pōtae.*

*Te Rāngai Rangatira ka taka ki tua i ō koutou maunga kārangaranga,  
te Kawau Mārō i taki i te kawa a Uenuku-kai-tangata ki ngā  
umupokapoka o te riri,  
te Pōkai Kura i mau i te kawa whatu ahuru  
ki ngā whare whakaiaia o Pōneke.*

*I te rā nei, ka rangona ā koutou kupu,  
ka rangona ā koutou tangi ki ō koutou whenua,  
ki tō koutou rangatiratanga  
me tō koutou mana whakahaere  
i murua atu nei  
e te mana o te wā.*

*Nō reira tukua te parekawakawa ki raro,  
kia au tā koutou moe.  
E moe i te moe tē whita,  
i te okiokinga uruhau  
i te urunga tē taka,  
i te moenga tē whakaarahia.*

## HE MAIMAI AROHA

*Esteemed elder-women and elder-men of the Night,  
Listen!*

*You, the principal birds who orchestrated the evening dance of the flocks  
of Maniapoto and Te Rohe Pōtae.*

*The company of chiefs who have gone to the unseen side of your famous mountains,  
the order of the cormorant, bearers of the lore of Uenuku-the-man-eater  
on the fields of war,  
the noblemen who argued the wisdom of reason  
in the power houses of Wellington.*

*Your laments for your lands will now be heard  
for your chiefly rights  
and for your right to administer your affairs,  
stripped from you  
by the authority of time.*

*Now, you may remove the green leaves of grief,  
let your rest be unencumbered.  
Sleep the repose of peace,  
the sweet slumber,  
on the softened pillow that moves not  
and on the bed from which there is no rising.*

## ACKNOWLEDGEMENTS

The Tribunal wishes to acknowledge all the claimants and other participants who passed away during the Te Rohe Pōtae District Inquiry, including Dr Tui Adams, Piripi Crown, Te Aue Davis, Mataroa Frew, Rangi Harry Kereopa, Barbara Marsh, Tā Archie Te Atawhai Taiaroa, the Honourable Koro Wetere and Hoane Titari John Wi. We treasure the kōrero that these individuals, as well as those not listed, shared during the Ngā Kōrero Tuku Iho hui and hearings.

We also wish to acknowledge our sadness at the passing of Rangi McGarvey, who provided live English translations of te reo Māori spoken at our hearings, as he did at the hearings for many other Waitangi Tribunal inquiries.

The Tribunal further acknowledges the passing of legal counsel Campbell Duncan and Kathy Ertel, who represented claimants in the Te Rohe Pōtae District Inquiry.

The Tribunal was deeply saddened by the passing of its presiding officer, Judge David Ambler on 11 November 2017 at the age of 50. Judge Ambler was a respected colleague who brought a dedicated work ethic and passion for the law, tikanga Māori, and te reo Māori to all that he did. His loss continues to be felt among his whānau and friends, the Māori Land Court, Waitangi Tribunal, the legal profession, and the many clients and claimants he served as a lawyer and judge over his quarter century of service. The Te Rohe Pōtae District Inquiry was his major contribution to the Waitangi Tribunal, in which, amongst other innovations, he pioneered the early hearing of claimant traditional and oral evidence in the Ngā Kōrero Tuku Iho hui.

Nō reira e koutou, haere atu rā ki te wāhi whakamutunga mō te tangata. Moe mai, moe mai.



## TE WHAKARĀPOPOTOTANGA: SUMMARY OF FINDINGS AND RECOMMENDATION

Titiro ia ki te wati kei toku ringa e mau ana, noku tenei wati. Mehemea ka pakaru, maku e mau atu ki te watimeke kia mahia, me toku tohu atu hoki nga mate ki a ia, a mana e mahi i runga i taku i tohu ai.<sup>1</sup>

*Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims* addresses claims concerning Crown actions in Te Rohe Pōtae after 6 February 1840, when the Treaty was first signed at Waitangi. The title of our report is taken from the term ‘te mana whatu ahuru’, which Ngāti Maniapoto use to denote the power of rangatira to rally their people for shared purposes.

This is a pre-publication version of parts I and II of the Tribunal’s report. The Tribunal reserves the right to amend the text of these parts in its final report, although its main findings will not change. It also reserves the right not to address certain issues in these parts of the report, and further parts, until the final report is released. The Tribunal reserves the right to refuse any applications to exercise its resumptive powers based on this pre-publication report until the final report is released. Later parts of the report will address issues of twentieth-century land and politics, health, education, and environmental management, as well as claims relating to particular takiwā.

### SUMMARY OF FINDINGS

The report describes the inquiry district and the peoples who came to occupy it. During the inquiry, we heard how the people of the *Tainui* waka arrived in the region and settled along the coast from Whāingaroa in the north to south of Mōkau. Many iwi and hapū in this inquiry claim descent from the *Tainui* voyagers, including Ngāti Maniapoto, Ngāti Apakura, Ngāti Hikairo, and Ngāti Raukawa. When they travelled further inland they met with people of the *Tokomaru*, *Aotea*, and *Te Arawa* waka, including Ngāti Tūwharetoa and Whanganui iwi. From these groups, a dynamic society developed and flourished in the region. It was into this society that the Treaty was brought in 1840.

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1. ‘Nga Korero Paramete: 1881–1885’, He Reo Tūre No te Taha Kāwana/Language of the Crown, New Zealand Electronic Text Collection, <http://nzetc.victoria.ac.nz/tm/scholarly/tei-NZPaVo1N-gaK-t1-g1-t4-body1-d3-d2-d1.html>, accessed 22 February 2018; ‘Native Lands Settlement Bill’, 1 November 1884, NZPD, vol 50, p556. This was translated as ‘This watch which I hold in my hand is mine; and, if it requires repairs, let me take it to the watchmaker and have it repaired. I will explain to the watchmaker what requires to be done to it, and then he can repair it according to my direction.’ Wahanui Huatare, 1 November 1884, NZPD, vol 50, p556.

When rangatira from the district signed the Treaty, they did so on the understanding that they would retain their tino rangatiratanga, their full chieftainship and right to self-government. Māori understood that both parties would mutually benefit from the terms of the Treaty and that the Crown would protect them from incoming settlers and settlement, and from foreign threats. The Tribunal has found in Chapter 3 that the Treaty established a partnership where the kāwanatanga or governing power of the Crown was limited by the guarantee of tino rangatiratanga to Māori. Likewise, the former absolute authority of Māori encapsulated in the term tino rangatiratanga was limited by the grant of kāwanatanga. Each would operate in their own sphere of influence and negotiate how their chosen institutions would operate where their authorities overlapped. The Crown also accepted a duty to actively protect Māori interests, and Māori acquired all the rights and privileges of British subjects. The practical details of these arrangements were to be worked out over time. In Te Rohe Pōtae, such discussions did not take place until the early 1880s, when Te Rohe Pōtae Māori engaged with the Crown in a series of negotiations and agreements now known by the claimants as Te Ōhāki Tapu.

In the decades prior to the signing of the Treaty, tangata whenua of the inquiry district entered into a range of transactions over land with various Europeans. Māori understood pre-Treaty transactions to be traditional arrangements established in accordance with Māori custom. After the signing of the Treaty, land claims commissions were established to investigate and confirm titles for those transactions. However, these did not account for these understandings and the tikanga associated with them. Furthermore, there were numerous aspects of procedure adopted by the commissions which should have highlighted to the Crown that the system was flawed. In chapter 4, the Tribunal has found that as the Crown was responsible for the legislation, its failure to rectify these issues breached the principles of the Treaty.

Through the Treaty, the Crown acquired a monopoly over the purchase of Māori land. From the 1850s, the Crown purchased approximately 140,000 acres of Māori land in the inquiry district, mainly around Mōkau and the Whāingaroa and Aotea Harbours. In chapter 5, the Tribunal has found that in negotiating these transactions, Crown agents failed to comply with the Crown's own standards of conduct for such purchases. These Crown agents failed to fully investigate customary tenure to the land the Crown sought to purchase, neglected to establish the free and informed consent of the sellers, and failed to ensure that Māori retained sufficient land for their present and future needs. In doing so, the Crown breached the principles of the Treaty of Waitangi.

Between 1856 and 1858 rangatira from the district, including many who signed the Treaty in the hope of forging a partnership with the Crown, came together to join the Kīngitanga. For Te Rohe Pōtae Māori, the Kīngitanga served as a way of protecting their lands. It was not opposed to the existence of Crown authority but rather was understood as a way of forming a more equal relationship with Queen Victoria and thus the colonial Government. The Crown had the opportunity to

recognise the Kīngitanga, and to incorporate it into the machinery of the state through, for example, Section 71 of the Constitution Act, but such an option was rejected. In 1863, the Crown invaded the Waikato to suppress the Kīngitanga by force. This resulted in the Waikato War of 1863–64, the exile of the Māori King, and the confiscation of 1.2 million acres of land north of the Pūniu River. The Tribunal has found in chapter 6 that the Kīngitanga was consistent with the institutional arrangements envisaged by the Treaty. Thus, the Crown acted in breach of the principles of the Treaty when it attacked Te Rohe Pōtae Māori and confiscated their land for settlement as punishment.

Chapter 7 describes the assertion and enforcement of the aukati, the border mechanism that Te Rohe Pōtae Māori deployed in conjunction with the Kīngitanga to protect their lands and authority from further Crown aggression. With an uneasy stalemate in place, Te Rohe Pōtae Māori and the Kīngitanga sought to bring the Treaty of Waitangi into effect in the region through negotiations with the Crown. The Crown, however, placed increasing pressure on Te Rohe Pōtae Māori during negotiations and failed to address their specific concerns, and their demands for self-government. The Tribunal has found that these actions were in breach of the principles of the Treaty.

From 1883 to 1885, Te Rohe Pōtae Māori continued to engage in a process of negotiation and agreement with the Crown, collectively known by claimants as Te Ōhākī Tapu. In their June 1883 petition to Parliament, Te Rohe Pōtae Māori demanded that the Crown use its kāwanatanga to give effect to Te Rohe Pōtae Māori's article two guarantee of tino rangatiratanga. From the Crown, Te Rohe Pōtae Māori also sought 'mana whakahaere', the right to autonomy and self-determination over their rohe. It was the practical application of tino rangatiratanga that they sought. Te Ōhākī Tapu was an opportunity provided to the Crown by Te Rohe Pōtae Māori to advance the Treaty to a new level. However, Crown agents throughout this period acted with dishonest and misleading negotiation tactics and promises, which in turn led to breakdowns in iwi relationships, land loss, and massive prejudice across the district, the impacts of which last to this day. The Tribunal has found in chapter 8 that due to these actions the Crown breached the principles of the Treaty of Waitangi.

The construction of the North Island Main Trunk Railway in the nineteenth century is considered in chapter 9. The Tribunal has found that many of the agreements made during the negotiations of the 1880s with Te Rohe Pōtae Māori were not adhered to. Some of these concerned the initial construction of the railway, including what, how much and by which means the Crown took land from Te Rohe Pōtae Māori. Also at issue was the Crown's failure to pay compensation for those affected by the takings, its lack of consultation with Te Rohe Pōtae Māori about local details of the land taken, including ensuring that sites of significance were avoided, and its delay in fencing the railway line. These actions also breached the principles of the Treaty of Waitangi.

In chapter 10, the Tribunal examines the operations and outcomes of the Native Land Court in Te Rohe Pōtae between 1886 and 1907. The Tribunal has found that,

while there were some improvements in the court's process in Te Rohe Pōtae, there remained a lack of Māori control and input into title determination, contrary to the express wishes of Te Rohe Pōtae Māori. Moreover, it has found that Native Land Court titles were awarded to individuals rather than hapū, and in this way the titles neither reflected custom nor provided for Māori engagement in the colonial economy. Added to that, the costs of gaining Native Land Court titles could be excessive and unreasonable, and were unfairly placed on Te Rohe Pōtae Māori. Finally, the options for Māori who wished to challenge court decisions were inadequate. As the Crown was responsible for this system, the Tribunal has found that it breached the principles of the Treaty of Waitangi in several respects.

In chapter 11, the last chapter of this report, the Tribunal discusses Crown purchasing in the district from 1890 to 1905. Purchasing began as the Native Land Court started to define individual owners' interests on land titles. For the most part, Te Rohe Pōtae Māori were collectively opposed to land sales but were forced into making deals with the Crown. The Tribunal has found that the Crown breached the Treaty on numerous occasions when implementing its purchasing programme, including using its legislative powers to support purchasing objectives, its purchasing methods and tactics, and the prices it paid to acquire as much land as possible at the cheapest possible prices. This resulted in the alienation of some 640,000 acres of Māori land in Te Rohe Pōtae.

The Tribunal has found the claims covered in these parts of the report to be well founded. In summary, the Crown chose not to give practical effect to the Treaty principle of partnership in Te Rohe Pōtae from 1840–1900. It failed to recognise or provide for Te Rohe Pōtae tino rangatiratanga before and during the negotiations collectively described as Te Ōhākī Tapu. This failure resulted in multiple breaches of the principles of the Treaty of Waitangi, and Te Rohe Pōtae Māori have suffered significant and long-lasting prejudice as a result.

### **AN OPPORTUNITY TO PUT THINGS RIGHT**

While the Crown may have chosen not to give effect to the Treaty at the time of the negotiations in the 1880s, or since, the Crown could not and cannot divest itself of its Treaty responsibilities. What is required is for the Crown and Te Rohe Pōtae Māori to work together to determine how the Treaty can be given practical effect in this district. We understand that the Crown's intention has been to address these matters through these proceedings and by arriving at Treaty settlements with the hapū and iwi of the district.

To put matters right, the Tribunal considers the Crown must now take steps to provide for the exercise by Te Rohe Pōtae Māori of their tino rangatiratanga and mana whakahaere within their rohe. (In this context, we understand mana whakahaere to mean the practical exercise of authority in accordance with the principles of autonomy and self-determination.) Through these means Te Rohe Pōtae Māori will be relieved of the prejudice they have suffered arising from the Crown's Treaty breaches, and the Crown and Te Rohe Pōtae will be able to move forward

in a manner that reflects the original Treaty agreements, which recognised the authority of both Treaty partners and provided for them to move forward together in a manner that brought mutual benefit.

The Tribunal acknowledges that the circumstances of the district have changed significantly since the 1880s. Te Rohe Pōtae Māori are no longer the owners of all the land in the district. They now hold a small proportion of that land. A sizeable number of people now call the region home, as well as a range of local councils and Crown agencies that exercise specific functions in the district. At the very least, to compensate for the prejudice that has been suffered from the Crown's actions, any settlement legislation negotiated by the parties should explicitly recognise the rights of Te Rohe Pōtae Māori to tino rangatiratanga and mana whakahaere. It should also impose a positive obligation on the Crown and all agencies acting under Crown authority to recognise and provide for those rights.

In providing for the practical exercise of the tino rangatiratanga of Te Rohe Pōtae Māori communities, the negotiations between the parties and any settlement legislation should address how their right of mana whakahaere should be institutionalised. Negotiations will also need to address the varying forms of authority that exist among the Māori groups of Te Rohe Pōtae, particularly hapū and iwi, and seek to find an appropriate balance between them. Any institutions that are agreed upon should be able to exercise functions alongside other Crown agencies and local authorities that currently exercise authority in the district. Settlement legislation may also need to outline the mechanisms by which appropriate relationships can be formed.

### **RECOMMENDATION**

The Tribunal recommends that the Crown acts, in conjunction with Te Rohe Pōtae Māori or the mandated settling group or groups in question, to put in place means to give effect to their rangatiratanga. For Ngāti Maniapoto or their mandated representatives, this will require the Crown to take into account and give practical effect to Te Ōhākī Tapu. How this might be achieved will be for the parties to decide in negotiations. However, the Tribunal considers that for the Crown to relieve the prejudice suffered by Te Rohe Pōtae Māori, the following minimum conditions must be met:

- ▶ First, that the rangatiratanga of Te Rohe Pōtae Māori (or the settling group or groups in question) be enacted in legislation in a manner which recognises and affirms their rights of autonomy and self-determination within their rohe, and imposes a positive obligation on the Crown and all agencies acting under Crown statutory authority to give effect to those rights. For Ngāti Maniapoto or their mandated representatives, this will require legislation that recognises and affirms Te Ōhākī Tapu, and imposes an obligation on the Crown and its agencies to give effect to the right to mana whakahaere.
- ▶ Secondly, subject to negotiations between the parties, that the legislation makes appropriate provision for the practical exercise of rangatiratanga by

Te Rohe Pōtae Māori (or the settling group or groups in question). For Ngāti Maniapoto or their mandated representatives, this will require legislation that gives practical effect to Te Ōhāki Tapu, and provides for the practical exercise of mana whakahaere.

The Tribunal reserves the right to make further recommendations on the matters addressed in parts I and II up to and including in the final published report.

## ABBREVIATIONS

AJHR	<i>Appendix to the Journals of the House of Representatives</i>
app	appendix
AUC	Auckland Crown purchase deed
CA	Court of Appeal
ch	chapter
cl	clause
CMS	Church Missionary Society
comp	compiler
doc	document
ed	edition, editor
GIS	geographic information system
GNA	got no address
ltd	limited
MB	minute book
memo	memorandum
n	note
no	number
NIMTR	North Island Main Trunk Railway
NZCA	<i>New Zealand Court of Appeal</i>
NZLR	<i>New Zealand Law Reports</i>
OLC	old land claim
p, pp	page, pages
para	paragraph
pt	part
PWD	Public Works Department
ROI	record of inquiry
RUP	recorded under parent
s, ss	section, sections (of an Act of Parliament)
SC	Supreme Court
v	and
vol	volume
Wai	Waitangi Tribunal claim
WMS	Wesleyan Missionary Society

Unless otherwise stated, footnote references to briefs, claims, documents, memoranda, papers, submissions, and transcripts are to the Wai 898 record of inquiry. A copy of the index to the record is available on request from the Waitangi Tribunal.





## CHAPTER 1

# HE KUPU WHAKAMĀRAMA I TĒNEI PŪRONGO: INTRODUCTION

*‘Kia mau tonu ki tēnā; kia mau ki te kawau mārō. Whanake ake! Whanake ake!’<sup>1</sup>*

### 1.1 TE MANA WHATU AHURU

The title of this report is *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims*. Claimant Tom Roa explained this concept as follows: ‘mana’ refers to the self-made or inherited power and authority of individuals or groups; ‘whatu’ has three meanings: a stone that perseveres against all obstacles, an eye, and the act of weaving; and ‘ahuru’ means peace and the warmth of an embrace.<sup>2</sup> The term is also associated with whatu-ahuru-manu, which were sacred, inscribed stone emblems brought from Hawaiki on the *Tainui* waka and used in tapu ceremonies to promote food abundance.<sup>3</sup> We understand te mana whatu ahuru to be an authority specific to Ngāti Maniapoto. As Tom Roa explained, the term denotes the power of rangatira to unite their people to achieve a joint purpose through peaceful means.<sup>4</sup> For these reasons, we consider *Te Mana Whatu Ahuru* to be an appropriate analogy for the claims and histories addressed in this report.

The purpose of this pre-publication report is to address the claims of Māori concerning Crown actions in Te Rohe Pōtae after 6 February 1840, when the Treaty was first signed at Waitangi. Te Rohe Pōtae is a part of Aotearoa New Zealand often referred to as the ‘King Country’. The term ‘Te Rohe Pōtae’ refers to oral traditions associated with the second Māori King, Tāwhiao, who was said to have placed his hat on a map of the district to indicate the territory over which the Kīngitanga held sway. Wahanui Huatare, an influential rangatira from the district, is also said to have used the hat as a metaphor for the territory.

Ngāti Maniapoto evolved as an iwi from the landing of the *Tainui* waka. To the north, where the great forest Te Nehenehenui met the southern Waikato plains, and to the north-west in the harbours of Kāwhia and Whāingaroa, the many hapū associated with Ngāti Maniapoto intermingled with hapū now commonly

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1. Document A110 (Meredith and Joseph), p18. This is a well-known Ngāti Maniapoto pepeha attributed to the ancestor Maniapoto that translates to: ‘Stick to that, the straight-flying Cormorant!’

2. Transcript 4.1.7, pp 42–45 (Tom Roa, hearing week 1, Te Tokanganui-ā-Noho Marae, 5 November 2012).

3. Document A83 (Te Hiko), p 50.

4. Document H9(c) (Roa document bank), pp [4]–[5].

associated with Waikato-Tainui. To the north-east, those hapū intermingled with Ngāti Raukawa. All of these groups shared ancestral links to the *Tainui* waka.

Iwi who did not descend from those on the *Tainui* waka shared overlapping spheres of influence with Ngāti Maniapoto in other parts of the district. To the south-east were lands occupied by hapū of Ngāti Tūwharetoa. Further to the south, around modern-day Taumarunui, were hapū associated with the peoples of upper Whanganui. To the south-west, in the Mōkau region, were the people of northern Taranaki. Although they differed in their origins, all of these groups shared close associations with each other in the territories where their customary interests overlapped.

By 1840, when the Treaty of Waitangi was brought to the coastal edges of the district, most of these hapū and iwi had come to be settled in their respective territories.

The claims in this report allege that the Crown breached the principles of the Treaty of Waitangi through a range of actions that resulted in significant prejudice to claimants and their tūpuna, from 1840 through to the present day. While these claims bear some similarities with those in other inquiries heard by the Waitangi Tribunal, the claimants placed significant emphasis on Te Ōhāki Tapu, something entirely unique to the rohe. Te Ōhāki Tapu is a term used by claimants to describe a series of negotiations and agreements that took place in the 1880s between the Crown and Te Rohe Pōtae Māori leaders. Taken together, these negotiations and agreements represented a declaration by Te Rohe Pōtae Māori of their tino rangatiratanga, as well as an opportunity for the Crown to give practical effect to the Treaty of Waitangi and to advance the Treaty relationship.

The negotiations of the 1880s occurred against the backdrop of war and raupatu on the margins of Te Rohe Pōtae. They followed the period when King Tāwhiao and his people retreated to Te Rohe Pōtae beyond the aukati, the boundary which the Kīngitanga tried to enforce in order to keep colonial troops out of their territory prior to the Waikato War of 1863–64. A 20-year period of defended independence ensued. The negotiations took place as the Crown became more insistent that the district be opened up to aid the construction of the North Island Main Trunk Railway.

These events, and others, are the subject of claims in this inquiry. The remainder of this chapter provides a brief overview of the procedural history of the inquiry. It then addresses certain general and specific jurisdictional issues concerning the Tribunal's ability to hear particular claims.

## **1.2 THE TE ROHE PŌTAE DISTRICT INQUIRY**

### **1.2.1 Planning and research**

The first judicial conference for the Te Rohe Pōtae District Inquiry was held on 2 and 3 October 2006 at Te Tokanganui-ā-Noho Marae in Te Kūiti. Judge David Ambler was appointed presiding officer by the then Waitangi Tribunal chairperson, Chief Judge Joseph Williams, as per clause 8(2) of schedule 2 to the Treaty

of Waitangi Act 1975.<sup>5</sup> He was joined by Professor Tā Hirini Mead as kaumātua. Following this judicial conference and because of the large number of claimants who indicated a wish to proceed with an inquiry, the Tribunal confirmed that the King Country was an active inquiry district and began preparations for the inquiry on 7 November 2006.<sup>6</sup>

At this early stage, the Tribunal encouraged the claimants to work with the Crown Forestry Rental Trust in compiling tangata whenua research.<sup>7</sup> At the same time, historian Dr Vincent O'Malley was contracted by the Tribunal to carry out a pre-casebook review to establish how much research was already available and whether additional research was required.<sup>8</sup> It was decided that the inquiry would be run under the Tribunal's 'standard new approach' model for district inquiries, which meant that the research programme and inquiry processes would be designed in such a way as to enable comprehensive coverage of historical and contemporary claims to occur.<sup>9</sup> Broad consensus on the research programme was reached at the third judicial conference convened on 1 October 2007.<sup>10</sup>

### 1.2.2 Determining the inquiry boundary

On 4 September 2007, Judge Ambler confirmed the interim boundary of the inquiry and named it the 'Te Rohe Pōtae District Inquiry', as it 'fully captured' the essence of the district.<sup>11</sup> The boundary approximated the boundary of the Aotea block as defined in 1886 (except for the Ōhura South block) and also included the area between the north-west of the Aotea block and the Waikato claim area.<sup>12</sup>

Judge Ambler subsequently granted a number of boundary extensions. The boundary was extended to include the raupatu claims of various iwi and hapū within the Waikato claim area identified in the Waikato-Tainui Deed of Settlement and Waikato Raupatu Claims Settlement Act 1995.<sup>13</sup> The boundary extensions also included certain non-raupatu claims within the Waikato claim area.<sup>14</sup> The whole of the Whāingaroa Harbour area was included.<sup>15</sup> Finally, the boundary was extended south into the Taranaki district to ensure all the Ngāti Maniapoto raupatu claims could be heard.<sup>16</sup>

A comprehensive discussion of the Tribunal's jurisdiction to inquire into raupatu claims is found in section 1.4. The boundary extensions granted by the Tribunal are outlined in full in the following sidebar and are also set out in map 1.1.

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5. Memorandum 2.5.14.

6. Memorandum 2.5.6, p 2.

7. Memorandum 2.5.6, p 3.

8. Memorandum 2.5.6, pp 3–4.

9. Memorandum 2.5.16, p 2.

10. Memorandum 2.5.23, p 5.

11. Memorandum 2.5.21, p 19.

12. Memorandum 2.5.21, p 4.

13. Memorandum 2.5.21, pp 8–16.

14. Memorandum 2.5.21, pp 16–17.

15. Memorandum 2.5.23 p 2.

16. Memorandum 2.5.21, pp 17–18.

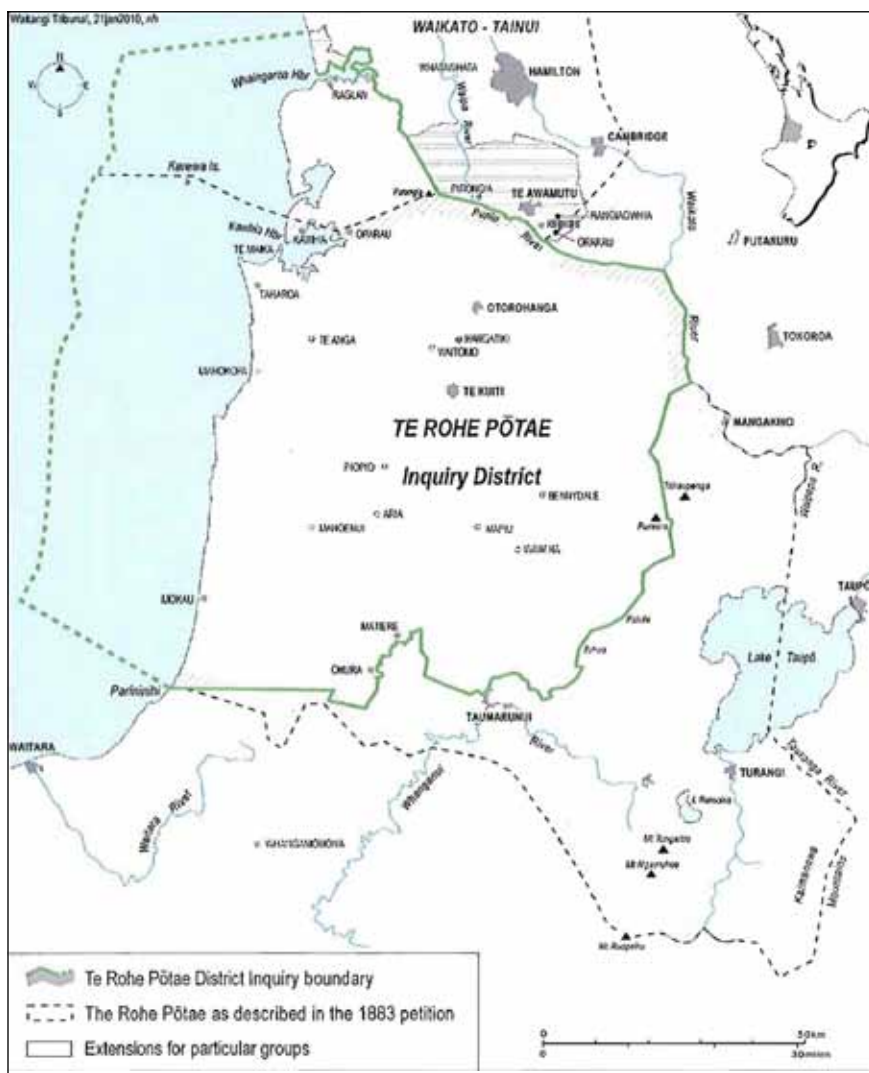
### The Te Rohe Pōtae District Inquiry Boundary Extensions

The boundary of the Te Rohe Pōtae District Inquiry is based on the interim boundary with the following extensions:

- (a) The Tribunal will hear relevant evidence on the wider historical context outside of the inquiry district, including relevant evidence of traditional relationships with neighbouring iwi and hapū, particularly in relation to the 1883 Rohe Pōtae petition area;
- (b) The Tribunal will hear claims relating to the Rohe Pōtae pact from iwi involved, but will not hear the claims of those iwi to lands outside the boundary of this inquiry;
- (c) West 20 miles out to sea from the mouth of the Tauterei Stream in the north of the inquiry district, and southward 20 miles from the coastline (including Kārewa island) to a point 20 miles west of the Taranaki raupatu line in the south of the inquiry district;
- (d) East to include the Ketemaringi, Hurakia and Maraeroa blocks;
- (e) North to include the whole of the Whaingaroa Harbour and the following claims within the Waikato claim area:
  - (i) The Raupatu claims of Ngāti Maniapoto and hapū affiliated with Ngāti Maniapoto (which may include hapū who also affiliate to Ngāti Raukawa);
  - (ii) The Raupatu claims of Ngāti Kauwhata in relation to Rangiaowhia;
  - (iii) The non-Raupatu claims of Ngāti Hikairo to Ngāti Hikairo land within Pirongia Parish, Ngāroto Parish, Mangapiko Parish, the town of Alexandra (east and west) and Whatiwhatihoe (being Parish of Pirongia lots 329 and 330);
  - (iv) The non-Raupatu claims of Ngāti Koata (ki Whaingaroa), Ngāti Kahu, Ngāti Tahau, Ngāti Te Kore, Ngāti Pukoro, Ngāti Te Ikaunahi, Ngāti Tira, Ngāti Heke, Ngāti Rua Aruhe, Ngāti Hounuku, Paetoka, and Ngāti Te Karu within the area south of Tauterei Stream within the Te Akau Block;
  - (v) The non-Raupatu claims of the Ngāti Maniapoto hapū, being Ngāti Apakura, Ngāti Paretekawa, and Ngāti Ngutu . . . ; and
- (f) South to include the Raupatu claims of Ngāti Maniapoto and affiliated hapū within the Taranaki district . . .
- (g) The Tribunal will hear all aspects of river claims from those groups which are participating in this inquiry where rivers form or cross the district boundary, including rivers that enter the Whaingaroa Harbour. However, claims will not be heard in cases where these groups' issues have been heard in full by another inquiry or where the Tribunal's jurisdiction to hear them has been explicitly removed by legislation.<sup>1</sup>

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1. Memorandum 2.5.53, pp 2–3.



Map 1.1. Te Rohe Pōtae District Inquiry final physical boundary including extensions

### 1.2.3 Previous district inquiries in neighbouring areas

The Te Rohe Pōtae District Inquiry is one of the last district inquiries to be heard by the Waitangi Tribunal. Since the early 1990s, the Tribunal has grouped claims into geographic areas, including several in the regions surrounding Te Rohe Pōtae. The reports resulting from these inquiries have included contextual discussion or preliminary findings on issues relating to the claims heard in the Te Rohe Pōtae District Inquiry. In addition, a number of settlements of Treaty claims have been reached that have impacted on the Tribunal's jurisdiction.

To the north is the Waikato district. Very early in the Treaty claim settlement process, Waikato-Tainui opted for direct negotiations with the Crown instead of a Tribunal inquiry. Therefore no Tribunal report on the Waikato issues has been produced. However, the 1995 Waikato deed of settlement informs this inquiry in respect of the Crown's settlement of Waikato raupatu claims (see section 1.4.1). It records the Crown's acknowledgement and formal apology concerning the raupatu that followed the Waikato War of 1863–64. The southern boundary of that district is also the northern boundary of our inquiry.

To the north-east is the south-east Waikato district. Both groups with predominant interests in this district – Ngāti Hauā and Raukawa – opted to proceed straight to settlement. However, Raukawa also participated in the proceedings for much of this inquiry, mainly concerning traditional interests in the Wharepuhunga block in the north-eastern corner of the Te Rohe Pōtae district. In 2014, they concluded a Treaty settlement with the Crown (see section 1.4.1).

To the east is the central North Island region, which combined three separate inquiry districts. The Tribunal convened a limited inquiry in 1993 concerning the Pouakani block, which sits outside the Te Rohe Pōtae district and lies north-east of the Maraeroa block. The *Pouakani Report* (1993) focused on the alienation of land interests of the Tūwharetoa, Maniapoto, Raukawa and Te Arawa peoples. It also made findings on the Crown's purchasing practice in the region, as well as offering contextual discussions of the negotiations leading to the opening of the Te Rohe Pōtae district and Crown surveying of eastern areas of Te Rohe Pōtae in the 1880s.

The main inquiry for the central North Island district resulted in *He Maunga Rongo: Report on Central North Island Claims, Stage One* (2008). The report considered issues relevant to this inquiry such as Māori autonomy, raupatu, land alienation, the operations of the Native Land Court, the environment, and economic development. It also included a discussion of the 1880s negotiations over the opening of Te Rohe Pōtae and their implications for Māori autonomy, but the Tribunal said its findings on these matters should be considered preliminary as it had not heard from Ngāti Maniapoto. In 2015, Ngāti Tūwharetoa, one of the main central North Island claimant groups, who also participated in the Te Rohe Pōtae District Inquiry, signed a deed of settlement with the Crown (see section 1.4.1).

To the south-east is the National Park inquiry district. *Te Kāhui Maunga: The National Park District Inquiry Report* (2013) discussed Crown-Māori political engagements between 1870 and 1886, including the Te Rohe Pōtae negotiations.

To the south is the Whanganui inquiry district. The claims there were heard in two stages, the first concerning the river and the second concerning the land. The issues discussed in the *Whanganui River Report* (1999) relate to our inquiry insofar as tributaries of the Whanganui River system, such as the Ōngarue River, flow through the Te Rohe Pōtae district. Further, the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 also provides some contextual understanding to the rohe. In the Whanganui land inquiry, Ngāti Maniapoto held a watching brief and sought leave to present two briefs of evidence to assist that Tribunal

to understand Ngāti Maniapoto whakapapa and the history and concepts relating to the Kīngitanga and the Te Rohe Pōtae negotiations between 1883 and 1885.<sup>17</sup> Claimants from Ngāti Urunumia and Ngāti Hari (two Ngāti Maniapoto hapū who participated in the Whanganui inquiry) agreed to provide some of the time allocated to their claims for these briefs. The presiding officer, Judge Carrie Wainwright, confirmed that the evidence would be treated only as context for these hapū, and any findings made would not be determinative.<sup>18</sup> *He Whiritauonoka: The Whanganui Land Report* (2015) contained discussions of the 1880s negotiations and the Waimarino land block.

To the south-west is the Taranaki inquiry district. The *Taranaki Report: Kaupapa Tuatahi* (1996) largely dealt with issues arising from the Taranaki confiscation, but included some discussion of Ngāti Tama's interests in the Mōkau region (part of this inquiry). A separate urgent inquiry was later convened concerning a claim brought on behalf of Ngāti Maniapoto, who objected to the Crown's proposed settlement with Ngāti Tama. In the *Ngāti Maniapoto/Ngāti Tama Cross-Claims Settlement Report* (2001), the Tribunal found that the Crown's revised settlement package would not breach the Treaty. Te Kawau Pā was excluded from the settlement and the Tribunal recommended that attempts be made to mediate a form of co-management of this site.

#### 1.2.4 Appointment of the panel

Judge Ambler was appointed presiding officer for the inquiry on 21 April 2007.<sup>19</sup> On 23 December 2009, Dr Robyn Anderson, John Baird, Dr Aroha Harris, and Professor Tā Hirini Mead were appointed members of the panel.<sup>20</sup> However, Dr Anderson recused herself on 23 March 2011.<sup>21</sup> The chairperson then appointed Professor Pou Temara to the panel on 22 February 2012.<sup>22</sup>

Following the passing of Judge Ambler, Deputy Chief Judge Caren Fox was appointed as the replacement presiding officer on 24 November 2017.<sup>23</sup>

#### 1.2.5 Determining the claim issues

Claims were brought to the Waitangi Tribunal on behalf of a diverse range of groups and individuals. These encompassed various whānau, hapū and iwi groups, as well as those representing particular tūpuna. Furthermore, claims were made on behalf of current-day entities such as trusts, boards, incorporations and owners of particular land blocks. The Tribunal also received many localised claims or

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17. Wai 903 ROI, memo 2.3.73, p 5.

18. Wai 903 ROI, memo 2.3.73, pp 5–6.

19. Memorandum 2.5.14, p 1.

20. Memorandum 2.5.50, p 1.

21. Memorandum 2.5.93, p 1.

22. Memorandum 2.5.112, p 1.

23. Memorandum 2.7.10, p 2.

claims relating to particular actions or events. In total, the Te Rohe Pōtae District Inquiry addresses 277 consolidated and aggregated claims.<sup>24</sup>

The first claim that eventually came to be part of the Te Rohe Pōtae District Inquiry was submitted to the Tribunal on 31 March 1987 by Margaret Makariti Poinga on behalf of herself and members of Ngāti Hikairo.<sup>25</sup> The Tribunal continued to receive Te Rohe Pōtae claims over subsequent years until 1 September 2008, which was the deadline for all historical Treaty claims that concerned Crown actions prior to 21 September 1992. During the course of the inquiry, two claims were received concerning Māui's dolphin and their threat of extinction. These were the claims of Davis Apiti, submitted on 1 September 2008 and amended further on 31 July 2014, and Angeline Greensill, submitted on 1 September 2014.<sup>26</sup> These claims were addressed in a priority report, further discussed in section 1.2.8.

The claimants produced a combined claimants' statement of issues, which was filed on 23 December 2011.<sup>27</sup> In response, the Crown filed its statement of position and concessions on 22 March 2012.<sup>28</sup>

The Tribunal took these documents into account in preparing its draft statement of issues, which it released to the parties for feedback at a judicial conference in Wellington on 14 and 15 August 2012.<sup>29</sup> The final Tribunal statement of issues was released on 6 September 2012.

### 1.2.6 Ngā Kōrero Tuku Iho hui, hearings, and site visits

On 16 June 2009, Judge Ambler presented the parties with a proposal for kōrero tuku iho hui. The proposal received overwhelming support.<sup>30</sup> The purpose of these hui was to provide a forum that could complement formal hearings and so assist in fulfilling the Tribunal's aim of receiving evidence 'in a manner that maintains the cultural and legal integrity of the claims resolution process'.<sup>31</sup> These hui focused solely on oral traditions and the tikanga behind them. They were intended as a dynamic platform for claimant witnesses, where Kōrero on different take could be recited, added to, corrected, and contradicted by knowledge-holders, speaking in turn.<sup>32</sup> The benefits of this approach included: hearing from kuia and kaumātua at an early stage of the inquiry; allowing researchers to take oral traditions into

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24. Memorandum 2.6.53, pp [8]–[13]. 'Consolidated' means all of the claim is heard in the inquiry. 'Aggregated' means the claim may participate in a number of inquiries. An appendix to the final report will contain a full list of the claimants and their claims, as well as the number of claims that actively participated in the inquiry and detail on the process of aggregation and consolidation.

25. Claim 1.1.1.

26. Statement of claim 1.1.286; statement of claim 1.1.286(a); statement of claim 1.1.287. Ms Greensill did not present evidence in support of her claim during the inquiry's evidential hearings.

27. Statement of issues 1.4.1.

28. Statement of response 1.3.1.

29. Statement of issues 1.4.3, pp 11–12.

30. Discussion paper 6.2.15; memorandum 2.5.42, p 4.

31. Discussion paper 6.2.15, p [1].

32. Discussion paper 6.2.15, pp [1]–[2].



Week	Date	Venue
Week 1	1–2 March 2010	Te Kotahitanga Marae, Ōtorohanga
Week 2	29–30 March 2010	Waipapa Marae, Kāwhia
Week 3	12–13 April 2010	Poihākena Marae, Raglan
Week 4	26–27 April 2010	Ngāpūwaiwaha Marae, Taumarunui
Week 5	17–18 May 2010	Maniaroa Marae, Mōkau
Week 6	9–11 June 2010	Te Tokanganui-a-Noho Marae, Te Kūiti

Table 1.1: Ngā kōrero tuku iho hui

account in their research; and bridging the preparatory and hearing inquiry phases to enable early panel engagement with claimant kōrero.<sup>33</sup> At the conclusion of each hui, the kōrero in te reo Māori was translated and transcripts were produced and placed on the record of inquiry.

Six of these hui were held in locations throughout Te Rohe Pōtae from March to June 2010.

Following the Ngā Kōrero Tuku Iho hui, the Tribunal held 17 weeks of hearings. They began in late 2012 and were held at various marae and centres around the Te Rohe Pōtae district. The hearings concluded in Wellington in early 2015.

In total, the Tribunal heard from approximately 350 witnesses across both the Ngā Kōrero Tuku Iho hui and hearings.<sup>34</sup>

### 1.2.7 Shaping the report

Following the conclusion of hearings in 2015, the Tribunal commenced writing its report.

In a memorandum dated 20 June 2014, Judge Ambler called for submissions from counsel on the question of how the Tribunal should approach its report in light of the Supreme Court decision *Haronga v Waitangi Tribunal* [2011] NZSC 53.<sup>35</sup> In its decision, the Supreme Court reaffirmed the Tribunal's obligation to inquire into every claim before it, as outlined in section 6(2) of the Treaty of Waitangi Act 1975.<sup>36</sup>

In response to the submissions of the parties, the Tribunal decided that it would address as many specific claims as possible in the substantive kaupapa chapters of the report. However, the Tribunal noted that specific claims were also being addressed in a distinct part of the report known as the Take a Takiwā chapters.

33. Discussion paper 6.2.15, p [2].

34. Some witnesses did not get to present their briefs of evidence at hearings and some witnesses pulled out of hearings at the last minute.

35. Memorandum 2.6.76, p 5.

36. *Haronga v Waitangi Tribunal* [2011] NZSC 53, para 80.

TE MANA WHATU AHURU

1.2.7

Week	Date	Hearing venue	Site visits
Week 1	4–9 November 2012	Te Tokanganui-ā-noho Marae, Te Kūiti	—
Week 2	10–14 December 2012	Te Tokanganui-ā-noho Marae, Te Kūiti	—
Week 3	3–8 March 2013	Maketu Marae, Kāwhia	Te Ahurei, <i>Tainui</i> waka, Kāwhia Harbour, Te Puna o Rona
Week 4	7–12 April 2013	Te Wananga o Aotearoa, Glenview	Ōrākau, Rewi's Reserve (Kihikihi), Rangiaowhia/Hairini, Ngāhinapouri, Pāterangi and Pikopiko, Waiari, Whatiwhatihoe, Te Karaka, Otawahao Mission School site, Moeawha Pā and mission station site, St John's CMS church (Te Awamutu), Hui te Rangiora, runanganui and council house site (Kihikihi)
Week 5	5–10 May 2013	Te Ihingārangi Marae, Waimiha	Tihikārearea, Ongarue Stream Road Bridge, Waimiha Urupā, Wai-miha awa, Ōngarue Urupā, Ōngarue, Pukepoto Pā and maunga, Tūhua maunga, Te Koura, Waimiha Pā
Week 6	8–13 September 2013	Aramiro Marae, Raglan	Te Rape Pā, Te Aramiro (Te Kaharoa) Marae, Ohautira, Waitetuna River mouth, whitebait farm and resource consent site 1, Puketutu, Te Uku landing, Accorn Farm, Huripopo, Whāingaroa Harbour, Manu Bay
Week 7	6–11 October 2013	Waipapa Marae, Kāwhia	Mokai Kainga Marae, Te Papa o Whatihua (urupā), Okapu F2 Farm, Nohinohi Whare, Hawaiiiki-Iti, Hourouere (Morrison subdivision)
Week 8	3–8 November 2013	Te Kotahitanga Marae, Ōtorohanga	—
Week 9	8–13 December 2013	Parawera Marae, Kihikihi	—
Week 10	3–7 March 2014	Maniaroa Marae, Mōkau	—
Week 11	31 March–4 April 2014	Wharauoa Marae, Taumarunui	Matapuna Bridge, Te Umutoi, Takaputiraha o Tutetawha, Te Kohunu, Petania, Te Arawahine, Te Kopani, Papawaka Pā

Week	Date	Hearing venue	Site visits
Week 12	4–9 May 2014	Oparure Marae, Te Kūiti	Te Korapatu Marae, aerodrome, oxidation ponds, Te Ana Ureure, Motakiora, Taupiri o te Rangi, Mangaokewa Stream
Week 13	9–13 June 2014	Waitomo Cultural and Arts Centre, Te Kūiti	—
Week 14	7–11 July 2014	Waitomo Cultural and Arts Centre, Te Kūiti	—
Week 15	2–7 November 2014	Napinapi Marae, Piopio	—
Week 16	8–12 December 2014	Waitomo Cultural and Arts Centre, Te Kūiti	—
Week 17	11–13 February 2015	James Cook Hotel Grand Chancellor, Wellington	—

Table 1.2: Waitangi Tribunal hearings

The regional groupings of the Take a Takiwā chapters take into consideration the discrete hapū and whānau claims and are organised regionally. They are: Waipā-Pūniu; Te Kūiti-Hauāuru; Waimiha-Ōngarue; Taumarunui; Mōkau; Kāwhia-Aotea; and Whāingaroa. The Take a Takiwā chapters will be included in the final report.

### 1.2.8 Prioritised reporting

In 2015, Judge Ambler prioritised two claims concerning the Crown's actions in respect of the Māui's dolphin due to the dolphins' increased risk of extinction. The Tribunal released *The Priority Report concerning Māui's Dolphin* in pre-publication format in May 2016.

On Friday 22 December 2017, Matanuku Mahuika, counsel for the Maniapoto Māori Trust Board, and Geoff Melvin, counsel for the Crown, filed a joint memorandum requesting the Tribunal to prioritise certain topics for early reporting to assist with settlement negotiations between Ngāti Maniapoto and the Crown.<sup>37</sup> At its meeting in December 2017, prior to receiving the joint memorandum, the Tribunal had already discussed a plan to progress and release the report.<sup>38</sup>

After a judicial conference on 26 February 2018, the Tribunal confirmed it would release parts I and II of the report in pre-publication format in August of that year.<sup>39</sup>

37. Memorandum 3.5.14.

38. Memorandum 2.7.14, p 2.

39. Memorandum 2.7.14, pp 2, 3.

### 1.3 SCOPE OF THE PRE-PUBLICATION REPORT

This part of the pre-publication report includes chapters on the following topics: tribal landscape; te Tiriti o Waitangi; old land claims; Crown purchasing 1840–65; war and confiscation; the formation and enforcement of the aukati; Te Ōhākī Tapu; the North Island Main Trunk Railway; the Native Land Court 1886–1907; and Crown purchasing 1890–1905.

### 1.4 JURISDICTIONAL ISSUES

Before addressing the claims in the chapters, there are jurisdictional issues that need to be addressed due to the effect of Treaty settlements in surrounding districts, and the extent to which they remove our ability to report on particular claims in our inquiry. In this section, we discuss the effect of these settlements in general. We then discuss particular jurisdictional issues which arise in respect of raupatu claims.

#### 1.4.1 Settlement legislation affecting the Tribunal's jurisdiction

Schedule 3 to the Treaty of Waitangi Act 1975 lists sections in settlement legislation prohibiting the Tribunal from further investigating those settled historical claims. Several of those pieces of legislation have the potential to affect this inquiry's scrutiny of issues:

- ▶ Section 9 of the Waikato Raupatu Claims Settlement Act 1995 removed the Tribunal's jurisdiction to inquire into most Waikato raupatu claims. Some claims were exempted, including claims to the Waikato River, though the river claims were later settled by the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.
- ▶ The Ngāti Tama Claims Settlement Act 2003 settled the raupatu claims of Ngāti Tama. No raupatu claims were made in this inquiry by Ngāti Tama or affiliated groups.
- ▶ Section 15(8) of the Raukawa Claims Settlement Act 2014 removed the Tribunal's jurisdiction to inquire into or to make recommendations or findings on settled Raukawa claims. Raukawa participated in the initial stages of this inquiry, with the Ngāti Raukawa Claim (Wai 443) serving as an 'umbrella' for 17 claims.
- ▶ Clause 15(6) of the Ngāti Tūwharetoa Claims Settlement Bill preserves the Tribunal's jurisdiction to inquire into, or make findings or recommendations in respect of, Ngāti Tūwharetoa claims insofar as they relate to the steps that are necessary for the Tribunal to complete the Te Rohe Pōtae District Inquiry. At the time of writing, the Bill has passed its second reading having been reported on by the Māori Affairs Select Committee, which did not comment on clause 15(6) and the Tribunal's jurisdiction. It is now before the Committee of the whole House. It is likely that once the Bill is enacted, it will preserve the Tribunal's jurisdiction, though the Bill is still subject to change. There is an argument that the Tribunal is technically unable to report for Ngāti Tūwharetoa due to the restrictions imposed on its jurisdiction under

section 6(6) of the Treaty of Waitangi Act 1975, which prevents it from examining a bill before Parliament. However, this Tribunal considers that section 6(6) of the Treaty of Waitangi Act 1975 should be interpreted narrowly, and while the provision prevents the Tribunal from examining a bill, it does not preclude us from reporting on the claims before us. In determining whether section 6(6) applies, the Tribunal notes that reporting on the claims before it in this inquiry does not require an examination of the Bill itself. The claims before us are not about the adequacy of the settlement process and the resulting Bill, but about the Crown's historic breaches. In issuing this report, the Tribunal is not seeking to interfere with the powers of Parliament to enact legislation, nor is it attempting to examine and comment on the Bill.

#### 1.4.2 Jurisdiction to hear raupatu claims

Te Rohe Pōtae Māori are the last major claimant group to have their raupatu claims heard by the Tribunal. Most of the iwi and hapū affected by the Waikato and Taranaki wars have settled their Treaty claims through various Acts of Parliament, beginning with the Waikato Raupatu Claims Settlement Act 1995.<sup>40</sup> The effect of these settlement Acts determines the extent to which this Tribunal can inquire into and report on particular claims.

By and large, most of the claimant groups in our inquiry that brought raupatu claims were unaffected by these Acts. However, by the end of our hearings, questions remained over whether the Tribunal had jurisdiction in respect of three claimant groups bringing raupatu claims: Ngāti Paretekawa and Ngāti Apakura, who were listed as 'hapū of Waikato' in the Waikato Raupatu Claims Settlement Act; and Ngāti Wehi Wehi, who the Crown said were caught by the Raukawa Claims Settlement Act 2014.<sup>41</sup>

Several other 'hapū' listed in the Waikato Raupatu Claims Settlement Act also brought claims in this inquiry. These included Ngāti Māhanga, Ngāti Tamainupō, Ngāti Mahuta, Ngāti Te Wehi and Tainui Hapū o Tainui Waka. However, none of them pursued raupatu claims. Ngāti Tahinga did set out to pursue a raupatu claim but by the time of closing submissions had withdrawn it.

Ngāti Hikairo had similarly indicated they were pursuing raupatu claims.<sup>42</sup> However, by the time of closing submissions, they had elected not to pursue those claims and sought neither findings nor recommendations from the Tribunal in that regard.<sup>43</sup> The Crown accepted that this approach was possible by reason of section 7(1A) of the Treaty of Waitangi Act 1975, though it did not necessarily accept that

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40. We use the general term 'Waikato' to refer to the iwi or confederation of iwi and hapū that settled with the Crown under the 1995 and 2010 settlements. The term is for present purposes synonymous with 'Waikato-Tainui'.

41. Ngāti Ngutu are affected in a similar way as Ngāti Paretekawa as they are also named in the 1995 Act, however the Crown did not separately identify their claims for consideration. Accordingly, our views on Ngāti Paretekawa also apply to Ngāti Ngutu.

42. The Te Rohe Pōtae Land Alienation Claim (Wai 1113) and the Ngāti Hikairo Lands and War (Thorne) Claim (Wai 2351).

43. Submission 3.4.226, p 17.

Ngāti Hikairo could avoid the jurisdictional bar in the Waikato Raupatu Claims Settlement Act.<sup>44</sup>

Ngāti Kauwhata – who are connected to Waikato and Raukawa and are closely related to Ngāti Wehi Wehi – also brought raupatu claims, but the Crown did not argue that settlement legislation prevented them from bringing such claims.

The following sections focus on whether the Tribunal has jurisdiction to inquire into the claims of Ngāti Paretekawa, Ngāti Apakura, and Ngāti Wehi Wehi in light of the provisions in the 1995, 2010, and 2014 Acts. We look first at the jurisdictional test that was set at the beginning of the inquiry, then we analyse the relevant evidence and submissions of each group.

#### **1.4.2.1 *The inquiry boundary and the Waikato raupatu settlement***

The question of the Tribunal's jurisdiction to hear the raupatu claims of hapū listed in the Waikato Raupatu Claims Settlement Act first arose at an early stage of the inquiry, in the context of a decision on the extension of the boundaries of the inquiry district.

During the second judicial conference in April 2007, claimant counsel sought to extend the inquiry boundary north, across the Pūniu River, into the Waikato claim area. A full panel had not then been appointed, so Judge Ambler concluded that in its absence he did not have jurisdiction to make a decision on what claims had or had not been settled by the Waikato raupatu settlement.<sup>45</sup> However, he noted that the boundary served to define 'which claims will be heard by this Tribunal and (to a large degree) what evidence will be relevant'.<sup>46</sup>

All parties, including the Crown, accepted that the Waikato raupatu settlement did not prevent Ngāti Maniapoto from bringing raupatu and non-raupatu claims within the Waikato claim area. But two questions remained: whether hapū defined as 'Waikato' could bring non-raupatu claims within the Waikato claim area and whether hapū defined as 'Waikato' by the Waikato Raupatu Claims Settlement Act 1995 could bring raupatu claims within the Waikato claim area based on a separate ancestral identity. The answer to the first question was that the hapū could bring non-raupatu claims; the answer to the second question was to be determined by the Tribunal at a later stage.<sup>47</sup> In his decision on these matters, Judge Ambler noted:

the Crown has conceded that 'Ngati Maniapoto' can bring non-Raupatu and Raupatu claims within the Waikato claim area. That, in my view, is the deciding point as far as boundaries are concerned. It will be for the Tribunal to then determine whether any of such hapū are otherwise expressly barred from bringing Raupatu claims by reason of being 'Waikato' for the purposes of the Act.<sup>48</sup>

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44. Submission 3.4.313, p 21.

45. Memorandum 2.5.21, pp 3–4.

46. Memorandum 2.5.21, p 4.

47. Memorandum 2.5.21, pp 8–9, 15.

48. Memorandum 2.5.21, p 15.

The final inquiry boundary was set out in the direction of 22 January 2010. The boundary was extended to include the whole of Whāingaroa Harbour and brought the the raupatu claims of Ngāti Maniapoto and affiliated hapū (including Ngāti Raukawa), as well as Ngāti Kauwhata in relation to Rangiaowhia, within the Waikato claim area.<sup>49</sup>

In a further direction on 15 November 2010, Judge Ambler stated that the outstanding jurisdictional issue was:

Whether the Tribunal can inquire into the ‘raupatu’ claims within the ‘Waikato claim area’ of certain hapū listed within the definition of ‘Waikato’ in the Waikato Raupatu Claims Settlement Act 1995, but on the basis of other, non-‘Waikato’, affiliations.<sup>50</sup>

The judge directed the Crown to identify for the Tribunal and claimants which claims it said were barred from inquiry by the Tribunal.<sup>51</sup> Rather than provide a list of claims, the Crown retreated from its earlier position, advising:

The Crown accepts that raupatu claims within the Waikato claim area of those hapū listed under the 1995 Act, can be inquired into by the Tribunal on the basis of another (non-Waikato) tribal affiliation. To put this another way, the fact that those hapū are constituents of Waikato-Tainui for the purposes of the 1995 Waikato-Tainui raupatu settlement, does not deny their members the right to assert their whakapapa affiliations to iwi other than Waikato-Tainui.<sup>52</sup>

Thus, the Crown accepted that raupatu claims on behalf of hapū listed in the Waikato Raupatu Claims Settlement Act could be brought on the basis of a non-Waikato affiliation. In subsequent submissions, the Crown expressed its position this way:

Accordingly, the Crown submits that claimants in the Rohe Pōtae district inquiry who come within the definition of ‘Waikato’ in the 1995 Act and who are making a ‘Raupatu claim’ will have to satisfy the Tribunal on the balance of probabilities that they are properly making that claim on the basis of some other (non-Waikato) affiliation. To put it colloquially, they will have to present satisfactory evidence that they can and do wear another tribal hat (other than a Waikato hat) and that it is appropriate for them to do so.<sup>53</sup>

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49. Memorandum 2.5.53, p 3.

50. Memorandum 2.5.84, p 4.

51. Memorandum 2.5.84, p 4.

52. Submission 3.1.333, pp 1–2.

53. Memorandum 3.1.527, p 3.

The Crown and claimants therefore agreed on the jurisdictional test for whether claims on behalf of hapū listed in the Waikato Raupatu Claims Settlement Act 1995 could be inquired into by this Tribunal.

#### 1.4.2.2 *The jurisdictional test*

The Tribunal's jurisdictional test was subsequently set out in Judge Ambler's September 2012 decision on the inquiry's scope:

It is common ground that in respect of the Waikato Raupatu Claims Settlement Act 1995, where claimants who come within the definition of 'Waikato', as defined in section 7 of the Act are making a 'raupatu claim', the Tribunal may only inquire into such claims where the claimants can establish that they are making a claim on the basis of some other non-Waikato affiliation.

Similarly, in respect of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, where claimants who come within the definition of 'Waikato-Tainui', as defined in section 6 of the Act, and are bringing a 'raupatu claim', the Tribunal may only inquire into such claims where the claimants can establish that they are making a claim on the basis of some other non-Waikato-Tainui affiliation.<sup>54</sup>

The question of the ability of Ngāti Wehi Wehi to pursue raupatu claims in light of the Raukawa Claims Settlement Act 2014 was not actively contested by the Crown until closing submissions were filed. For this reason, Ngāti Wehi Wehi's ability to bring claims was not discussed by the parties at the time Judge Ambler set the jurisdictional test in 2012.

In closing submissions, the Crown referred to the relevant provisions of the 1995 and 2010 Acts, and adopted the jurisdictional test referred to above. However, the Crown did not accept that satisfying the jurisdictional test meant that the claimants can obtain 'multiple' Treaty settlements on the basis of different tribal affiliations. In the Crown's submission, hapū whose raupatu claims were settled by the 1995 and 2010 Acts could not seek additional redress.<sup>55</sup>

In its closing submissions, the Crown identified a number of 'further factors' against which it said the Tribunal should assess raupatu claims made by hapū listed in the 1995 and 2010 Acts.<sup>56</sup> The factors were restated as follows:

- ▶ Are the claimants' raupatu claims separate and distinct from those settled through the Waikato settlements (which might be demonstrated, for example, by evidence that the group is not a beneficiary of the settlements)?
- ▶ Does the traditional area of interest of the claimant group/hapū, or part of that area, fall outside the Waikato confiscation area?
- ▶ Can the claimant group/hapū assert customary interests within the Waikato confiscation area on the basis of distinct non-Waikato or non-Waikato-Tainui whakapapa?

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54. Memorandum 2.5.132, p 2.

55. Submission 3.4.310(e), pp 23–28.

56. Submission 3.4.310(e), pp 30–31.



- ▶ Is the group functioning as such, ‘on the ground’ and on the basis of its non-Waikato or non-Waikato-Tainui affiliation?
- ▶ What marae does the group affiliate to?
- ▶ Are these the same marae as represented by the Waikato-Tainui Te Kauhanganui or any other post-settlement governance entity responsible for administering redress provided through the 1995 or 2009 raupatu settlements?
- ▶ Are they considered by others, including Waikato-Tainui, to be part of Waikato-Tainui?<sup>57</sup>

The Crown clarified, however, that these factors did not add a ‘gloss’ to the jurisdictional test; rather, they related to assessing whether a claim was ‘well-founded’ and whether the Tribunal should make recommendations.<sup>58</sup>

Consequently, we do not seek to revisit the 2012 test set by Judge Ambler, which in our view stands. We therefore apply the test that was set in respect of Ngāti Paretekawa and Ngāti Apakura, and we apply the same test in respect of Ngāti Wehi Wehi (in their case, the question being whether they can establish a non-Raukawa affiliation).

#### **1.4.2.3 Threshold for establishing non-Waikato affiliation**

Before looking at the evidence and the submissions of the three groups in question, we need to address the question raised by the Crown about what is needed for the claimants to establish a non-Waikato affiliation. The Crown suggests that the legal burden to establish jurisdiction is a civil one – the claimants must prove ‘on the balance of probabilities’ that they have a non-Waikato affiliation and they must present satisfactory evidence that the claim comes within the Tribunal’s jurisdiction and is not barred.<sup>59</sup> That is, the claimants must have a distinct and separate non-Waikato raupatu claim on the basis of a non-Waikato affiliation.<sup>60</sup>

Generally speaking, the Waitangi Tribunal – in the context of considering the merits of a claim – does not require any of the parties to prove their case to the conventional civil standard. Rather, the Tribunal must have regard to the totality of the evidence before it and make a decision. It is then appropriate to do so on the balance of probabilities.<sup>61</sup>

In this context, however, we are asked to establish whether we have jurisdiction to inquire into specific claims. The Crown asked us to place the onus on the claimants to prove, on the balance of probabilities, that they have a non-Waikato affiliation in order to exempt their claims from settlement. This, in our view, places the bar too high. We are guided by the principle that the Tribunal’s jurisdiction to hear claims cannot be removed by general or ambiguous legislation. In this case,

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57. Submission 3.4.313, pp 20–21.

58. Submission 3.4.313, pp 19–20.

59. Submission 3.4.310(e), p 30.

60. Submission 3.4.310(e), p 30.

61. Waitangi Tribunal, *The Turangi Township Remedies Report* (Wellington: GP Publications, 1998), pp 4–6.

all parties have accepted that the Acts in question do not unambiguously remove the Tribunal's jurisdiction in respect of the three groups.

In its further closing submissions, the Crown submitted that it understood the Tribunal's use of 'affiliation' to mean whakapapa. On this understanding, the test would be whether the claimants could establish a raupatu claim on the basis of some non-Waikato whakapapa.<sup>62</sup> We agree that whakapapa is a key determinant of tribal affiliation. But whakapapa also encompasses important historical and cultural factors. The matter of tribal affiliation needs to be understood on a case-by-case basis in terms of all the available evidence.

Therefore, in determining whether the groups in question have established that they affiliate to groups other than those that have settled their raupatu claims, we looked for evidence that they have an affiliation that is demonstrated by whakapapa and reinforced by historical and cultural contexts.

#### **1.4.2.4 Our approach**

In light of this, we set out the evidence presented by each of the groups and present our conclusions first on whether Ngāti Paretekawa and Ngāti Apakura have demonstrated a non-Waikato affiliation and then whether Ngāti Wehi Wehi have demonstrated a non-Raukawa affiliation.

#### **1.4.3 Ngāti Paretekawa**

Two claimant groups brought raupatu claims on behalf of Ngāti Paretekawa. First were the claims brought by Harold Maniapoto and others (Wai 2014 and Wai 2068). These claimants belong to a branch of Ngāti Paretekawa, being Ngā Uri o Peehi Tukōrehu. The claim relates to the territory around the Pūniu River, extending both north and south of the confiscation line. The claim is also closely related to that brought by Harold Maniapoto and others on behalf of Ngā Uri o te Whakataute (Wai 1593), being a whānau within Ngāti Paretekawa. Secondly was the claim by Robert Te Huia and others on behalf of Ngāti Paretekawa and Ngāti Paea (Wai 440), the specific section of Ngāti Paretekawa being Ngāti Paretekawa ki Napinapi.

The position of the Ngāti Paretekawa claimants was that they brought their claims to the Tribunal on the basis of their Ngāti Maniapoto whakapapa, because Ngāti Maniapoto's raupatu grievances had been neither acknowledged nor settled by the Crown.

Harold Maniapoto said Ngāti Paretekawa is a hapū of the Te Kanawa section of Ngāti Maniapoto. Paretekawa was the hapū of Pēhi Tukōrehu, who during the early 1800s established his people on the ancestral lands of his tūpuna Te Momo o Irawaru and Paretekawa in Mangatoatoa Pā on the Pūniu River, and nearby on Kakepuku maunga and around the Mangapiko Stream. Mr Maniapoto, a direct descendant of Tukōrehu, told the Tribunal 'Tukōrehu's mana was "mana

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62. Submission 3.4.313, p 20.

rangatira”, chieftainship, his claim to the land was through [m]ana to hold the land and through the tupuna Motai (Father of Unu) and Te Kanawa.<sup>63</sup>

Mr Maniapoto and other Ngāti Paretekawa claimants also described Paretekawa connections with Waikato. In the early 1800s, Tukōrehu established an aukati at his pā at Mangatoatoa on the Pūniu River, and ‘he enforced it against all transgressors, all tribal groups seeking passage southward into Maniapoto and likewise the other way’.<sup>64</sup> In order to achieve this, he married his daughter Ngawaiata to Te Wherowhero and settled his son-in-law, with his people, at Kaipaka and Taurangatahi Pā, and on the Moeāwhā lands between Otāwhao and the Pūniu River. A second daughter, Ngāwaero, also later married the Waikato leader. Thus, ‘Waikato had permanent occupation in the district through the action of Tukōrehu in placing them there, they had no real claim beyond that’.<sup>65</sup>

While the death of Tukōrehu in the mid-1830s may have lessened the influence of Maniapoto in the district for a time, by the late 1850s a new generation of Ngāti Paretekawa leaders were asserting themselves, including Te Winitana Tupotahi, Raureti Paiaka, Te Kohika and the prominent Ngāti Maniapoto leader Rewi Maniapoto.<sup>66</sup>

Mr Maniapoto explained the status of Ngāti Paretekawa as a constituent hapū of the Waikato raupatu settlement. He described Ngāti Paretekawa’s inclusion in the settlement legislation as a consequence of Ngāti Maniapoto’s consistent struggle to have their raupatu grievances properly acknowledged by the Crown. In 1946, when the Tainui Māori Trust Board was established to administer the settlement reached as a result of the Sim commission’s inquiry, Ngāti Paretekawa were not originally included. After the board first met, Ngāti Paretekawa sent a delegation along with Raukawa ki Panehakua ‘to remind them that part of the area that was being settled in that particular settlement had Ngāti Paretekawa and Ngāti Raukawa interests and lands on it’. It was then that they gained representation on the board. We note that Ngāti Paretekawa are also represented on the Maniapoto Māori Trust Board and that Mangatoatoa Marae is one of that board’s marae.<sup>67</sup>

When negotiations commenced prior to the eventual 1995 Waikato raupatu settlement, Mr Maniapoto said there were ‘close liaisons’ between Te Kotahi Mahuta for Waikato, Rongo Wetere for Maniapoto, and Wally Papa for Raukawa:

So we have these three trust boards sitting together talking about a settlement for Tainui. Now the Tainui they talked about was the waka. The Tainui that the Crown

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63. Document K35 (Maniapoto), p 4; see also transcript 4.1.10, pp 327, 411–413 (Harold Maniapoto, hearing week 4, Mangakotukutuku Campus, 9 April 2013).

64. Transcript 4.1.7, pp 280–281 (Harold Maniapoto, hearing week 1, Te Tokanganui-ā-Noho Marae, 6 November 2012).

65. Document K35 (Maniapoto), pp 4–6; see also transcript 4.1.1, pp 39–44 (Harold Maniapoto, Ngā Kōrero Tuku Iho hui, Te Kotahitanga Marae, 1 March 2010).

66. Transcript 4.1.10, pp 411–412, 667 (Maniapoto).

67. Transcript 4.1.10 (Maniapoto), pp 674–675; see also doc A2 (Meredith).

saw was Waikato – quite, quite different. And so the settlement that they settled was for the interests of Waikato and in Waikato’s interests.<sup>68</sup>

Mr Maniapoto acknowledged that Waikato did what they had to do to reach a settlement, and that they could not settle on behalf of Ngāti Maniapoto. However, he said Rongo Wetera, the chair of the Maniapoto Māori Trust Board at the time, was ‘incensed with them having to be removed from that circle of negotiation.’<sup>69</sup>

Once again, Ngāti Paretekawa were included in what was essentially a Waikato settlement. That the Crown’s intention was to limit the settlement to Waikato must have been made clear to all during the debate on the Waikato Raupatu Claims Settlement Bill in 1995, when the Minister in Charge of Treaty of Waitangi Negotiations, Douglas Graham, told the House: ‘The real rebels, Ngati Maniapoto, lost nothing.’<sup>70</sup>

Mr Maniapoto said the fact that Ngāti Paretekawa consider themselves to be Ngāti Maniapoto has made it difficult to be part of the Waikato settlement: ‘it’s not a nice feeling to go – knowing that you don’t have that entitlement because of your whakapapa.’<sup>71</sup> In essence, Mr Maniapoto told the Tribunal: ‘It is the Ngāti Maniapoto part that has not been addressed. It’s the Ngāti Maniapoto part that we want to address at this hearing.’<sup>72</sup>

Bringing raupatu issues before this Tribunal, Mr Maniapoto acknowledged, had not been an easy decision. Maintaining the integrity of the Waikato settlement, and good relations with Waikato, had been an important consideration:

When we first raised this issue with the Tribunal it was a quandary for us as Ngāti Paretekawa, and once [Crown counsel] Donna Llewellyn issued her submissions, the first thing I did was went and saw Waikato, and I said to Waikato, ‘We are now looking at an opportunity of readdressing raupatu in the Waikato region. I’m aware that we have settled – part of our hapū have settled under Waikato Raupatu Settlement. What happens if we get to the end of ours and we have another settlement for the same region?’ Their response to me was this, ‘Harold that is our koha to Ngāti Maniapoto.’<sup>73</sup>

Crown counsel asked Mr Maniapoto what Ngāti Paretekawa wants that the 1995 settlement does not provide. In response, he said:

It does not re-establish our tūrangawaewae and our ancestral lands. It does not return our customary interests back to the hapū who lost it. It returned it instead to another iwi. It does not provide the basis, the foundation from which Ngāti Paretekawa can develop its past, its present and its future. It does not provide for Ngāti

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68. Transcript 4.1.10, p 680 (Maniapoto).

69. Transcript 4.1.10, p 681 (Maniapoto).

70. Douglas Graham, 19 October 1995, NZPD, vol 551, p 9922.

71. Transcript 4.1.10, p 683 (Maniapoto).

72. Transcript 4.1.10, p 680 (Maniapoto).

73. Transcript 4.1.10, pp 686–687 (Maniapoto).

Paretekawa as a hapū anything whatsoever except acknowledgement through a third-party system of marae. Virtually it doesn't do anything for Ngāti Paretekawa as a hapū. If it did we would be well ensconced north of Pūniu River now, and here I am arguing about Manga's single acre that he still hasn't even got title to. We don't have any customary rights north of the Pūniu River. We have no base on which to build our infrastructure or structure for the future of our generations to come. We haven't even got a base in which to secure the generations of the past on now, and I'll give you a good example of this. That man back there, his name is Te Winitana Tūpotahi. When he died in 1905 they had a big hui for him, and my mum's uncle out of his generosity gave up his interests at Te Rewatu so that he could be buried there. Such is the pōhara of my people. They don't even have a place to be buried when they die. If the '95 settlement was what is purported to have been, then we would never ever be in that position again, but we're still there.<sup>74</sup>

The primary closing submission by counsel for the two claimant groups maintained that Ngāti Paretekawa had presented clear evidence of the hapū's affiliation to Ngāti Maniapoto and had therefore satisfied the jurisdictional test that allows this Tribunal to inquire into and report on their claims.<sup>75</sup> Counsel emphasised that Ngāti Paretekawa's claims before this Tribunal 'lie within the rubric of their Maniapoto heritage and whakapapa' and that the 1995 Act did not extinguish Ngāti Maniapoto's claims. Furthermore, according to *Ngāti Apa ki Te Waipounamu Trust v The Queen*,<sup>76</sup> the right to bring a claim in accordance with the law cannot be extinguished except by clear and precise statutory language. Counsel further submitted that the definition of 'Waikato' in section 7 excludes those persons who are not descendants of Waikato, such as Ngāti Maniapoto. Counsel also said the fact that a hapū has more than one iwi affiliation should not deprive that hapū of the benefits from the separate settlements of the iwi to which it affiliates.

We agree that there is substantial evidence of Ngāti Paretekawa's whakapapa links to Ngāti Maniapoto. Therefore, we conclude that Ngāti Paretekawa have established, for the purpose of this inquiry, that they have raupatu claims that derive from their affiliation to Ngāti Maniapoto and that, as a result, we are able to inquire into those claims.

#### 1.4.4 Ngāti Apakura

Two claimant groups brought raupatu claims on behalf of Ngāti Apakura (Wai 1469 and Wai 2291). Counsel notes that Ngāti Apakura can be viewed as a hapū of Waikato, a hapū of Ngāti Maniapoto and an iwi in their own right, with between five and 17 hapū. The disruption and complication of Ngāti Apakura's identity due to the positioning of the confiscation boundary means that they do not fit easily within the Crown's Treaty settlement policies. Dr Robert Joseph explained:

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74. Transcript 4.1.10, pp 678–679 (Maniapoto).

75. Submission 3.4.208, p 6.

76. *Ngāti Apa ki te Waipounamu Trust v The Queen* [2000] 2 NZLR 659 (CA).

that raupatu boundary is an arbitrary line that appeared to cut right through Ngāti Apakura, right through their whenua, right through their identity as a group and so they're on both sides and other sides of that raupatu boundary. And so in coming back to negotiating, some Ngāti Apakura had settled. Branches of Ngāti Apakura but not all of Ngāti Apakura had settled their grievances and including the grievances that occurred at Rangiaowhia.<sup>77</sup>

For the purposes of the inquiry, Ngāti Apakura see themselves as a distinct group, 'Ngāti Apakura te iwi', that has affiliations other than solely to Waikato, and on these grounds they argued their raupatu claims have not been settled by the 1995 and 2010 Acts.<sup>78</sup>

The Crown disputes Ngāti Apakura's ability to bring raupatu claims on the grounds that Ngāti Apakura te iwi cannot be distinguished from the Ngāti Apakura mentioned in the 1995 and 2010 settlements and that they have not established, 'on the balance of probabilities', that they have a separate non-Waikato affiliation. The Crown submitted that 'it would be instructive to consider whether the claimants (as Ngāti Apakura te iwi) would be excluded as beneficiaries of the 1995 and 2009 [Waikato raupatu] settlements.'<sup>79</sup> The Crown discussed a 1947 inquiry by the Native Land Court into a petition from members of Ngāti Apakura and Ngāti Puhiaue. Representing the petitioners, Pei Te Hurinui Jones told the Court that 'no other tribe in the Waikato, or no other section of the Waikato tribe, suffered so severely [from the raupatu] as these people.'<sup>80</sup> The Crown argued that this statement 'tends to confirm' that Apakura were part of 'a wider Tainui-Waikato confederation.'<sup>81</sup> In relation to the matter of whakapapa, the Crown maintained that customary evidence shows that Ngāti Apakura are

essentially a people largely descended from the Tainui waka, which places them within the Waikato confederation (at least to the extent their traditional area is located within the Waikato region). While the evidence is that the eponymous ancestor, Apakura, was herself of another iwi (descending from Te Arawa waka), her marriage to a descendent of Hoturoa, captain of the Tainui waka, would constitute Ngāti Apakura a member of the broader Waikato confederation.<sup>82</sup>

Ngāti Apakura supplied extensive testimony as to their distinct whakapapa lines. The submissions of Ngāti Apakura focused mainly on how they maintain an identity in their own right, but they also acknowledged that they can connect to Ngāti Maniapoto, Waikato, and Ngāti Hikairo.<sup>83</sup> Counsel for the claimants maintained that the Crown's submission that Ngāti Apakura are a people largely descended

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77. Transcript 4.1.10, p 273 (Robert Joseph, 8 April 2013).

78. Submission 3.3.269, pp 3, 5-7.

79. Submission 3.4.310(e), p 32.

80. Submission 3.4.310(e), pp 33-34.

81. Submission 3.4.310(e), p 33.

82. Submission 3.4.310(e), p 33.

83. Submission 3.4.405, p 4.

from the *Tainui* waka and are therefore members of the Waikato confederation is too broad. Taken to its logical conclusion, such an assertion would in fact mean that Ngāti Maniapoto is also of the Waikato confederation. Fundamentally, claimant counsel said, the Waikato raupatu settlement accounted only for ‘the component of Apakura that fled north to seek refuge with their Waikato kin, following the war.’<sup>84</sup> However, in counsel’s submission, Ngāti Apakura, ‘in and of their own whakapapa, identity and constituent hapū’, are not included in that settlement.<sup>85</sup>

Countering Ngāti Apakura’s claim, the Crown referred to Waikato-Tainui information which it said showed that six marae listed among those that authorised the 1995 settlement were Ngāti Apakura marae situated in the north of Te Rohe Pōtae district: Mōkai Kāinga, Hiona, Pūrekireki, Te Kōpua, Kahotea, and Te Tokanganui-ā-Noho. While other Apakura marae were mentioned by claimants, such as Tanehopuawai and Mangarama, the Crown disputed Ngāti Apakura’s claim on the basis that ‘they have not shown how the Apakura people affiliating to those marae have raupatu claims separate and distinct from the Apakura marae included in the 1995 and 2009 Waikato-Tainui settlements.’<sup>86</sup>

In response, Ngāti Apakura argued that they have longstanding affiliations with marae in Te Rohe Pōtae, exemplified by the Maniapoto Māori Trust Board list, which records Ngāti Apakura as being affiliated with eight marae. Counsel for the claimants listed 10 marae with which Ngāti Apakura affiliate that were included in the Te Kawau Mārō draft Ngāti Maniapoto mandate strategy, and pointed out that only three of them were also listed in the Waikato-Tainui Te Kauhanganui trust deed.<sup>87</sup> Counsel argued that Ngāti Apakura have interests both within and outside the Waikato claim area and that they can claim interests within the claim area on the basis of a non-Waikato affiliation. This was because, firstly, Apakura identity was distinct from Waikato and, secondly, because the boundary of the Waikato confiscation area was arbitrary and ‘cut right through’ both that identity and their lands. Furthermore, counsel argued that Ngāti Apakura does function on the basis of that separate affiliation, as is exemplified by their involvement in Ngā Iwi Topu o Waipā, in resource consent issues in the Te Awamutu area, and through the Apakura Rūnanga Trust.<sup>88</sup>

While Ngāti Apakura maintain that they are affiliated with Ngāti Maniapoto, they interpret affiliated as ‘not necessarily entirely defined as being part of Ngāti Maniapoto.’<sup>89</sup> In this sense they state that their interests cannot be fully accommodated under a purely Ngāti Maniapoto structure. Those of Ngāti Apakura who retreated south following the confiscations and became more closely affiliated with Ngāti Maniapoto had not settled their claims. While the Crown suggests that affiliation with Ngāti Maniapoto came about as a consequence of the wars, Ngāti Apakura maintain that, ‘[a]lthough the affiliation of Apakura to these areas was

84. Submission 3.4.405, p 5.

85. Submission 3.4.405, p 5.

86. Submission 3.4.310(e), pp 32–33.

87. Submission 3.4.405, pp 6–8.

88. Submission 3.4.405, p 10.

89. Transcript 4.1.22, p 745 (Tom Bennion, hearing week 15, Napinapi Marae, 5 November 2014).

certainly strengthened because of the wars, Apakura in fact already held mana whenua deep within Te Rohe Potae prior to the war.<sup>90</sup>

Counsel said that Ngāti Apakura te iwi were particularly affected by the confiscation line at the Pūniu River, which was drawn through their ancestral rohe. Ngāti Apakura claimants based their raupatu claim on the assertion that when the Crown invaded the centre of their rohe at Rangiaowhia in February 1864, they were an independent and prosperous iwi that was both affiliated to and independent of Waikato and Maniapoto. Tom Roa said that, before raupatu, ‘Ngāti Apakura were an iwi of mana; with a wealth shared by Waikato-Maniapoto’ and that ‘[t]hese iwi possessed a burgeoning economy of some substance.’<sup>91</sup> He also explained that ‘Ngāti Apakura has had the strength to be able to retain its identity, and as such is claimed by both Waikato and Maniapoto as a hapū of these respective iwi.’<sup>92</sup>

Mr Lennox recounted the efforts of his tūpuna to assert their ownership at Rangiaowhia. He told the Tribunal: ‘I would like to see the restoration of our connections to our core traditional lands and our Ngāti Apakura te iwi identity.’<sup>93</sup>

Counsel for Ngāti Apakura described the raupatu as ‘permanently severing parts of the iwi from each other and their whenua.’<sup>94</sup> Their traditional history report states:

Ngāti Apakura was also referred to as a hapū of both Waikato and Maniapoto at other times in official lists between 1840 and 2010 . . . Still, it is noted here that Apakura were a distinct iwi but due to the colonial process among other events, some Apakura whānau and hapū came to view themselves as part of the closely connected Maniapoto and Waikato iwi while others kept alive their Apakura iwi affiliations.<sup>95</sup>

The Crown submitted that ‘undue focus can be put on the use of the term “hapū” in the definition of “Waikato” in the 1995 and 2009 settlements.’ The Crown told us that it understands hapū and iwi identities are not fixed but a question of ‘time, place, and custom.’ It said:

The Crown understands the term ‘Waikato’ in the 1995 and 2009 settlements as it is commonly understood, namely as referring to those descendants of the Tainui waka who resided or reside in the Waikato region (that is, the ‘Waikato’ peoples take their name from the district to which they belong).<sup>96</sup>

It appears that Ngāti Apakura remain fragmented. Claimants from one end of the inquiry district to the other told us of their Apakura heritage. We do not doubt that similar ties exist within Waikato.

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90. Submission 3.4.405, p 6.

91. Document H9(c) (Roa document bank), para 80.

92. Document K38 (Roa), p 7.

93. Document K22 (Lennox), p 41.

94. Submission 3.4.228, p 50.

95. Document A97 (Borell and Joseph), pp 60–61.

96. Submission 3.4.310(e), p 30.



We find it significant that descendants of Ngāti Apakura – whether they identify today as that or not – now reside throughout Te Rohe Pōtae as a direct result of the raupatu. This is reflected by the large number of Ngāti Apakura-affiliated marae across both this inquiry district and in the Waikato claim area. It is difficult to see how the Waikato raupatu settlement was intended to provide redress for all these people.

Irrespective of the way that they present their claim, Ngāti Apakura clearly have pre-war whakapapa ties to Ngāti Maniapoto, as well as closer affiliations that arose from their dispersal and adoption by Ngāti Maniapoto as a consequence of the raupatu.

For the purpose of this inquiry, then, Ngāti Apakura have established that they have raupatu claims that derive either through their affiliation to Ngāti Maniapoto, or through their existence as an iwi in their own right.

#### 1.4.5 Ngāti Wehi Wehi

Richard Orzecki and others brought claims on behalf of Ngāti Wehi Wehi (Wai 1482). In reply to the Crown's closing submissions that Ngāti Wehi Wehi were caught by the Raukawa Claims Settlement Act 2014, counsel submitted that the Crown was plainly wrong, that Ngāti Wehi Wehi's raupatu claims were not based on affiliation to Raukawa, and that Ngāti Wehi Wehi had an entirely different line of descent from that of Raukawa.

Ngāti Wehi Wehi are closely connected to Ngāti Kauwhata by whakapapa and share similar customary land interests in Waikato. They sought to stand 'strongly beside' Ngāti Kauwhata 'to challenge the confiscations of their lands.' They are also 'closely affiliated' with Raukawa, but maintain an identity distinct from either.<sup>97</sup>

The Crown submitted that Ngāti Kauwhata were not prevented from bringing raupatu claims by the settlement legislation but that Ngāti Wehi Wehi were. The Crown's position in relation to Ngāti Wehi Wehi is puzzling and we reject it.

Ngāti Kauwhata and Ngāti Wehi Wehi are intimately related, with the eponymous ancestor Kauwhata being the father of the eponymous ancestor Wehi Wehi.<sup>98</sup> It appeared to us contradictory for the Crown to argue that Ngāti Kauwhata could bring raupatu claims but that Ngāti Wehi Wehi could not.

At hearing week 4, the Crown put to Jeremiah Jacobs that Ngāti Wehi Wehi were included as a hapū of Raukawa in the deed of settlement between the Crown and Raukawa dated 2 June 2012. Mr Jacobs was confused by the question because he was not aware of Ngāti Wehi Wehi having been included in that deed.<sup>99</sup> In fact, neither the 2012 deed of settlement nor the 2014 Act contain any reference to Ngāti Wehi Wehi or, for that matter, Ngāti Kauwhata.

By the time of the closing submissions the Crown's argument had changed. The Crown submitted that, to the extent that the raupatu claims of Ngāti Wehi Wehi were based on descent from Raukawa and affiliation to a Raukawa marae in the

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97. Submission 3.4.154(a), pp 6–7.

98. Document A120 (McBurney), p 30.

99. Transcript 4.1.10, pp 1551–1554 (Jeremiah Jacobs, 12 April 2013).

Waikato area, those claims were settled.<sup>100</sup> However, claimant counsel pointed out in submissions in reply that Ngāti Wehi Wehi's raupatu claims were not based on affiliation to Raukawa. Counsel said the whakapapa evidence was clear that the eponymous ancestor Wehi Wehi was from a different line of descent than that of Raukawa: Raukawa descends from Tūrongo, being one of the sons of Tāwhao, whereas Kauwhata, the father of Wehi Wehi, descends from Whatihua, being a different son of Tāwhao.<sup>101</sup>

We therefore conclude that there is no legislative impediment to either Ngāti Kauwhata or Ngāti Wehi Wehi bringing raupatu claims concerning the Waikato wars. Nevertheless, whether either of those iwi or hapū has 'well founded' claims is a matter to which we will return in chapter 6.

### 1.5 TE KŌRERO A RAWIRI

To conclude this introductory chapter, it is appropriate to set out some of the views of the late presiding officer Judge David Ambler on the key themes relevant to the Te Rohe Pōtae District Inquiry.

For Judge Ambler, the principal theme of the inquiry was the struggle by Māori to retain and exercise authority using new institutions in response to the expansion of Crown authority and European settlement in the district. As is discussed in chapter 8, rangatira such as Rewi Maniapoto and Wahanui Huatare referred to the authority that Te Rohe Pōtae Māori asserted as 'mana whakahaere', or full control and power over their lands and their people. Judge Ambler saw the broader tension between Māori striving to maintain their mana whakahaere and the Crown's failure to provide for that mana whakahaere as the central story of this inquiry.

In a thesis statement prepared for initial report writing purposes, Judge Ambler summarised his understanding of the early history of Te Rohe Pōtae:

The pre-Treaty period, when traders and missionaries first came to the district, was a time of relatively benign relations between Māori and Pākehā. In the years following the Treaty, the Pākehā presence in the district increased, but was still limited. In the early 1850s, the Crown began acquiring land, mainly in the areas around Mōkau and the Whāingaroa and Aotea Harbours. From the late 1850s through to the mid-1860s, tensions increased over land transactions and Te Rohe Pōtae Māori support for the Kingitanga, resulting in the well-documented Waikato and Taranaki wars and the confiscation of large parts of those districts. Ngāti Maniapoto were at the centre of this conflict and were significantly affected by confiscation in both districts, as well as by the long-term effects of the influx of refugees primarily from the Waikato. The subsequent period of the aukati that stretched to the mid-1880s saw relative peace and varying attempts by the Crown and Māori to negotiate an ongoing relationship.

The 1880s marked a persistent Crown policy of opening up Te Rohe Pōtae. This resulted in high-level negotiations giving rise to a series of agreements that have since

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100. Submission 3.4.310(e), p 37.

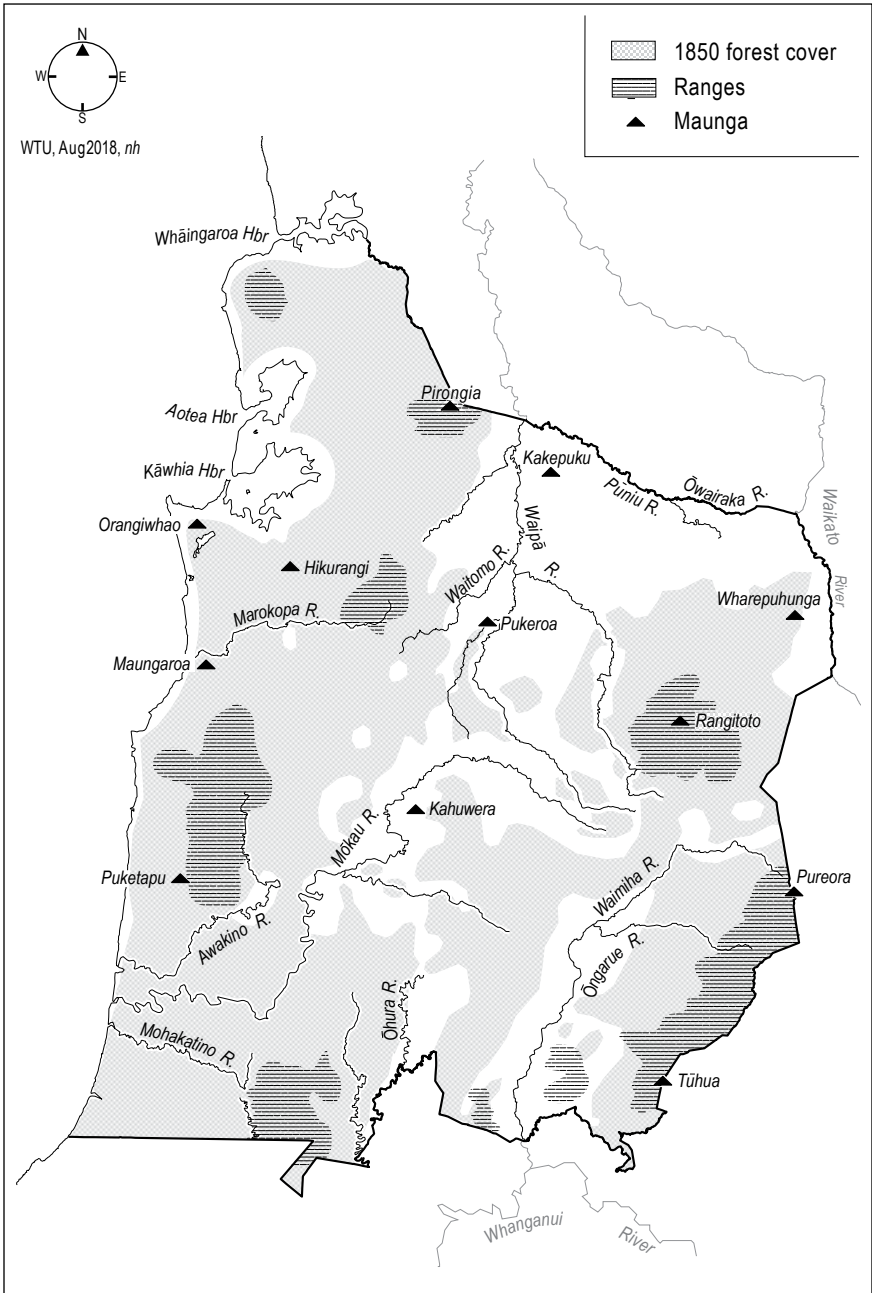
101. Submission 3.4.324, pp 2–4.

come to be known by Māori as Te Ōhākī Tapu. These negotiations are of great historical and constitutional significance. But what Te Rohe Pōtae Māori sought reflected no more than what the Treaty contemplated. Clearly the Crown missed the critical opportunity to provide for new Māori institutions during and following the negotiations in the mid-1880s, and that failure goes to the heart of the prejudice to Te Rohe Pōtae Māori in the decades following the lifting of the aukati.

In the chapters that follow, we address the arguments of the claimants and the Crown in respect of these and other events, in order to assess whether the Crown breached the principles of the Treaty and caused prejudice to Māori in the inquiry district.



## PART I



**Map 2.1: Significant natural features of the inquiry district**

## CHAPTER 2

### HE KURA WHENUA, HE KURA TANGATA: THE TRIBAL LANDSCAPE

*Mana whenua, mana tangata,  
ki te kore he whenua o te tangata,  
kua kore te mana taihoa koa.<sup>1</sup>*

#### 2.1 INTRODUCTION

This report is concerned with relationships between the Māori people of Te Rohe Pōtae and the Crown from the signing of the Treaty in 1840 to the present. To understand this relationship, it is necessary to understand the rangatira who signed the Treaty and the people they represented in the context of Te Ao Māori. Who were they, how did they live, and how did they manage relationships with each other and with the world around them? By answering these questions we can see what the Treaty might have meant to them, and what they might have expected of their relationship with the Crown.

Māori had lived in this district for many hundreds of years before Europeans arrived.<sup>2</sup> Over many generations, the people of the *Tainui* waka had explored, named, settled, cultivated, and defended lands from Tāmaki in the north to the upper Whanganui and Poutama regions in the south. In the south and the east, they met the people descended from the *Tokomaru*, *Aotea*, and *Te Arawa* waka. Tribal traditions refer to ariki and rangatira who embodied and protected the mana of their people, and whose lives were punctuated by epic journeys, great battles, intense rivalries, famous marriages, and unbreakable familial bonds.

Pre-colonial Māori in general, and this district's people in particular, had their own distinct understandings of the universe and how it was made; their own histories and identities; their own systems of social organisation, law, and political authority; their own values and systems for determining right and wrong; their own methods of determining rights and interests in land and other resources; their own ways of understanding and managing relationships with the environment; and their own methods for managing interpersonal and inter-group relationships.

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1. The words of claimant Tom Roa at the first Ngā Kōrero Tuku Iho hui: 'If there is no land there is no mana': transcript 4.1.1, p 31.

2. *Tainui* probably landed at Kāwhia sometime during the mid- to late 1200s: Atholl Anderson, Judith Binney, and Aroha Harris: *Tangata Whenua: An Illustrated History* (Wellington: Bridget Williams Books, 2015), pp 27–29, 55, 58, 63–66.

At a fundamental level, they saw their lives as being shaped by spiritual as well as physical and human forces. They understood their world through a lens of whanaungatanga, or kinship, through which all people and things were connected – past and present, animate and inanimate, living and dead. All rights, interests, laws, duties, and values, and all authority to lead or act, derived from the realm of ancestor-gods and ultimately from Te Korekore, the original nothingness from which all life and matter emerged. All relationships – human and environmental – were mediated through this spiritual realm.

### **2.1.1 The purpose of this chapter**

This chapter is concerned with understanding the district's people. It addresses questions of history and identity, law and values, rights and interests, social and political organisation, economic and environmental management, leadership, and relationships both within and between groups. Each of these matters is fundamental to the Treaty promise that Māori would retain tino rangatiratanga (full chieftainship or full authority) in respect of their lands, resources, homes, and other treasures.

It is important to see these matters in the context of their time. All societies change: technologies develop; economic activities change; social and political structures evolve; groups come and go. This chapter first sets out to explain the dynamic world, Te Ao Māori, as it was understood and engaged with by Te Rohe Pōtae Māori. It goes on to take a broad narrative approach to our topic, from the *Tainui* making landfall, up to the nineteenth century.

This chapter then describes the district's rich and complex history, involving multiple lines of descent, and many waves of settlement through periods of conflict and realignment, as well as times of peace. It concludes with a description of the tribal landscape as it was at 1840, with a particular focus on border territories and hapū and rangatira of the region. The story here concerns all people of this district, and all claimant groups. But, inevitably, it focuses most on the descendants of Maniapoto, who came to occupy almost all lands of this district and have interests in some of the lands beyond. It therefore omits much. While this chapter aims to avoid unnecessary controversy, it is inevitable that the details of some traditions will be contested.

### **2.1.2 Sources**

The Tribunal received a large number of oral testimonies and other tangata whenua evidence. Together these have played an important role in shaping this chapter.

Between February and June 2010, prior to hearings commencing, the Tribunal convened Ngā Kōrero Tuku Iho o te Rohe Pōtae hui on six marae. The purpose of these hui was to provide a forum in which kaumātua could present their oral traditions in a manner that was sympathetic to the tikanga of those traditions. It also allowed the panel to engage with claimants far earlier in the inquiry process than would otherwise have been the case, and reduced the need for some claimants to



produce lengthy written briefs. The Tribunal continued to hear this kind of evidence throughout subsequent hearings.

This chapter also draws on more than 20 oral and traditional history reports produced by iwi and hapū from the district. These reports set out and describe, amongst other things, kinship relationships, tribal groupings, and tūpuna and their deeds regarding specific tribal territories.

A number of secondary texts, including previous Tribunal reports, have also been drawn on in this chapter. These texts added to and helped to contextualise much of the history described in the above sources.

## 2.2 TE AO MĀORI

Te Rohe Pōtae was one part of Aotearoa in which a dynamic society developed with social, political, and economic systems that facilitated and included the arts, science and theory, knowledge, theology and religion, cosmology, mobility, political alliances (and tensions), history, labour, architecture, resource management and distribution, and more. This society had as its originating point particular traditions, which in themselves were forms of knowledge representing this dynamic world.

Tainui traditions refer to Te Korekore, an absolute stillness or nothingness, which existed before time.<sup>3</sup> All of creation, natural and supernatural, is said to have emerged from that void, powered by a supreme energy and consciousness known as Io – the endless, unchanging, parent and origin of all knowledge and all things, often referred to as Io-matua-kore, the parentless one.<sup>4</sup>

From that first consciousness emerged Papa-tū-ā-nuku, the earth mother, and Ranginui, the sky father, locked together in a tight embrace from which no light could emerge.<sup>5</sup> In that cramped darkness lay their children, who conspired to separate their parents so that they might live in the light. The children were successful and became Atua, the progenitors and guides for every aspect of the natural world.<sup>6</sup>

From Rongomātāne, the first-born, came cultivated foods and peace. From Tāne-mahuta came trees, plants, birds, insects, rocks, and all other aspects of the forest. From Tangaroa's line came the oceans and aquatic life. From Tāwhirimātea came the winds. From Haumiatiketike came plants that could be gathered for

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3. Transcript 4.1.5, pp 173, 218–219, 234–235.

4. Pepene Eketone and others, 'Ko te Kawenata o Ngāti Maniapoto me ona hapu maha', 1 January 1904 (doc s19(a) (Te Kanawa appendixes), app H, p 29, app I, p 37); transcript 4.1.5, pp 173, 213, 218–219, 234, 238; transcript 4.1.1, p 104; transcript 4.1.4, pp 2, 124–125, 130; doc M5 (Watene, Pihama, and Watene), pp 3, 5; doc A110 (The Ngāti Maniapoto researchers), pp 27–48; transcript 4.1.3, pp 41, 198–200.

5. Sean Ellison provided a different whakapapa, in which Tangaroa married Papa-tū-ā-nuku but then left her alone. Only then did Ranginui appear: transcript 4.1.3, pp 198–199.

6. Document A110, pp 27–48; Eketone and others, 'Ko te Kawenata' (doc s19(a), app H, p 29).

food. Rūaumoko returned to the earth and became the source of earthquakes, volcanoes, and seasons.<sup>7</sup>

Humanity descends from Tūmatauenga, also the god of war. But, in Tainui traditions, it was Hani (the male essence) and Puna (the female essence) who provided the spark of life, fashioning Tiki-i-āhua-mai-i-Hawaiki (Tiki-who-was-fashioned-in-Hawaiki) and Tiki-apoa from limestone clay.<sup>8</sup>

From them came Whiro, and from Whiro came the explorer Toi, and from Toi came Whatonga. More than 20 generations then passed before the *Tainui* landed in Aotearoa, and another 50 or so generations are said to have passed from then to the present day.<sup>9</sup>

The essential point is that the original *Tainui* explorers saw themselves and all other elements of creation as being descended from atua, who in turn were descended from the original consciousness Io-matua-te-kore.<sup>10</sup> Every element of creation was therefore related, and all relationships were ordered through whaka-papa, lines of genealogical progression. Every human was a representative and servant of all who had gone before – their human tūpuna, and distant ancestor-gods, back to their common source.<sup>11</sup>

### 2.2.1 Mana Taketake

This system of thought created a network of interwoven relationships – and a network of rights and obligations – among all people, all elements of the environment, and all ancestors. Māori society was guided by its own system of law and authority and a series of organising principles. Here we discuss tapu, mana, whanaungatanga, manaakitanga, utu, tuku, and tikanga. In doing so, we reflect claimant kōrero on aspects of these concepts specific to Te Rohe Pōtae while also detailing aspects that were and are shared across Māoridom.

#### 2.2.1.1 Tapu

For Māori, to be tapu was to be set apart by atua for a particular purpose, and therefore to be placed off limits to other purposes. Tapu defined the roles and functions of every person, place, being, word, or thing in existence. A tree was set aside to be a tree, and could only be put to other purposes with the gods' permission. Hence, karakia (incantations) were used to seek permission for any change of use. Similarly, when a person stepped into a tapu space the change of states was immediate and so were the attributed obligations. To then leave a tapu space required a ritual act, such as sprinkling oneself with water.

7. Document A110, pp 27–48; Eketone and others, 'Ko te Kawenata' (doc s19(a), app H, p 29).

8. Document A110, pp 27–48; Eketone and others, 'Ko te Kawenata' (doc s19(a), app H, p 29).

9. Document A110, pp 27–48; Eketone and others, 'Ko te Kawenata' (doc s19(a), app H, p 29); transcript 4.1.1, p104. Gordon Lennox referred to 100+ generations from Io to the present, lasting 2,500–3,000 years: transcript 4.1.2, p134.

10. Document A110, pp 27–48.

11. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuatahi* (Wellington: Legislation Direct), 2011, p 23.

Likewise, people and families might be set aside for particular functions or specialities – spiritual, political, or economic leadership; diplomacy and warfare; cultivation; hunting and fishing; rongoā; artistic endeavours; and so on – and would therefore inherit or acquire tapu commensurate with those roles, and would need ancestral blessing for any change.

Every person was born with tapu commensurate with his or her lines of descent and expected role in life. To be in a state of tapu was to be under a ritual obligation to behave in a manner that would not offend the atua and as such tapu could be gained or lost through events in the physical world. Tohunga, spiritual leaders, were in constant communion with the gods, seeking to maintain the purity of tapu associated with their lines of descent. Though it was a spiritual force, tapu had practical purposes. Those accorded tapu status maintained specialist knowledge and performed important functions. By setting aside parts of the environment, the use of tapu also ensured that resources were used wisely.<sup>12</sup>

### 2.2.1.2 *Mana*

Like tapu, mana was handed down from atua through lines of descent, often, though not always, to the eldest son. An example is the story of Maniapoto inheriting his father's mana over his older brother, as discussed in section 2.4.1. 'Mana' is usually translated as authority, but it is not limited to political power. It is a spiritual authority or power to act in the world as agents of atua. Just as tapu sets a person aside for particular purposes, mana is the authority and ability to fulfil those purposes.<sup>13</sup>

Throughout Māoridom, mana is generally said to be acquired in any of three ways. First, mana tūpuna is authority inherited from ancestors at birth. As the claimant Piripi Crown told us: 'Ko te kōrero mai rānō ka whānau mai te tangata me tōna ake mana, nā Io i hōmai' (When a man is born he has his own individual mana given to him by Io).<sup>14</sup> As with tapu, some inherit more than others. Traditionally, mana tūpuna was highest among those who were descended from chiefly lines.<sup>15</sup>

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12. Document A102 (Meredith, Nankivell, and Joseph), pp 79–80; doc M5 (Watene, Pihama, and Watene), pp 3–6; Hirini Moko Mead, *Tikanga Māori: Living by Māori Values*, revised ed (Wellington: Huia Publishers, 2016), pp 34–35, 36–38, 43–44, 49–56; Waitangi Tribunal, *Ko Aotearoa Tēnei*, p 23; Māori Marsden, *The Woven Universe: Selected Writings of Rev. Māori Marsden*, ed Te Ahukaramū Charles Royal (Masterton: The Estate of Rev Māori Marsden, 2001), pp 5, 40, 69; New Zealand Law Commission, *Māori Custom and Values in New Zealand Law*, Study Paper 9 (Wellington: New Zealand Law Commission, 2001), pp 36–38.

13. Document M5, pp 3–6; E T Durie, *Custom Law* (Wellington: Victoria University of Wellington Treaty of Waitangi Research Unit, 2013), pp 36–37; Mead, *Tikanga Māori*, pp 33–34, 43–44, 49–51, 55–57; Waitangi Tribunal, *Ko Aotearoa Tēnei*, p 23; New Zealand Law Commission, *Māori Custom and Values in New Zealand Law*, pp 32–36; Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 1, pp 109–110.

14. Transcript 4.1.6, p 362.

15. New Zealand Law Commission, *Māori Custom and Values in New Zealand Law*, p 33.

Secondly, mana tangata is the influence or authority acquired through actions and events in the world. A person whose actions, expertise, or service enhance the well-being of their kin group will enhance his or her mana, as will a person who rights a wrong.<sup>16</sup> Thirdly, mana atua is the authority derived from direct contact with atua, as shown by tohunga and sometimes by matakite (prophets or seers).<sup>17</sup>

Each of these sources can reflect different functions or roles – mana tangata being of considerable importance to someone whose roles include leadership in warfare or economic matters, and mana atua being important to a tohunga, whose roles are concerned with ritual and spiritual matters. Mana tūpuna is typically important for all leadership roles, as will be evident from the histories later in this chapter.<sup>18</sup>

However mana was acquired, it was derived from atua and tūpuna, and could be used only to serve them and the kin groups descended from them. It was not the same as personal power. Any leader, no matter how great, could not act against communal interests or without communal consent (either implicit or explicit) and still retain his or her mana.<sup>19</sup>

Claimant Thomas Roa also spoke of ‘an authority specific to Ngati Maniapoto, known by the people of this region as mana whatu ahuru. He described how this form of mana emphasised the ability of rangatira to unite groups ‘to achieve a joint purpose’ while promoting peace and security for their people.<sup>20</sup>

Te mana whatu āhuru, Mr Roa explained, represented the strength and peace that arose from unity. Each person inherited his or her own mana, and so did each element of the environment. Greater leaders unified the mana of each individual, in ways that allowed sharing and peaceful co-existence, and so enhanced the mana of all.<sup>21</sup>

He further noted that whatu can refer to a stone that perseveres against all odds, and to the eye of a visionary or seer, and to the action of weaving together (which is an essential function of a rangatira or weaver of people). Āhuru, he said, was a term for peace, which also implied a blessing handed down through generations.<sup>22</sup>

Historian James Cowan recorded Tainui and Maniapoto traditions of ‘whatu-ahuru-manu’, which were talismanic stone emblems, also sometimes called ‘mauri kohatu’ or ‘mauri-manu’. He noted that these emblems were ‘small stones, probably

16. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 111; Durie, *Custom Law*, pp 36–37; Marsden, *The Woven Universe*, pp 4, 40, 151, 154; New Zealand Law Commission, *Māori Custom and Values in New Zealand Law*, pp 32–36.

17. New Zealand Law Commission, *Māori Custom and Values in New Zealand Law*, p 35.

18. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 109–111; Durie, *Custom Law*, pp 36–37; Marsden, *The Woven Universe*, pp 4, 40, 151, 154; New Zealand Law Commission, *Māori Custom and Values in New Zealand Law*, pp 32–36.

19. Transcript 4.1.7, pp 80–81; doc M5, pp 3–6; Waitangi Tribunal, *The Muriwhenua Land Report* (Wellington: GP Publications, 1997), pp 4, 26, 28, 29; Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 110–111; Durie, *Custom Law*, pp 36–40; Marsden, *The Woven Universe*, pp 40, 151; New Zealand Law Commission, *Māori Custom and Values in New Zealand Law*, pp 33, 34.

20. Document H9(c), para 14.

21. Transcript 4.1.7, p 46.

22. Transcript 4.1.7, pp 43–45.

carved, which had been charmed by the high priest in Tahiti before the departure of the Tainui.<sup>23</sup> These emblems were planted by Tainui tūpuna throughout Te Rohe Pōtae in order to 'ensure a permanent abundance of forest birds for food'.<sup>24</sup>

Ngāti Maniapoto scholar Pei Te Hurinui Jones also recorded the use of sacred, inscribed stone emblems, but he called them 'papa tatau'. Jones described how these stones were used to elevate young tohunga into the highest echelons of priesthood.<sup>25</sup> This extremely tapu ceremony was only performed at Te Ahurei, Te Papa o Rotu, and Rangiatea.<sup>26</sup>

Jones suggested that the Battle of Hingakākā, discussed in section 2.5.2.1, was linked to the alleged theft of papa tatau from the whare wānanga Te Ahurei. According to Tainui tradition, the stones had been brought to Aotearoa from Hawaiki and were thus of great cultural and spiritual significance.<sup>27</sup>

The Ngāti Maniapoto concept of mana whatu ahuru as a form of mana emphasising their particular form of authority has endured as a central tenet of Ngāti Maniapoto to this day. It appeared, for example, in the 1904 Kawenata – a Ngāti Maniapoto unification statement discussed further in chapter 3 – where it was described as a divine mana handed down through generations which unified hapū and iwi under leaders such as Rereahu, Maniapoto, and their descendants.<sup>28</sup> It was further discussed by a number of witnesses during the hearings of this inquiry.<sup>29</sup>

### 2.2.1.3 Whanaungatanga, manaakitanga, and utu

Closely associated with mana are three fundamental values which define how authority should be used. Whanaungatanga (kinship) emphasised the value of whakapapa, not only as a way of tracing connections between people, but as a way of understanding and ordering rights and interests. Fostering kinship connections was one of the fundamental duties of leaders in pre-colonial times.<sup>30</sup> Kevin Amohia told us how, following an internal split within Ngāti Tūwharetoa, 'many of the Tūwharetoa people came across and they actually ended up living in and around Kauriki and that particular area. They were left in peace by our people. The reason for that is, he whanaungatanga'.<sup>31</sup>

Manaakitanga (hospitality) emphasised the value of supporting and providing for others, and thereby building relationships based on mutual obligation and

23. Sir Maui Pomare, *Legends of the Maori*, ed James Cowan, 2 vols (1930, reprinted Papakura: Southern Reprints, 1987), vol 1, p 45.

24. Pomare, *Legends of the Maori*, vol 1, p 45.

25. Pei Te Hurinui Jones, *King Pōtatau: An Account of the Life of Pōtatau Te Wherowhero, the First Māori King* (Wellington: Huia, 2010), p 35.

26. Jones, *King Pōtatau*, pp 33–37.

27. Jones, *King Pōtatau*, pp 35–36, 42–43; doc A98 (Thorne), pp 81–82.

28. Document s19(a) (Te Kanawa), pp 37–39, 48.

29. Document H9(b) (Roa); doc H9(b)(1) (Roa), pp [1]–[3]; doc H16 (Jensen), p 7; doc A117 (Jackson), p 11; transcript 4.1.21, p 1394.

30. Waitangi Tribunal, *Ko Aotearoa Tēnei*, pp 5, 22–23; Waitangi Tribunal, *The Muriwhenua Land Report*, pp 21, 24–25; Mead, *Tikanga Māori*, pp 33, 227–228.

31. Transcript 4.1.4, p 16.

interest.<sup>32</sup> Following raupatu of lands north of the aukati (discussed in chapter 7), for example, Ngāti Maniapoto demonstrated their commitment to manaakitanga, hosting thousands of Māori refugees who had been displaced following the confiscations.<sup>33</sup>

Kaitiakitanga (guardianship) emphasised the value of sustaining and providing for each element of the natural world. As we will see, by fostering these values, leaders and their kin groups could keep peace, build alliances, enhance security, ensure a supply of food and other resources, and create economic interdependence which could be vital during times of scarcity.<sup>34</sup>

Underlying these values was the principle of utu, which can be seen as reciprocity or balance, the essence of which was that anything taken – including mana or tapu – must be returned. Utu could work in constructive ways, creating cycles of reciprocal obligation which brought people together, supporting collective effort and enhancing their joint mana. It could also work in destructive ways, such as when the killing of a senior leader created cause for retribution.<sup>35</sup> In the Ngā Korero Tuku Iho hui, for example, Wikiwera Henskes of Ngāti Mutunga told us how her whanaunga Te Hikaka challenged Pōtatau Te Wherowhero, who had written a song that insulted Ngāti Maniapoto, and demanded utu. She explained that Pōtatau responded by giving him the suit of armour which King George the fifth had given to Hone Heke in England, which Hone had given to Pōtatau.<sup>36</sup>

#### 2.2.1.4 Tuku

Tuku describes the idea of transferral, generally within a social context.<sup>37</sup> It embraces the notions of releasing or letting go, though is often interpreted as the act of gift-giving. The Muriwhenua Land Tribunal, for example, noted the link between the concepts of tuku and manaakitanga. In its report, the Tribunal said that ‘the underlying purpose of gift exchange, as we see it, was not to obtain goods but to secure lasting relationships with other hapu. This was consistent with Maori

32. Mead, *Tikanga Māori*, pp 33, 103–104; Durie, *Custom Law*, p 6.

33. Document K35 (Maniapoto), pp 37–38.

34. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 115; Waitangi Tribunal, *Ko Aotearoa Tēnei*, pp 5, 23; Mead, *Tikanga Māori*, pp 205–210.

35. This district's histories show many examples of utu acting in ways that deepened and reinforced relationships. One example was in the tradition of resource sharing in which coastal groups offered seasonal access to fishing grounds and inland groups offered similar access to territories for eeling or bird snaring; transcript 4.1.1, pp 67–68; transcript 4.1.7, pp 46–47; transcript 4.1.5, pp 225–226; doc L14(a) (Kereopa), p 28. Utu also worked in destructive ways, as in the escalating cycle of conflict between Ngāti Toa-rangatira and the Waikato-Maniapoto coalition in the first two decades of the 1800s. For general discussions of utu, see Mead, *Tikanga Māori*, pp 31, 35, 178, 197, 213–215, 399, 401; Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 108–109, 113–114; Waitangi Tribunal, *He Whakaputanga me te Tiriti/The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry* (Wellington: Legislation Direct, 2014), pp 19, 25; New Zealand Law Commission, *Māori Custom and Values in New Zealand Law*, pp 38–40.

36. Transcript 4.1.5, p 120.

37. Richard Benton, Alex Frame, Paul Meredith, *Te Mātāpunenga: A Compendium of References to the Concepts and Institutions of Māori Customary Law* (Wellington: Victoria University Press, 2013), p 441.

views of reciprocity.’ It continued that ‘It cannot be presumed, either, that in bartering with Europeans, Maori valued only the goods and not a personal trading relationship. There is evidence that a personal and continuing relationship was still sought.’<sup>38</sup> Those receiving tuku were also expected to uphold any obligations or duties that were associated with it.<sup>39</sup>

During hearings for this inquiry, claimants also spoke about tuku of land or ‘tuku whenua.’<sup>40</sup> The Wairarapa ki Tararua Tribunal described tuku of land as ‘a traditional practice where land was given in exchange for other benefits, and in the context of an ongoing and mutually beneficial relationship between the parties. Tuku was fundamentally different from sale, where land is permanently transferred from one party to another, and there is no enduring relationship between them.’<sup>41</sup> While the responsibilities or permissions to the land could vary between tuku, it was generally understood that if the land was no longer needed for the purpose for which it was given, it should be returned to the original owner.<sup>42</sup>

### 2.2.1.5 Tikanga

Together, these values and principles were essential elements of a system of tikanga – which can be understood as law, and more broadly as referring to what is right, correct, and just in accordance with mātauranga Māori (Māori knowledge and systems of thought).<sup>43</sup>

Tikanga cannot be understood merely as customs. Rather, tikanga was a system of law, and also as a system of social controls and norms, of personal morals and ethics, of rules and guidelines for managing relationships, and of rituals for mediating relationships between people and atua. In the words of former Tribunal chair Justice Williams, it was ‘essentially the Māori way of doing things – from the very mundane to the most sacred or important fields of human endeavour.’<sup>44</sup>

Tikanga in pre-European times applied to all areas of life and all relationships. There were tikanga for family and kin relationships, social and economic exchanges, marriage, warfare, peacemaking, migration, social and political organisation, group decision-making, leadership, relationships with land and the environment, and so on.

Because tikanga was a principles-based system it could be applied flexibly to different circumstances. The underlying principles were well understood, and

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38. Waitangi Tribunal, *Muriwhenua Land Report*, p 28.

39. Submission 3.4.121, pp 13–14.

40. Submission 3.4.121, pp 13–14, 43; submission 3.4.293, p 42; transcript 4.1.9, pp 41, 142–144, 286, 309–310.

41. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, 3 vols (Wellington: Legislation Direct, 2010), vol 1, p 120.

42. Transcript 4.1.9, pp 309–310, 315–318.

43. Waitangi Tribunal, *Ko Aotearoa Tēnei*, pp 6, 22–23; Waitangi Tribunal, *The Muriwhenua Land Report*, pp 58, 216.

44. J Williams, ‘He Aha Te Tikanga Māori’, unpublished paper for the Law Commission, 1998 (New Zealand Law Commission, ‘Māori Custom and Values in New Zealand Law’, p 16).

guidance was provided in the form of stories, sayings, songs, and other information handed down from generation to generation.

How tikanga was applied depended on circumstances. For public events, tikanga typically involved rituals which invoked atua. The peacemaking at Te Horangapai (section 2.5.1.3) is an example, in which tohunga invoked the gods Uenuku and Maru to bind Ngāti Maniapoto and Ngāti Hāua together in peace.

Following periods of war, tikanga was similarly a means of dictating who could claim mana whenua over areas of land, which was often then realised through the use of pou whenua (boundary markers). Ngāti Maniapoto researcher Anthony Tawhiwhi Barrett described how 'Iwi Māori determine mana whenua through a tikanga-based practice of placing pou whenua in an area to identify and acknowledge the tangata whenua of the land.'<sup>45</sup> We describe examples of this practice in sections 2.4.1 and 2.4.2.

Though unwritten, tikanga contained the essential elements of law, including predictable rules for behaviour and predictable responses to transgression.

As the New Zealand Law Commission has noted, early settlers in New Zealand understood that tapu had legal effect, as did Māori systems of land tenure. Nor did they have any difficulty recognising utu and muru as aspects of law enforcement. In the commission's view, it was only through changes in British legal doctrine after 1840 that law came to be associated with western institutions.<sup>46</sup>

In Treaty terms, tikanga and tino rangatiratanga cannot be separated, because tikanga guides all relationships with people, the environment, and atua, and because the actions of rangatira are legitimate only if they are tika.

In a world without written language, tikanga were handed down from generation to generation through histories, stories, songs, sayings, place names, carvings, and other knowledge. By describing the actions of atua and tūpuna, these kōrero also provided guidance on how to act in this world.

In the time of gods, for example, Tūmataunga's defeat of his siblings gave humankind some measure of dominion over forests and oceans. Likewise, the histories of this district's ancestors – their journeys, discoveries, battles, and marriages, and the names and taonga they left behind – helped determine who had rights and how they could be used.<sup>47</sup>

### 2.2.2 Te Taiao te Tai Tangata

Te Rohe Pōtae is a region of great geographical diversity. Flanked by mountain ranges to the east and the coast to the west, it is 'an area of steep rolling hills and valleys dissected by rivers and streams'.<sup>48</sup> Much of the area was also once covered in

45. Document A110, p 258.

46. New Zealand Law Commission, *Māori Custom and Values in New Zealand Law*, pp 19–20, 23.

47. For discussions of the nature of tikanga, see: doc 12 (Crown), pp 5–6; Mead, *Tikanga Māori*, pp 16–29; Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 3, pp 819, 865, 890; Waitangi Tribunal, *Ko Aotearoa Tēnei*, pp 22–23, 33–34, 87, 254; Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 101–123; New Zealand Law Commission, *Māori Custom and Values in New Zealand Law*, pp 15–18; Durie, *Custom Law*, pp 3–5, 7–9.

48. Document A110, p 306.



dense forest, and as such many claimants referred to the rohe as Te Nehenehenui, the great forest.

To the east lies the Rangitoto Range and the headwaters for many of the great awa in the district. From Rangitoto maunga, the Waipā and Pūniu awa flow north-west, tracking around the Ouruwhero (Te Kawa) wetlands, before joining east of Pirongia, a significant northern maunga.

South of the Rangitoto Range lie the Hauhungaroa Ranges, which make up much of the district's eastern boundary. Bordered at the north and south by the Pureora and Tūhua maunga respectively, the ranges form the catchment for the Waimiha, Ōngarue, and Taringamotu awa, all of which flow through the south of the district.

The Mōkau awa, beginning between the Rangitoto and Hauhungaroa Ranges, flows south-west across the breadth of the district, emptying into the sea near the district's southern boundary. Along with the Awakino, Mōhakatino, and Marokopa awa, it forms one of several river mouths on the southern and central west coast. These acted as small harbours and key transport links for Te Rohe Pōtae Māori.

Along the northern coast are the three major harbours of the district: Whāingaroa/Raglan, Aotea, and Kāwhia. It was here that the earliest Te Rohe Pōtae settlements were established, with the district's network of awa allowing iwi and hapū to spread throughout the region over time.

Within their dynamic, principled world, shaped and regulated by tikanga, Te Rohe Pōtae Māori established and maintained meaningful relationships with the district's lands, waterways, mountains, and other parts of te taiao. In the oral and traditional history volume of Ngāti Maahanga, researchers explained that Māori:

had (and have) a comprehensive world view about the environment, which was synonymous in traditional times with our entire way of life. The key to understanding this world view is to accept its holistic nature, ie that it is a view of the essential interconnectedness of all things.<sup>49</sup>

Te taiao was also a source of identity: each mountain, river, lake, swamp, or other landform being part of the web of ancestral relationships that were established in the earliest migrations and explorations and sustained throughout the generations since.

Just as people were connected to each other through whakapapa, so too were they connected to land, and to bodies of water, flora and fauna, and other elements of the natural environment. Land, a source of life, is also central to identity – ancestral connections creating a place where each individual can live and belong.<sup>50</sup>

In Te Rohe Pōtae, early Tainui tūpuna established connections with the land by naming maunga and other landforms, and by building altars or whare wānanga. Names, according to former Waitangi Tribunal chairperson Judge Edward Taihakurei Durie, 'are imprints on the land, demonstrative of past association', and

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49. Document A94 (Collins, Turner, and Kelly-Hepi Te Huia), p 323.

50. Mead, *Tikanga Māori*, pp 285–289; Durie, *Custom Law*, pp 61–63.

for that reason were ‘significant declarations of entitlement’.<sup>51</sup> Some names – such as Rangiaitea and Hawaiki-iti – link back to the ancestral homeland in Hawaiki.<sup>52</sup>

Marae, altars, and whare wānanga are similar assertions of spiritual connection. This continued a tradition originally from the Cook Islands, as scholar Hirini Moko Mead notes: ‘When an early voyager landed, one of the first things he did was to erect a marae to give thanks to his Gods and to establish his claim to the land occupied. The building of a marae was equivalent of a flag when foreign powers took possession.’<sup>53</sup>

Each subsequent generation reasserted the relationships established by their forebears, and established new ones, which in turn were handed down through generations in names, waiata (songs), pepeha and whakataukī (sayings), and other kōrero linking the territory to significant tūpuna.<sup>54</sup> For example, Miki Apiti referred to the waiata ‘Tērā te uira e hiko i te rangi’ (the lightning strikes from the sky), which describes the ancestral connections of Ngāti Te Wehi to the Aotea Harbour.<sup>55</sup>

By these means individuals understood and could describe in detail their ancestral connections to maunga (mountains), lakes, rivers, swamps, rocks and caves, trees, coastal areas, birds, fish, eels, and other elements of the environment, and therefore understood what occupation and usage rights they had, and how these parts of the environment should be managed.<sup>56</sup>

Throughout the hearings, claimants described in intimate detail their relationships with tūpuna, and their relationships to the lands on which their tūpuna walked. We heard of where tūpuna had lived, of their marriages, their homes, their gardens, their hunting and fishing grounds, their relationships with neighbours, and so on. And we heard also of how claimants had kept those traditions alive into the present, to the extent that was possible in a very changed environment.

Each of these kōrero, Harold Maniapoto reminded us, concerned mana tangata (authority over people) and mana whenua (authority over land). By describing ancestral relationships, claimants placed themselves in the landscape and explained what rights and interests they retained, and what obligations they had to the land and other taonga.<sup>57</sup>

Rovina Maniapoto of Ngāti Paretekawa, for example, spoke of her ancestral relationships with Pirongia-o-te-araro-o-Kahupeka, abode of patupaiarehe (fairy

51. Durie, *Custom Law*, pp 75, 86, 88.

52. Document A110, pp 120–121; doc A104 (de Silva), pp 53, 71–72, 183; doc A101 (Young), p 19; doc A77 (Kahotea), pp 25, 40; doc A76 (M Belgrave, D Belgrave, Procter, Bennett, Joy, Toghler, Young, Anderson, Kiddle, and Lilley), p 59; doc A94, pp 109, 114.

53. Mead, *Tikanga Māori*, p 114.

54. Document 12, p 5; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, p 31; Waitangi Tribunal, *Ko Aotearoa Tēnei*, pp 22–23; Durie, *Custom Law*, pp 61–63, 84–89.

55. Transcript 4.1.2, pp 44–46.

56. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 30–31; Waitangi Tribunal, *Ko Aotearoa Tēnei*, pp 22–23; Durie, *Custom Law*, pp 61–63, 84–89; see also transcript 4.1.3, pp 198–200; transcript 4.1.4, pp 124–125.

57. Transcript 4.1.1, p 5.

people); with Te Kawa, where eels were distributed to thousands who gathered for annual tuna heke; to the Pūniu and Waipā Rivers, ‘ngā wai tuku kiri ēnei o aku kuia, o aku koroua’ (the waters where my elders bathed); to the taniwha Waiwaia and Tūheitia, who lived in the Waipā; the marae of her tūpuna, Whatiwhatihoe, where Te Wherowhero lived and married Peehi’s daughter Ngāwaero; and Mātakitaki, where the Waikato–Maniapoto coalition was defeated.<sup>58</sup>

She referred to Mōkau, where the anchor of the *Tainui* waka now rests at Hingamutu urupā on Maniaroa marae, and her connections with Ngāti Tū and Ngāti Rungaterangi through her ancestor Te Rerenga Wetere; and to Kahuwera, where the god Uenuku lived until called upon to give aid at Hingakākā; and to Hikurangi and Tūhua, explored by her ancestor Tukawekai (brother of Te Kanawa Whatupango); and to the river Ōngarue, home of her ancestor Te Pikikōtuku, from which comes the saying ‘ko au te awa, ko te awa ko au’ (I am the river, the river is me).<sup>59</sup>

Ms Maniapoto also referred to connections to Ngāti Tūwharetoa, Ngāti Raukawa, Apakura, Ngāti Māhanga, and Ngāti Te Wehi as she traversed the district, arriving back at Kāwhia, resting place of *Tainui* and home of the sacred altar Te Ahurei.<sup>60</sup>

Harry Kereopa (Ngāti Te Ihingārangi) referred to punawai (springs) of pure water ‘i taka mai rā e Io Matua Kore’ (falling from Io Matua te Kore) into the mountains at Pureora; and from each spring another forms, then another, representing the hapū of Rereahu flowing outwards into the district, creating and in turn sustaining its hapū.<sup>61</sup>

Sean Ellison (Tainui Awhiro) referred to the ancestral relationships of Tainui Awhiro hapū to Karioi, on the southern entrance to Whāingaroa Harbour – and to the adulterous relationship of Karioi to Pirongia.

Koinei tū kōrero he paki waitara noa iho pea ki ētehi ēngari ki ōku pakeke ki te kōrero koe mō ngā maunga e kōrero ana koe mō te iwi. Kāore he rerekētanga. Ko te whakapapa tēnei o te maunga e tū nei o Karioi. Ko mātou te hunga e noho nei ki ōnā tahataha ki raro anō ki tōnā maru. Ko mātou āna tamariki.

These types of stories are just fanciful stories to some, but to my elders, if you are talking about the mountains, you are talking about the people. There is no difference. This is the genealogy of this mountain standing here, Karioi. We are the people who are inhabiting its slopes beneath its shelter. We are its children.<sup>62</sup>

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58. Transcript 4.1.1, pp 7–10. Translation by Waitangi Tribunal.

59. Transcript 4.1.1, pp 7–10.

60. Transcript 4.1.1, pp 7–10.

61. Transcript 4.1.4, pp 130–131.

62. Transcript 4.1.3, pp 196–197, 199–201, 205–206. For other kōrero about maunga, see transcript 4.1.6, pp 15, 26, 263–264; transcript 4.1.4, pp 107–108; doc E2 (Bell), p [2].

Claimants described the food sources their ancestors relied on – the ‘great food bowl’ of the Waipā Valley<sup>63</sup> and the ‘pātaka kai’ (food store) of Te Kawa;<sup>64</sup> Te Mārā Kai o Maniapoto (the Garden of Maniapoto) near Ruakurī Cave in the Waitomo Valley;<sup>65</sup> the birding and berry gathering grounds at Pureora; the fishing grounds at Marokopa and Mōkau; and the plentiful eel supplies in streams throughout the district.<sup>66</sup>

They described kāinga, such as those along the Mōkau River or encircling the Kāwhia Harbour;<sup>67</sup> caves in which famous ancestors such as Maniapoto and Uekaha lived;<sup>68</sup> and pā whawhai such as Arapae, sited on the Mōkau River to defend against war parties invading from the south, and Puketoa in southern Kāwhia, where Ngāti Urunumia based themselves during the wars against Ngāti Toa-rangatira.<sup>69</sup>

They described transport routes to and through the district – the network of rivers and river valleys converging around Te Kūiti and Ōtorohanga and connecting the interior to the coast, providing passage for explorers, migrants, refugees, warriors, and seasonal hunting and fishing parties. Ngāti Maniapoto settlements and pā were located to maximise control of these strategic routes.<sup>70</sup>

The claimant Jim Taitoko also referred to a series of tracks linking key settlements with each other, and inland areas with the coast. For example, he described Tapu-i-wāhine, which linked Taumarunui to Aria, and could then be followed south-west to Mōkau or north-east to Te Kūiti. Other tracks linked Kāwhia to Ōtorohanga, and Taumarunui to Whanganui, and traversed the coast.<sup>71</sup>

Claimants also described the waves of migration, seasonal and permanent, which meant hapū could have interests in many different parts of the district;<sup>72</sup> and the network of relationships criss-crossing the district, uniting neighbouring hapū and providing ties between distant ones.<sup>73</sup> They referred to places of refuge,

63. Transcript 4.1.1, p 91.

64. Transcript 4.1.1, p 67.

65. Transcript 4.1.6, p 272. The whare at Te Kūiti where we heard this evidence was Te Tokanganui-ā-Noho, said to mean ‘The Stayer home of the Full Basket’: transcript 4.1.6, p 16.

66. Transcript 4.1.1, pp 15, 33–34, 67, 91; transcript 4.1.6, pp 15, 26, 84, 119, 185–187, 190, 233–235, 263–264, 272–273, 290–291, 302–304, 348; transcript 4.1.2, pp 162–164, 168–169, 172–173, 195–196; transcript 4.1.4, pp 107–108; doc E2, p [2].

67. Transcript 4.1.5, pp 97, 146–147, 200–201, 264, 274; transcript 4.1.2, pp 162–165, 168–169.

68. Transcript 4.1.6, pp 117, 190, 208–209, 231, 275; transcript 4.1.5, pp 74, 103–104; see also doc A110, p 125.

69. Transcript 4.1.5, pp 9, 14, 31, 91, 176, 241, 249; transcript 4.1.2, pp 46, 162–166, 168–169; transcript 4.1.6, pp 60, 97–98, 113, 186–189, 225–227, 231–232; doc Q11 (Wirepa-Davis), pp 3–5; doc R20 (Tūwhangai), p 10; doc S14 (Morgan), p [2]; doc G14 (Koroheke), p [3]; doc E2, p [2].

70. Transcript 4.1.6, pp 69–70, 91, 118, 264; transcript 4.1.1, p 135; transcript 4.1.5, pp 9, 14, 18, 46–47, 91, 97, 200–201, 249, 264.

71. Transcript 4.1.4, pp 243–244.

72. For example, Ngāti Huiao, which is most closely associated with Pukeroa and Hangatiki, also had kāinga further north at Pōkuru: doc A60 (Berghan), pp 175, 198–204.

73. For a handful of the numerous examples of inter-hapū and inter-iwi relationships which claimants described, see transcript 4.1.1, pp 62–63, 66–68, 70, 89; transcript 4.1.2, pp 94–95; transcript 4.1.6, p 205; transcript 4.1.5, pp 223–226.

such as Te Marae o Hine, Te Horangapai, and Ōrongokoekoeā, as well as locations where shelter was provided after the Waikato war.<sup>74</sup>

They referred to burial caves and urupā where their tūpuna rested.<sup>75</sup> Even rocks, which marked boundaries, or places of birth and death, were recalled in detail.<sup>76</sup>

Many claimants referred to their own childhoods, and the intimate relationships they experienced with land, rivers, streams, and areas of bush as they were growing up. Many also pointed out major environmental changes that have taken place over the years, which have continued to profoundly alter the landscape and so interfered with or destroyed entirely many of their ancestral relationships.

As relationships with land and other environmental taonga have broken down, so too have relationships among people. In turn, the very identity of claimant peoples is threatened. Without the relationships that define them and give them mana, who are they? Claimant Taohua Te Huia referred to the words of his tūpuna:

Ko te ingoa ko te hapu e kore e kiia he hapu ki te kore he marae. Ko te marae e kore e kiia he marae kite kore he whare. Kote whare e kore e kiia he whare kite kore he tangata. Kote tangata e kore e kiia he tangata kite kore he whenua.

Concerning this term hapū, a hapū is not said to be a hapū if there is no marae. A marae is not termed a marae if there is no House. The House is not termed a house if there is no Man. A man is not said to be a Man if there is no land.<sup>77</sup>

This report – like other Tribunal district reports – is a history of the breakdown of ancestral relationships in the face of colonisation, and an analysis of the consequences of that breakdown. Whether the Crown bears any responsibility for these changes is a matter that will be considered in later chapters.

### 2.3 LANDING AND EARLY SETTLEMENT

The Tribunal heard a wealth of kōrero regarding the arrival and settlement of the *Tainui* waka, from which most iwi and hapū in the district trace their descent. It also heard traditions relating to peoples who occupied the land long before the great migrations, as well as how the descendants of some of these earliest ancestors met and intermarried with the new arrivals from *Tainui* and other waka.

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74. Transcript 4.1.1, pp 102–103, 177, 189–190, 209; transcript 4.1.3, pp 112, 136; transcript 4.1.4, pp 120, 215; transcript 4.1.5, pp 15, 38, 51; transcript 4.1.6, pp 31, 72–73, 76–77, 93, 132, 365, 393; transcript 4.1.7, pp 86, 97; transcript 4.1.11, p [63]; transcript 4.1.10, pp 706–707.

75. Transcript 4.1.2, pp 141, 144, 161, 163, 178, 202, 228; transcript 4.1.3, pp 96, 137; transcript 4.1.5, pp 46, 271; transcript 4.1.6, p 103, 264–265, 273. Regarding Ruakuri, see transcript 4.1.6, pp 264–265.

76. Transcript 4.1.2, pp 162–165.

77. Document A63(a), part 2 (Alexander), p 1267; transcript 4.1.14, p 355; doc P16 (Te Huia), p 10. Also see transcript 4.1.1, pp 12, 38; Mr Te Huia was quoting his grandfather, Te Whakataute Raureti, who wrote these words in a letter to the Native Minister in 1910: doc A63 (Alexander), p 600. Translation by Waitangi Tribunal.

### 2.3.1 Hoturoa and Rakataura

According to one tradition, *Tainui* left Hawaiki to escape a great war.<sup>78</sup> Hoturoa was in command, with his nephew Rakataura as navigator.<sup>79</sup> As *Tainui* was crossing the ocean, Rakataura fell in love with Hoturoa's daughter – who is known in different traditions as Kahurere, Kahukeke, or Kahupeka – and the two leaders fell out.<sup>80</sup>

After *Tainui* landed at Tāmaki Makaurau,<sup>81</sup> its leaders continued their journeys separately. Hoturoa and Kahurere continued by sea, while Rakataura, accompanied by Rōtū, Hiaroa, and other explorers travelled south on foot, traversing the Waikato River valley and the Waikato coast, uttering incantations to keep *Tainui* from entering the coastal harbours.<sup>82</sup>

*Tainui* ventured as far as Taranaki. According to one account, it stopped briefly at Mimi, just north of Urenui,<sup>83</sup> then turned back to the north, anchoring at the mouth of the Mōkau River.<sup>84</sup> Hoturoa and Rakataura met on a beach north of Mōkau and made their peace, and Hoturoa consented to his daughter marrying Rakataura.<sup>85</sup>

Hoturoa then brought the *Tainui* to Kāwhia, its final resting place.<sup>86</sup> He settled there with his wife Whakaotirangi, who established a garden from kūmara she had carried from Hawaiki.<sup>87</sup> Rakataura and Kahurere, meanwhile, embarked on an epic journey to the interior, traversing Pirongia and travelling south along the Waipā River before exploring the hills to the east.<sup>88</sup>

These new territories were not only colder but also much larger than their island home. Between Pirongia and Wharepūhanga they found flat and fertile land. Further south was the great forest Te Nehenehenui, which at that time would have been rich with moa as well as smaller birds and edible plants. These areas were connected by networks of rivers and streams plump with eels and waterfowl; these waterways would later become the district's pre-colonial equivalent of a state highway network, providing easy passage between hills and coast, north and south.

Rōtū is said to have left the others, settling at Whatawhata on the Waipā River in what is now known as the Waikato district. Hiaroa continued south, settling at Kahuwera on the Mōkau River, south-west of present-day Te Kūiti.<sup>89</sup> Another

78. The war was known as Rātōrua (the twice setting sun): doc A110, p 100.

79. Document A110, pp 110–111; doc A98, p 47; doc A83, pp 34–36.

80. Transcript 4.1.3, pp 201–202; doc A110, pp 111–112; doc A98, p 47; doc A83, pp 49, 55.

81. *Tainui* had stopped briefly at Whangaparāoa before landing at Tāmaki: doc A110, p 93.

82. Document A110, pp 94–97, 108–109, 111–112; doc A98, pp 48–49; transcript 4.1.5, pp 109–110.

83. This account was given by Rihari Tauwhare to the Native Land Court in 1886: doc A110, pp 108–109.

84. Document A110, pp 108–109; doc A98, p 49; transcript 4.1.5, pp 95–96, 99, 248; doc F15 (Ngāti Maniapoto supporting documents), p 3.

85. Document A110, p 109; doc A98, pp 49–50; transcript 4.1.1, p 15; transcript 4.1.3, pp 201–203.

86. Document A110, pp 95–96, 97–98, 108–109, 192; transcript 4.1.1, p 14.

87. Document A110, pp 48–49, 97–98, 113–114; transcript 4.1.6, p 18; transcript 4.1.1, pp 61, 122.

88. Transcript 4.1.1, pp 14–15, 66, 90–91; doc A83, pp 49–53, 55; doc A110, pp 113, 193, 327, 329, 351–353; doc A98, p 56.

89. Document s19(a), p 38; doc A110, pp 84–85, 95, 112, 319, 337–338; transcript 4.1.8, pp 1065–1066.

early explorer, Hape, settled closer to the coast.<sup>90</sup> And yet another *Tainui* crew member, Hotunui, is said by some to have settled in the south-east of the district near Tūhua.<sup>91</sup>

As noted in section 2.2, at each stage of their journeys, these early explorers left behind names and physical markers of their presence. Hoturoa planted a pōhutukawa at Mimi, and at Mōkau he placed pou in the ground, which sprouted into trees known as ngā neke o *Tainui* (the duckboards of *Tainui*).<sup>92</sup> He also left *Tainui*'s anchor in the river mouth.<sup>93</sup> *Tainui* itself was left at Kāwhia, at a place known as Te Tumu o *Tainui*.<sup>94</sup> Rakataura and Kahurere, meanwhile, named places as they travelled. Pirongia, Kakepuku, Wharepūhunga, Rangitoto, Pureora, Hurakia, and many other natural features were named to commemorate their epic journey of exploration.<sup>95</sup>

At every step in their physical journeys, these early explorers were in dialogue with atua, giving thanks for their safe voyage and asking for safety and abundance in the new land. Before leaving Kāwhia, Rakataura established an altar and whare wānanga (house of learning) known as Te Ahurei.<sup>96</sup>

Rakataura, Rōtū, and Hiaroa distributed sacred stones during their journeys. These stones were also from Hawaiki and, as noted in section 2.2.1.2, were known as mauri kōhatu or whatu ahuru manu. They were used to assert their mana and appeal to atua for abundance in the new land. Of these stones, the most famous were those that were planted at significant forest sites with the aim of attracting bird life.<sup>97</sup> Rōtū and Hiaroa also established altars and whare wānanga where they settled.<sup>98</sup>

### 2.3.2 Whatihua and Tūrongo

It is likely that *Tainui* descendants lived in relatively small family groups, moving from place to place to take advantage of seasonal hunting, fishing, and food gathering opportunities, as well as sustaining themselves from seasonal kūmara

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90. Hape's descendants became known as Ngāti Rākei, who lived near the Mōkau river mouth: doc A110, p 85.

91. Transcript 4.1.4, pp 109–114; doc A83, pp 50–51; see also doc A108 (Patete), p 22.

92. Document A110, pp 108–109; doc A98, p 49; transcript 4.1.5, pp 95–96; Yorkie Taylor identified the trees as wekeweke: transcript 4.1.5, p 248. See also doc F15, p 1.

93. Document A110, p 110; transcript 4.1.5, pp 9, 99, 105, 109.

94. Document A110, pp 95–98, 109; transcript 4.1.1, p 14; transcript 4.1.2, p 37.

95. In particular, maunga and other natural features were named to commemorate the state of Kahurere's health. Pirongia, for example, is Pirongia te Aroaro o Kahurere (sometimes shortened to Pirongia-o-Kahu), and Kakepuku is Kakepuku-te-aro-aro-o-Kahu: transcript 4.1.1, pp 14–15, 66, 90–91; doc A83, pp 50–53; doc A110, pp 113, 193, 327, 329, 351–353; doc A98, p 56. Hurakia is the northern part of the range now known as Hauhungaroa: Carolyn King, D John Gaukrodger, Neville Ritchie (eds), *The Drama of Conservation: The History of Pureora Forest, New Zealand* (Wellington: Department of Conservation/Springer Books, 2015), p vii.

96. Document A110, pp 108–110; also see pp 95, 97–98, 337, 342.

97. Document A83, p 50; see also doc A98, pp 50–51; doc R13 (Tūwhangai), p 8; doc Q3 (Waho), p 6.

98. Document A83, p 50; see also doc A98, pp 50–51; doc R13, p 8; doc Q3, p 6.

gardens. Tribal traditions refer to the adaptation of Hawaiki crops and growing methods to the new land.<sup>99</sup>

The Tainui peoples were not alone in the district. Traditions refer to patu-paiarehe (fairy people) and urukehu (fair-haired people) living on the slopes of Pirongia and Kakepuku, and in the Tūhua and Pureora forests;<sup>100</sup> and to other tribes which had arrived from Pacific homelands before *Tainui*, in particular to Ngāti Kahupungapunga who occupied lands north of Te Kawa.<sup>101</sup>

There is no record of significant conflict between the *Tainui* migrants and these earlier settlers during the generations between Hoturoa and Tāwhao. With relatively small populations and ready access to cultivations and abundant large fauna, there appears to have been little rivalry or competition among groups of different descent.<sup>102</sup>

The detailed histories that emerge from about 1500 tell of some of the conflicts that beset the Tainui peoples from about that time.<sup>103</sup> In this respect, Te Rohe Pōtae appears to have followed the same pattern as other North Island districts. As populations of moa and other large fauna crashed, and human populations grew, the focus of economic activity turned to year-round cultivation and to hunting smaller fauna such as fish, shellfish, and tuna (eels). With year-round settlement and greater competition for resources, possession of territory became more important than it had previously been.<sup>104</sup>

Over time, social structures began to change. Family groups began to work together, sharing labour and territorial defence, thereby forming into hapū. A

99. For example, see the tradition of Whakaotiranga and her kete rukuruku (small basket) of kūmara: doc A110, pp 48–49. For general descriptions of Hawaiki people's adaptation to the new environment, see Waitangi Tribunal, *Ko Aotearoa Tēnei, A Report into Claims concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 1, pp 238–239; Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 21–22; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, p 30; James Belich, *Making Peoples: A History of the New Zealanders: from Polynesian Settlement to the End of the Nineteenth Century* (Auckland: Allen Lane, 1996), pp 35, 67; Atholl Anderson, 'A Fragile Plenty: Pre-European Māori and the New Zealand Environment', in *Environmental Histories of New Zealand*, ed Eric Pawson and Tom Brooking (Melbourne: Oxford University Press, 2002), pp 25–26.

100. Transcript 4.1.9, p 412; transcript 4.1.17, pp 44–46, 410, 638–639, 1403–1404; transcript 4.1.11, pp [570], [615]; transcript 4.1.12, pp 39, 136–137, 152–154, 174, 273–274, 499; transcript 4.1.14, p 60; transcript 4.1.21, p 21; transcript 4.1.16, pp 146, 158, 161; doc J23 (Wanikau), pp 8–9; doc A83, p 26.

101. Transcript 4.1.1, pp 63–64, 66–67; see also doc A83, pp 47, 50–51, 68, 90–92; doc A110, pp 82–83; doc A108, pp 302, 363–369. Claimants also referred to other early groups, including Ngāti Hia of the upper Mōkau Valley, and Ngāti Hotu of western Taupō. Some sources give *Tainui* origins for these groups: specifically, Hiaroa for Ngāti Hia and Hotunui for Ngāti Hotu. Regarding Ngāti Hia, see transcript 4.1.17, p 575. Regarding Ngāti Hotu, see transcript 4.1.4, pp 45–48, 109–114 and transcript 4.1.17, pp 44–46. Some sources also referred to Ngāti Hā, who were descended from Tia of *Arawa* and invaded Ngāti Hia lands sometime during the 1500s. Ngāti Hia, Ngāti Raukawa, and Tainui people of Kāwhia fought together to see off this invasion: transcript 4.1.4, pp 77, 110; transcript 4.1.6, p 346.

102. Document A83, pp 68, 78–80.

103. Document A83, pp 11, 48.

104. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, p 30; Belich, *Making Peoples*.



pattern emerged in which these groups would occupy a territory, grow, and then divide, with one part of the group moving off to break in new territories and repeat the process. In these early times, rangatira (chiefs) who married more than once frequently divided their lands between the eldest sons from each marriage. Six generations after Hoturoa, his descendant Kākati married twice, dividing Kāwhia between his eldest sons from each marriage – Tāwhao taking the north and Tuhianga taking the south.<sup>105</sup>

In turn, Tāwhao married two sisters. His sons from the different marriages, Whatihua and Tūrongo, grew up as bitter rivals. As they reached adulthood, Whatihua inherited his father's mana to manage lands in northern Kāwhia, while his brother travelled inland to establish a new settlement at Rangiātea, near Ōtorohanga. There, he used some of the soil from Te Ahurei to establish the fourth Tainui whare wānanga.<sup>106</sup> The settlement is recalled as highly prosperous, with a population that grew rapidly.<sup>107</sup>

In spite of the rivalry, the Kāwhia and Rangiātea communities remained in close contact, with Tūrongo visiting his former home regularly – establishing a link between inland and coastal communities that has remained important throughout the district's history.<sup>108</sup> These ties were reinforced through several generations of intermarriage, beginning with that of Whatihua's son Uenukutuwhatu to Tūrongo's daughter Rangitairi.<sup>109</sup>

There are differing views over which of Whatihua and Tūrongo was the senior – Whatihua was the elder; Tūrongo's mother was the elder sister.<sup>110</sup> Regardless, both are regarded as important ancestors for many of the Tainui tribes. Though it is a simplification, the division of land established in their time continued through generations, with Whatihua's descendants (based on senior male lines) typically occupying coastal areas from northern Kāwhia through to Pirongia, and Tūrongo's coming to occupy the lands from Pirongia and Wharepūhanga south to Tūhua.<sup>111</sup>

105. Document A110, p 246. Several traditions also acknowledge a third son, Uetapu (see doc A110, pp 78, 82–83; doc A99 (Tainui researchers), p 34; transcript 4.1.14, pp 391–392), but some sources conflate Uetapu with Ue, Kākati's grandfather (see transcript 4.1.1, pp 30, 61–63; doc K35(a) (Maniapoto), p 47). For general descriptions of the evolution of Māori social organisation, see Waitangi Tribunal, *Ko Aotearoa Tēnei, Te Taumata Tuarua*, vol 1, pp 238–239; Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 21–22; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, p 30; Anderson, Binney, and Harris, *Tangata Whenua*, pp 77–84.

106. Document A110, pp 116–117, 120–122, 194–195, 120–122, 242, 244, 337, 340; doc A83, pp 59–64, 68–74, 75–78, 89–90, 250, 282; see also doc A97, pp 31–32; doc A98, pp 74–75; doc A99, p 53. In some traditions, Tūrongo carved his house at Rangiātea using the adze Te Toki a Matariki, which Whatihua had used to carve his house and impress Ruapūtahanga: doc A83, pp 78–79.

107. Document A110, p 337; doc A83, pp 68, 78–80.

108. Document A83, pp 79–81; doc A110, pp 54–56; see also doc A99, pp 54–55.

109. Document A83, pp 79–81; doc A110, pp 54–56; see also doc A102 (Ngāti Apakura researchers), p 18.

110. Document A110, pp 52–53.

111. Document A83, pp 64–65, 251; doc A110, pp 195–196; doc A98, p 76; doc A97, p 33; transcript 4.1.1, p 15.

**2.3.3 Raukawa and Rereahu**

Tūrongo and Mahinārangi had one son, Raukawa, and two daughters, Rangitairi and Hinewai.<sup>112</sup> Raukawa married Tūrongoihi, who was descended from Hoturoa and from Tia of Te Arawa.<sup>113</sup> Most traditions record them as having four children – Rereahu, Whakatere, Kurawari (or Kuiwai), and Takihiku. It is from Rereahu that all who now call themselves Ngāti Maniapoto claim descent; as Piripi Crown put it, ‘ko Rereahu katoa tātou’ (‘we are all Rereahu’).<sup>114</sup> Rereahu’s younger siblings Kurawari and Takihiku are important tūpuna of Ngāti Raukawa.<sup>115</sup>

Whereas the early period of Tainui exploration and settlement was relatively peaceful, several conflicts occurred during Raukawa’s lifetime and in succeeding generations, which had the effect of extending Tainui influence – and in particular the influence of Tūrongo’s descendants – inland and southwards.

Probably around the early to mid-1500s the Kāwhia rangatira Tānetinorau attacked Ngāti Hia, who (according to most sources) were Hiaroa’s descendants<sup>116</sup> and had spread out to occupy significant areas of land from Ōtorohanga south. Tānetinorau then settled near Waitomo.<sup>117</sup>

Soon afterwards, Raukawa sided with another Kāwhia rangatira, Tamaaio (great-grandson of Whatihua), to repel Ngāti Hā, an Arawa hapū from Taupō which had moved into the lands between Pureora and Puketutu. Peace was negotiated, cemented by the marriage of Tamaaio to a Ngāti Hā woman of senior birth.<sup>118</sup> Raukawa and Tamaaio then turned on Ngāti Hia, driving them further southwards.<sup>119</sup>

Rereahu, Raukawa’s eldest son, is said to have lived in various places, from Te Kawa, Mangaorongo, and Hikurangi to Rangiatea, Te Kūiti, and Pureora.<sup>120</sup> He married twice, both marriages reinforcing the bonds between the Kāwhia and Rangiatea branches of Tāwhao’s descendants. His first marriage was to Rangianewa, Tamaaio’s daughter. Their sole child was Te Ihingārangi.<sup>121</sup> A long time later, Rereahu married Hineaupouamu, who was descended from both

112. Document A83, pp 75–79; doc A110, pp 55, 121, 195–196.

113. Document A83, pp 80–81.

114. Transcript 4.1.6, p 362; see also transcript 4.1.6, pp 123–124; doc A83, pp 84–85; doc A110, pp 122, 362.

115. Document A83, pp 86–87; doc A110, p 54.

116. Document A110, pp 339–340, 361–362; doc A83, p 50; transcript 4.1.6, p 17.

117. Transcript 4.1.6, pp 273–274; doc A83, pp 81–82; doc A86, p 51; transcript 4.1.21, p 1038.

118. Document A86, pp 60–62; doc A110, pp 329, 357–358, 361–362; doc A83, pp 50–51, 81–83; transcript 4.1.17, pp 36–37, 39. For Tamaaio’s whakapapa, see doc A110, pp 54–55. For the origins of Ngāti Hā, see Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 69, 72, 76–77.

119. Document A83, pp 83–84; doc A110, pp 358, 362–363. Not long afterwards, some of Raukawa’s relatives aligned with Ngāti Tama of west Taupō and attacked Ngāti Tūwharetoa, but were defeated. Peace was followed by intermarriage which created links between the whakapapa of Ngāti Raukawa and Ngāti Tūwharetoa: Pei Te Hurinui Jones and Bruce Biggs, *Nga Iwi o Tainui: The Traditional History of the Tainui People* (Auckland: Auckland University Press, 2004), pp 196–214.

120. Document A110, pp 122–125; transcript 4.1.13, pp 23–24.

121. Document A83, pp 55, 84.

Whatihua and Tūrongo. That marriage produced eight children: Maniapoto, Matakore, Tūwhakahekeao, Tūrongo-tapu-ārau, Te Io-wānanga, Kahuariari, Kinohaku, and Te Rongorito.<sup>122</sup>

### 2.3.4 Paerangi, Ruatipua, and Ngatoroirangi

Other ancestors are important in the traditions of hapū and iwi whose rohe overlapped with the southern and eastern boundaries of Te Rohe Pōtae.

Traditions tell of Paerangi, a great ancestor who settled in the district before the arrival of the great waka migrations. Claimant Tūrama Hawira described how ‘ngā Paerangi i paranī te whenua’, ‘it was Paerangi who branded the land’ and ‘applied the tapatapa rituals of naming.’<sup>123</sup>

Kevin Amohia of Ngāti Hāua told the Tribunal that ‘the beginnings of Ngāti Hāua is that we had no waka, we had no waka’ and described two stories of the potential origins of Paerangi.<sup>124</sup> One tells of how Paerangi reached Aotearoa on his pet bird, Te Rau a Moa, which he ‘had nurtured because it was hurt. As a result, he was able to communicate with, and command the bird.’<sup>125</sup>

The alternative story describing Paerangi’s arrival suggests that he arrived by accident while searching for his children, who had been lost at sea: ‘He was eventually assisted by the winds of Hau, and was carried to the shores of Aotearoa. From this event came the name Haua-a-Paparangi which depicts the journey of Paerangi. Haua-a-Paparangi means, “the winds of our heavenly father” or “the breath of our heavenly father”.’<sup>126</sup>

Ngāti Hāua were traditionally known as Ngāti Ruatipua, named after another tupuna who arrived in the district prior to waka. Te Wainui-a-Ruatipua is also the name of the Whanganui River in Ngāti Hāua traditions.<sup>127</sup> Mr Amohia explained that ‘the Ngāti Hāua whakapapa begins at the [Tongariro] maunga and follows the Whanganui River.’<sup>128</sup>

Unlike Paerangi, it is unclear how Ruatipua first arrived in Aotearoa.<sup>129</sup> Descendants of both tupuna later intermarried with those who migrated to Aotearoa on the *Aotea* waka and formed the early ancestors of not just Ngāti Hāua, but Ngāti Tūwharetoa and Whanganui iwi as well.<sup>130</sup>

Ngatoroirangi is an important tupuna for Ngāti Hikairo and Ngāti Tūwharetoa. He was first appointed as tohunga for the *Tainui* waka. However, so sought-after were his talents that Tamatekapua, chief of the *Te Arawa* waka, kidnapped or lured

122. Document A110, pp 54–56, 122; doc A83, pp 82–84.

123. Transcript 4.1.4, p 152.

124. Transcript 4.1.4, pp 4–5.

125. Document A108, p 249.

126. Document A108, pp 249–250.

127. Document A112, p 13.

128. Document A112, p 13 (cited from Wai 903 ROI, doc K11 (Amohia), p 4).

129. Document A112, p 13.

130. Document A124, p 11.

Ngātoroirangi and his wife Kearoa aboard his waka so that he would be tohunga on the *Te Arawa* instead.<sup>131</sup>

Oral histories tell that, while sailing, Ngātoroirangi became enraged upon learning that Tamatekapua and Kearoa had slept together. Using sorcery, he drove the *Te Arawa* waka toward a whirlpool named Te Korokoro-o-Te-Parata but felt sorry for the other people aboard the waka and, citing the appropriate incantations, steered them to safety.<sup>132</sup>

The *Tainui* and *Te Arawa* waka both reached Aotearoa at Whangaparāoa, where Ngātoroirangi set free two pet birds he had brought with him.<sup>133</sup> Meto Hopa of Ngāti Hikairo told the Tribunal how Ngātoroirangi then ‘went to explore the land in Te Arawa territory and then travelled into Tūwharetoa territory.’<sup>134</sup> He explained that ‘Ngātoroirangi travelled and explored the land and beyond Ruapehu’, identifying and naming much of it.<sup>135</sup>

When Ngātoroirangi died, Mr Hopa noted, ‘he died in the Waikato River and it was the river that transported his body, floating on the ripples of the water unto the mouth of the Waikato River and out to sea.’<sup>136</sup> His body, however, washed back onto the beach where it was discovered in a decomposing state by Ngāti Hikairo tūpuna Tūmārouru and Tamatea.<sup>137</sup> The couple went on to name their son Hikairo (‘the decomposed loved one’), Ngāti Hikairo’s eponymous ancestor, in memory of Ngātoroirangi.<sup>138</sup>

#### 2.4 TE MANA O MANIAPOTO

Early settlement in the district following the landing of the *Tainui* waka established the ancestors of many of today’s hapū and iwi on the land. Significant events followed that led to the emergence of one particular tupuna: Maniapoto, the eponymous ancestor of Ngāti Maniapoto. The development of Ngāti Maniapoto as an iwi coincided with other lines of Tainui descent branching out to form new hapū and iwi in their own right. These people continued to engage with others in the borders of the district.

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131. Document A83, p 36; doc A110, pp 106–107. Other stories say that Ngātoroirangi was aboard the *Tainui* waka for some time, before being ‘spirited away’ by Tamatekapua onto the *Te Arawa* waka at Rarotonga, see doc A83, p 37.

132. Document A97, pp 41–42.

133. Document A86, p 30; doc A97, pp 41–42.

134. Transcript 4.1.2, p 277.

135. Transcript 4.1.2, pp 277–278.

136. Transcript 4.1.2, p 278.

137. Transcript 4.1.2, p 279.

138. Document A98, p 55.

### Hapū and Iwi

The dominant political and social group from Maniapoto's time through to 1840 and beyond was the hapū.

Hapū typically comprised several whānau living in close proximity, united by common descent, operating under common leadership, and working together for mutual benefit. The common ancestor was typically fairly recent, often extending back little more than two or three generations. In this district, hapū were often named after founders' mothers or grandmothers: for example, Ngāti Rangatahi became established in the time of Rangatahi's son, Tūkawekai.<sup>1</sup>

They maintained cultivations and managed other communal food resources such as birding, eeling, and fishing grounds, as well as pā whawhai (fighting pā), waka, and other communal property.<sup>2</sup>

Hapū territories were well known by members of the hapū and by their neighbours. Typically, hapū members could describe in detail their ancestral relationships with mountains, lakes, rivers, swamps, rocks and caves, trees, coastal areas, and the myriad other elements of the environment, and therefore understood what occupation and usage rights they had, and how these parts of the environment should be managed.<sup>3</sup>

Nonetheless, territorial rights commonly overlapped, with people of neighbouring or related hapū able to assert ancestral connections within a hapū's territory, and therefore to assert rights. Depending on the specific relationships, these might include rights to seasonal occupation; rights to use resources such as food sources, water, and cultivations, either on a seasonal or permanent basis; and rights to safe passage. Sometimes, hapū territories overlapped or were contested.<sup>4</sup>

Claimants described how hapū moved around seasonally, following food sources; how resources were shared among different hapū, with people coming from far and wide for seasonal fishing expeditions and tuna heke. While rivers and streams were

1. For evidence of hapū formation and development in this inquiry district, see doc A110, pp 182, 244–246, 250–251, 258–259; Mead, *Tikanga Māori*, pp 224–229. Many publications have discussed the structures and roles of hapū during this period: see, for example, Anderson, Binney, and Harris, *Tangata Whenua*, pp 87–93, 144; Durie, *Custom Law*, pp 16–18; New Zealand Law Commission, *Māori Custom and Values in New Zealand Law*, pp 42–43; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, p 30; Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 21–22.

2. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, p 30; Durie, *Custom Law*, pp 15–16, 23; doc A110, pp 224–225; New Zealand Law Commission, *Māori Custom and Values in New Zealand Law*, pp 42–43; Mead, *Tikanga Māori*, pp 221–244.

3. Transcript 4.1.3, pp 198–200; transcript 4.1.4, pp 124–125; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 30–31; Durie, *Custom Law*, pp 61–63, 84–89.

4. Durie, *Custom Law*, pp 84–85; also see pp 61–63; Waitangi Tribunal, *The Pouakani Report 1993* (Wellington: Brooker and Friend, 1993), section 2.1.

important transport routes, the district also had an extensive network of walking tracks. Safe passage was regarded as an important right among Tainui peoples.<sup>5</sup>

Claimants also described how neighbouring hapū sometimes clashed over territory or resources, but just as often intermarried, sometimes to a point where they could scarcely be distinguished.<sup>6</sup> Claimants also described how hapū of Ngāti Maniapoto typically shared resources and worked together in common cause, with most hapū looking after domestic affairs while some specialised in territorial security.<sup>7</sup>

In effect, the hapū of Ngāti Maniapoto appear to have operated in an interdependent manner from an early stage in their history. One of the tangible results was security: for hundreds of years, Ngāti Maniapoto heartlands around Te Kūiti and Ōtorohanga were peaceful, even as borderlands became increasingly volatile.

Whether the descendants of Maniapoto operated as an iwi from an early stage in their history depends on how 'iwi' is defined. If it is understood as multiple hapū sharing common descent and routinely acting together for purposes of territorial defence, the descendants of Maniapoto probably were acting as an iwi from a very early stage.<sup>8</sup>

5. Document A108, pp 319–320; transcript 4.1.1, pp 65–68, 95–96; transcript 4.1.7, pp 46–47; transcript 4.1.5, pp 225–226; doc L14(a), p 28; doc A97, pp 57–60; see also Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 22, 113–114.

6. Document s61(d)(Taylor), pp 7–8; transcript 4.1.5, pp 15, 53, 74, 89, 174–176; transcript 4.1.4, p 243.

7. Document L14(a), pp 6–7.

8. Mead, *Tikanga Māori*, pp 229, 233–235.

### 2.4.1 Maniapoto

Although Te Ihingārangi was his eldest son by a considerable number of years, Rereahu determined that Maniapoto should inherit his mana. The story of how this occurred is famous in Tainui folklore. As Rereahu was nearing death, he sent Te Ihingārangi to complete an errand. Once Te Ihingārangi was gone, Rereahu called Maniapoto to his side, and, anointing the Crown of his head with red ochre, instructed his son to bite it. Maniapoto was thereby imbued with his father's mana, inheriting his responsibility to lead and guide Rereahu's descendants. When Te Ihingārangi returned he saw the red ochre on Maniapoto's lips and knew what had occurred.<sup>139</sup>

139. Document A110, pp 122–123; Jones and Biggs, *Nga Iwi o Tainui*, pp 170–175. Te Piko Davis told an almost identical story in which Te Kanawa Whatupango asked his son Tutunui to bite his head and inherit his mana: doc O20(b) (Davis), pp 7–8. Jones and Biggs note that, after the ceremony, the two brothers fought near the Waipā River. Te Ihingārangi was defeated and left with his three children, settling in the Maungatautari district beside the Waikato River: Jones and Biggs, *Nga Iwi o Tainui*, p 174.

Rereahu appears to have made this choice because he regarded Maniapoto as being more capable of uniting and guiding the remaining siblings and protecting their lands. Furthermore, Maniapoto's mother was of a senior line of descent.<sup>140</sup>

Having been overlooked, Te Ihingārangi left the district and went to live among relatives at Maungatautari. Maniapoto, meanwhile, united his remaining siblings under the cloak of Rereahu's mana.<sup>141</sup> The claimant Tom Roa told us that Te Ihingārangi was much older than Maniapoto, and would not have fought over his father's mana. Rather, the older brother's departure was by mutual consent: it was a 'Ki Tapu' (sacred agreement), which secured peace between the brothers' peoples.<sup>142</sup>

Subsequently, Maniapoto married two of Te Ihingārangi's descendants: Hinewhatihua and Paparauwhare.<sup>143</sup> According to some kōrero, Te Ihingārangi returned to Waipā late in life; others say his children either remained behind when he left or returned later, settling in the upper Waipā valley and becoming Ngāti Te Ihingārangi.<sup>144</sup> Some of his descendants remained at Maungatautari where they were incorporated into hapū such as Ngāti Korokī and Ngāti Hauā.<sup>145</sup>

The roles played by Maniapoto and his siblings reveal much about social organisation, territorial relationships, and the nature of rangatiratanga during that period. Although each had their own kāinga and spheres of influence, the boundaries were fluid, resources were shared, and responsibilities overlapped.

The elder siblings also had their own home territories. Matakore's main kāinga lay in the upper Waipā Valley, extending into the Rangitoto Range – an area renowned for its abundant bird life.<sup>146</sup> Maniapoto left him and his younger brother Tūwhakahekeao to hold these lands against any further threat from Arawa peoples to the east (and other descendants of Raukawa to the north).<sup>147</sup> At some stage a whare wānanga was created at Hurakia, known as Te Hunga Tāhere Manu.<sup>148</sup>

Kinohaku, meanwhile, is recalled as exercising influence over an extensive territory from inland Hangatiki and Waitomo to coastal Marokopa and Waikawau.<sup>149</sup>

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140. Document A110, pp 122–123; Jones and Biggs, *Nga Iwi o Tainui*, pp 170–175; transcript 4.1.6, pp 234–235, 362.

141. Document A110, pp 122–123; transcript 4.1.13, pp 23–24.

142. Transcript 4.1.7, pp 45–46.

143. Document A110, pp 71, 123.

144. Document A110, pp 54, 123; transcript 4.1.6, p 134.

145. Document A110, p 123.

146. Document A110, pp 304, 327–328; Waitangi Tribunal, *The Pouakani Report*, p 19.

147. Document S1, p 10; doc R13(b) (Tūwhangai), pp 3–4.

148. Document R13(b), p 5.

149. Transcript 4.1.6, pp 233–235, 274; submission 3.1.323, app A, p 2; doc G16 (Davis) p [8]; see also transcript 4.1.6, pp 60, 97–98, 113, 186–188; transcript 4.1.21, pp 19–20, 1630; doc Q11, p 3; doc S37(b) (Jensen), p 2; doc A110, pp 134, 152–153, 320, 333–336; doc A60, pp 301–305; doc A114, p 70; doc A106, pp 9–13; submission 3.4.80, para 9.

Maniapoto's lands lay in between. He and Te Ihingārangi had grown up around Ōtorohanga,<sup>150</sup> but as an adult Maniapoto also kept kāinga in several other parts of the Waipā Valley, including Te Kūiti, Taupirioterangi (south-east of Te Kūiti on the Mangaokewa Stream), Hangatiki, Mohoanui (east of present-day Ōtorohanga), and Tuitahi (west of Ōtorohanga overlooking the Waipā and Waitomo Valleys).<sup>151</sup> Late in life, he lived in a cave, known as Te Ana Ureure, in the Waitomo district.<sup>152</sup>

Each sibling is recalled as contributing special skills and resources to the wider family group. Matakore, befitting his forest homeland, was an expert in gathering and preserving forest food; Kinohaku was an expert in gathering food from the sea and waterways; Tūrongotapuarau's gift was healing; Tūwhakahekeao's was warfare and oversight of the family's shared territories; Te Io-Wānanga was guardian of sacred learning, and of knowledge about the heavens and stars; Kahuariari was an expert in child-rearing; and Te Rongorito was an expert in healing and is also recalled as a peacemaker.<sup>153</sup>

In the social structures of the time, whānau groups typically managed day-to-day economic activities such as food gathering and small-scale cultivation,<sup>154</sup> while hapū managed activities which required more labour, such as cultivation or hunting expeditions.<sup>155</sup> Rangatira led the hapū in managing these activities (see sidebar in section 2.4.4).

But the roles played by members of Maniapoto's family also speak to additional layers of responsibility which were shared between hapū. Matakore's forest food and Kinohaku's food from oceans and rivers contributed to the welfare of their siblings and their hapū.

As one example of this sharing and how it was managed, Maniapoto and Matakore jointly established a village in the Pureora forest for winter bird-snaring. The village lay about 500 metres north of a fortification used to defend the site from Arawa neighbours, and was called Tūturuwhakamate ('hold fast until death') – a clear indication of how highly valued it was.<sup>156</sup> At some point, Maniapoto and Matakore placed a pou whenua to mark their respective harvest territories. The resource, having been jointly developed and defended, was thereby also divided among their respective families. Through this arrangement, which was brokered

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150. Maniapoto was living at Mohoanui on the Waipā River just south-west of the present-day Ōtorohanga township. Te Ihingārangi was living north of there at Tuitahi, overlooking the Waitomo and Waipā Valleys. Maniapoto moved there after he and Matakore defeated Te Ihingārangi. Tuitahi had been a Ngāti Hia pā before that tribe was conquered by Raukawa and Tamaio. Another Ngāti Maniapoto pā in the township, Kākāmutu, had also belonged to Ngāti Hia: doc A110, pp 357–358. Also see doc A60, p 637.

151. Document 99(b) (Wi), p 4; doc A110, pp 125, 357–359; Jones and Biggs, *Nga Iwi o Tainui*, pp 178–179.

152. Transcript 4.1.6, p 22; transcript 4.1.13, p 23; doc A110, pp 125, 361.

153. Document A110, pp 122–125; transcript 4.1.13, pp 23–24.

154. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, p 30; New Zealand Law Commission, *Māori Custom and Values in New Zealand Law*, pp 41–42.

155. See doc A110, ch 3.

156. Document A110, p 327.



by Te Rongorito, the peacemaker, the brothers worked together to secure the resource, while avoiding conflict over its allocation.<sup>157</sup>

As the principal leader, Maniapoto was responsible for defence across all the territories of his siblings' hapū. During his lifetime, inter-hapū and inter-waka conflict was becoming more common at the district's northern and southern borders. Yet Maniapoto's strength was rarely tested. On one occasion, Maniapoto and his people killed a group of men who had come 'from the east' of his village Taupiri-o-te-Rangi and challenged his authority.<sup>158</sup> On another occasion, he quickly repelled an attack led by his cousin Wairangi, who was seeking to avenge an insult: Kinohaku's daughter Rangipare had refused to marry him, and instead had run off with her cousin, Maniapoto's son, Tūtakamoana.<sup>159</sup> This conflict planted the seed for the later formal division of Tūrongo's descendants into Ngāti Maniapoto and Ngāti Raukawa factions.<sup>160</sup>

Through the combined strength of Maniapoto and his siblings, they were able to maintain peace and security throughout their territories during much of Maniapoto's life and for many generations beyond. Tūwhakahekeao was trained to command warriors and acted, on occasion, as Maniapoto's deputy, but he is also recalled as a man of great gentleness. One of his principal responsibilities, according to Shane Te Ruki and Piripi Crown, was to 'go and check the various hapū, and [i]f food supplies were exhausted, [to] . . . tell them where to move.'<sup>161</sup> Thus, he embodied the combination of military prowess, territorial control, and care for his people's well-being which were hallmarks of rangatiratanga. According to the claimant Tāme Tūwhangai, it was Tūwhakahekeao who founded Ngāti Rereahu.<sup>162</sup>

Te Rongorito's special role as a broker of peace was underlined by Rereahu's decision to give her an area of land east of Ōtorohanga, known as Te Marae o Hine, on which all violence was forbidden. This, not coincidentally, also marked a border zone between the lands of Rereahu and those of his siblings. Many years later, Te Rauparaha's violation of that prohibition would have serious consequences for him and his people.<sup>163</sup>

157. Document A110, pp 304, 327–328; Waitangi Tribunal, *The Pouakani Report*, p 28.

158. Jones and Biggs, *Nga Iwi o Tainui*, pp 178–182; see also 'Native Land Court Judgment', *New Zealand Herald*, 2 February 1893, p 3.

159. Document H8 (Maniapoto), pp 3–4; doc A110, pp 179–180. Wairangi was descended from Takihiku, and had kāinga at Wharepūhanga: doc A83, pp 94, 97–105. Wairangi and his close kin had been involved in an aggressive territorial expansion northwards from Wharepūhanga to Maungatautari, in which the Ngāti Kahupungapunga people were all but wiped out: doc A83, pp 95–104; also see pp 89–94; Jones and Biggs, *Nga Iwi o Tainui*, pp 138–142.

160. Document A110, pp 179–180, 197–198, 249–250.

161. PN Crown and GS Te Ruki, *Te Kete Kōrero, He Kohinga Kōrero Kaumātua, Ngā Tūpuna Taketake a Ngāti Maniapoto: The Founding Ancestors of Maniapoto* (Te Kūiti: Kowhai Consulting, 2004) (doc A110, p 124).

162. Document S1, p 10.

163. Her status is commemorated in the pepeha 'Kei hewa ki te marae o Hine' (Do not desecrate the courtyard of Hine [Te Rongorito]): doc A110, pp 125, 191, 249, 385. Also see transcript 4.1.11, p [63]; transcript 4.1.4, p 215; transcript 4.1.6, p 393.

Experiences in the physical world were echoes of experiences in the realm of atua. This was the province of Te Io Wānanga. According to Mr Crown and Mr Te Ruki:

Ko te āhuetanga o te tūpuna nei, kei a ia ngā kōrero hōhonu o te whare wānanga. Ko ia hoki te mea e mōhio ana ki ngā kaupapa e pā ana ki te Atua-nui-o-te-rangi, ērā kōrero katoa kei a ia kei Te Io-wānanga. Mai i te taha-tū o te rangi, mai i te Atua ngā kōrero o te Kete Aro-nui te Uruuru-Matua, ngā kōrero mō ngā whetū, mō te timatanga o te ao. Nō reira te ingoa Te Io-wānanga.

Concerning the circumstances of this ancestor, he was the one who possessed the fundamental teachings of the house of learning. He was also the one who knew the profundities concerning the great God-of-the-heavens; all those teachings were with him, Io-wānanga [Io the Learned]. From the sky's horizon, from the God himself [came] the teachings from the set of directions for the principal chants, teachings concerning the stars, and for the beginnings of the world. From these [came] the name, Io-wānanga.<sup>164</sup>

The combined strength of Maniapoto and his family is reflected in the saying 'Te mana whatu ahuru o Maniapoto', as described in section 2.2.1. This term was used in the 1904 kawenata (covenant) of Ngāti Maniapoto to describe the unified spiritual authority handed down from Io-mātua-te-kore through generations to Hoturoa and on to Rereahu and Maniapoto and their people.<sup>165</sup>

Unity among Maniapoto's siblings is also reflected in Maniapoto's final saying, uttered as he lay dying during a family gathering at Kākāmorea, near Waitomo. After watching them perform a haka he told them: 'Kia mau ki tēnā, kia mau ki te kawau-mārō' (Stick to that, the straight flying cormorant).<sup>166</sup>

Literally, this described the cormorant straightening its neck as it dives into the ocean to capture prey. Figuratively, it referred to a battle formation that Maniapoto had perfected, in which warriors were arranged in the shape of an arrow and darted forward towards their opponents. It referred to numerous people moving as one, led by the strongest and bravest, striking without hesitation.<sup>167</sup>

#### 2.4.2 Other lines of Tainui descent

While Tūrongo's descendants were increasing their influence throughout the district, other branches of Tainui were also moving out from their original Kāwhia home to occupy new lands. These groups, while maintaining close affiliations with their Ngāti Maniapoto kin, established their own identities in territories in the northern parts of the inquiry district.

164. Crown and Te Ruki, *Te Kete Kōrero* (doc A110, pp 32–33).

165. Document s19(a), app H, pp 28–31, app I, pp 37–39, 48.

166. Transcript 4.1.6, p 231.

167. Transcript 4.1.1, p 16; doc A110, pp 18, 125; see also transcript 4.1.6, p 231; transcript 4.1.5, pp 248–249. 'Te kawau mārō' is sometimes translated as 'the straight-flying cormorant', and sometimes as 'the swoop of the cormorant'.

One branch, descended from Pūhanga (a great-grandson of Hoturoa) and led by Tamapoto,<sup>168</sup> moved inland from Aotea and Whāingaroa to occupy lands north of Pirongia. They became Ngāti Māhanga.<sup>169</sup> Māhanga was also an important ancestor for some of the groups mentioned below.<sup>170</sup>

Another Tainui branch, descended from Tuhianga, brother of Tāwhao and uncle of Tūrongo (see section 2.1.2), occupied much of southern Kāwhia. They expanded their influence to coastal Marokopa. Of particular importance was Tūpāhau, who drove an invading Waikato force from these lands. Some of his descendants became known as Ngāti Mango and then as Ngāti Toa-rangatira. Others intermarried with Ngāti Kinohaku and Ngāti Waiora, becoming part of Ngāti Maniapoto.<sup>171</sup> Other descendants of Tuhianga moved inland, marrying descendants of Tūrongo and settling around Hangatiki and Kakepuku, becoming Ngāti Huiao and Ngāti Nguu.<sup>172</sup>

Several other groups descended from Tūrongo's brother Whatihua either occupied or spread out from Kāwhia. Some remained in northern Kāwhia or expanded northwards to Aotea and Whāingaroa. They included Ngāti Tūrirangi, Ngāti Koata, Ngāti Wehi Wehi, and Ngāti Te Wehi, among others.<sup>173</sup> Other descendants of Whatihua moved inland, founding Ngāti Kauwhata, Ngāti Tūkorehe, Ngāti Korokī, Ngāti Hauā, Ngāi Tamainupō, and Ngāti Apakura.<sup>174</sup> A third group of Whatihua's descendants settled east of Pirongia around Te Kawa Swamp, intermarrying with Ngāti Kahupungapunga and becoming Ngāti Mōtai and then Ngāti Unu.<sup>175</sup>

Meanwhile, an Arawa rangatira, Pikiāo, migrated into the district from Rotorua, settling east of the Waikato River and marrying a Tainui chieftainess. Their descendants became Ngāti Mahuta and Ngāti Pāoa.<sup>176</sup>

168. Most Tainui lines of descent trace to Mōtai, Pūhanga's brother: transcript 4.1.16, p 20; doc A94, p 30; see also doc A83, p 80; doc M3 (Taukiri, King, and Kihī), p 2.

169. Transcript 4.1.3, pp 16–19; 25–26; doc A94, pp 30, 36–38.

170. For example, Māhanga is mentioned in the whakapapa of Ngāti Koata, Ngāti Te Wehi, Ngāti Korokī, Ngāti Hauā, and Ngāti Tamainupō: doc A94, pp 147–149, 158–160; doc A104, pp 77–78.

171. Jones and Biggs, *Nga Iwi o Tainui*, pp 154–161; doc A102, p 16; doc A106 (Young), pp 7, 10, 12–13; doc A110, pp 79, 81, 134, 152–153, 335; doc A147 (Stirling), pp 5, 23, 107; transcript 4.1.6, p 188. Tuhianga was Tāwhao's brother and therefore Tūrongo's uncle (doc A99, p 40). Toa-rangatira could also trace descent from Maniapoto (doc A102, p 19) and Whatihua (doc A99, pp 54–55).

172. Transcript 4.1.1, pp 62, 89; transcript 4.1.6, pp 225–227, 230–232, 235, 290–291; doc G14, pp [2]–[4]; doc A110, pp 78–81, 142; doc A60, pp 198–204.

173. Document A104(i) (de Silva), p 30; doc A99, pp 54–55.

174. Document A102, pp 16–17; doc A97, pp 29–31, 34, 101; doc A102, p 18; doc A108, p 303; doc A83, pp 86, 161, 164, 166, 177, 258–259, 276; doc A101, p 6; doc A94, p 48; doc A109, pp 13–14. Ngāti Apakura occupied lands between Ngāroto and the Pūniu River. Moepatu Borrell and Robert Joseph, in their traditional history of Ngāti Apakura, trace a line of descent from Whatihua and Apakura to Pikirangi down to Tamatea, who married Tūmarourou of Ngāti Maniapoto. From there, there are many overlaps between Ngāti Apakura, Ngāti Hikairo, and Ngāti Maniapoto lines of descent: doc A97, pp 61–63, 77, 84; doc A110, pp 150, 169, 286.

175. Claim 1.1.118, pp 3–4; transcript 4.1.1, pp 60–70, 126; doc A110, pp 78, 82–83. Ngāti Mōtai was named for Mōtai II or Mōtai Weherua, a descendant of Whatihua, not for Mōtai I or Mōtai Tangatarau, who was Hoturoa's great-grandson.

176. Jones and Biggs, *Nga Iwi o Tainui*, pp 106–109, 162–163.

As discussed earlier, Ngāti Hia – descendants of the early Tainui explorer Hiaroa – occupied significant areas in the south-west of the district; and Ngāti Rākei, descended from Hape, occupied lands around the Mōkau River and some distance inland.<sup>177</sup> Another hapū, Ngāti Hotu, occupied the district's south-western corner.<sup>178</sup>

### Spheres of Influence: The Nature of Land Interests

Traditionally, the determining factor in land rights and interests was not ownership, but ancestral connection. If a person's ancestors had travelled through the land, named it, left pou whenua (markers), lived or died there, used its resources, and so on – he or she could assert rights to maintain those connections. As a result, rights and interests were typically complex and interwoven, just as whakapapa were.

This way of relating to land has three important implications.

First, different types of right could co-exist within the same territory. A hapū might, through ancestral connection, assert rights to occupy a territory, and that right might be recognised and respected by others. But others could nonetheless assert rights to use resources within the territory.<sup>1</sup> They might, for example, have rights to gather berries, or cultivate kūmara, or harvest birds, tuna, fish or other food, on either a seasonal or a permanent basis. Likewise, others might have rights of seasonal occupation.<sup>2</sup> At the very least, Tainui hapū typically had rights of safe passage to and through others' territories, so long as their purposes were not hostile.<sup>3</sup>

Secondly, among neighbouring groups, rights to occupy were typically overlapping and interwoven. The Ngāti Maniapoto historian Dr Robert Joseph referred to neighbouring hapū having 'spheres of influence' or areas of 'blurred association' which overlapped and were likely to shift according to prevailing circumstances, rather than fixed boundaries.<sup>4</sup>

1. Durie, *Custom Law*, pp 84–85; also see pp 61–63.

2. Document A108, pp 319–320; Durie, *Custom Law*, pp 69, 84–87.

3. For example, claimant traditions refer to Te Ngohi Kāwhia of Ngāti Paretokawa in the early 1800s regularly travelling between lands at Napinapi, Kāwhia, and Pūniu to maintain relationship with others and go on fishing expeditions: transcript 4.1.1, p 147.

4. Transcript 4.1.13, pp 31–32; see also Durie, *Custom Law*, p 88; doc A35 (Ward), p 10; doc A110, pp 134, 218, 224–225, 249–250, 287; doc A97, p 90; doc A108, pp 22–23, 126.

177. Document A28, pp 15, 20; doc A110, p 85.

178. Transcript 4.1.4, pp 45–47, 110–113.

Intermarriage, peace agreements, the formation of alliances, shifts in allegiance among members of a hapū, and shifts in military power could all lead to interweaving of rights, or shifts in the balance between neighbours.<sup>5</sup>

Ngāti Maniapoto has many traditions of neighbouring hapū co-existing without any formal boundaries between them, sometimes because rights and interests overlapped, and sometimes because they were contested.<sup>6</sup>

Typically, formal boundaries were marked only when needed to secure peace following a period of conflict. There are several examples throughout this chapter, including the establishment of ridgeline boundaries between Ngāti Maniapoto and Ngāti Tūwharetoa (section 2.4.4), and Peehi Tūkōrehu's use of the Pūniu River as an aukati to prevent conflict between Ngāti Maniapoto and their neighbours, including Ngāti Raukawa (section 2.5.2.3).<sup>7</sup>

On such occasions, natural features were often used, but pou whenua or other physical markers were sometimes put in place. For example, claimants described trenches and other markers used to define boundaries in the heavily populated northern Kāwhia–Aotea area.<sup>8</sup>

Even where fixed boundaries were established, they often related to resources, not to occupation<sup>9</sup> (as in the case of Maniapoto and Matakore dividing their birding grounds),<sup>10</sup> and individuals typically retained ancestral rights on either side of the line.<sup>11</sup> In any case, such boundaries became increasingly blurred over time as peacemaking was followed by intermarriage, as occurred, for example, along the Maniapoto–Tūwharetoa<sup>12</sup> and Maniapoto–Whanganui borders.<sup>13</sup>

As Dr Joseph and other authorities emphasised, what mattered was whakapapa relationships with land and resources, which by their nature crossed physical boundaries.<sup>14</sup>

A third important implication of whakapapa-based relationships with land was that rights were vested in all members of a group, not only its leaders. Within a

5. Transcript 4.1.13, p 31; see also Durie, *Custom Law*, p 88; doc A35, p 10; doc A110, pp 134, 218, 224–225, 249–250, 287; doc A97, pp 28, 69–70, 90; doc A108, pp 22–23, 126; doc A94, p 54; doc A108, pp 42, 319–320.

6. Document A110, pp 224, 250–251.

7. Document A110, pp 163, 219–220, 251–253, 258–259; transcript 4.1.4, pp 14–16; transcript 4.1.5, pp 95–96; transcript 4.1.3, pp 146–147; transcript 4.1.6, pp 191–192, 317.

8. Transcript 4.1.2, pp 27–28; transcript 4.1.5, pp 95–96; transcript 4.1.4, pp 14–16; transcript 4.1.3, pp 147–148; doc A97, pp 100–101; Durie, *Custom Law*, pp 86–87.

9. Transcript 4.1.13, pp 31–32; Durie, *Custom Law*, p 88.

10. Document A110, pp 327–328.

11. Durie, *Custom Law*, pp 84–89.

12. Transcript 4.1.4, pp 62–69, 147.

13. Waitangi Tribunal, *He Whiritaunoka: The Whanganui Land Report*, 3 vols (Wellington: Legislation Direct, 2015), vol 1, pp 55–56, 95–96; transcript 4.1.4, pp 14–16.

14. Transcript 4.1.13, p 32; doc A35, p 10; doc A110, pp 134, 224–225; doc A97, p 90; doc A94, p 54; Durie, *Custom Law*, pp 84–89.

hapū's territories, rights in land and other resources rested with everyone by virtue of their common descent from the founding ancestor. Though a rangatira might allocate land or other resources for individual use, this was a management function: the land was not his, and his actions were tika (valid or correct) only if serving the whole community.<sup>15</sup>

Similarly, rangatira could exercise protective mana over a wide district but only retain land interests in a limited area. Te Kanawa Whatupango (section 2.4.4), for example, played important roles in establishing and protecting Ngāti Maniapoto boundaries with neighbouring iwi, but his people were military specialists, and so possessed little land for themselves.<sup>16</sup>

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15. Durie, *Custom Law*, pp 84–89.

16. Document s1, pp 8–9, 14; Durie, *Custom Law*, pp 75–76.

### 2.4.3 From Maniapoto to Te Kanawa

According to most sources, Maniapoto had three wives, each of whom bore one son.<sup>179</sup> Over several generations, their descendants extended their influence throughout most of the district. As they did so, they encountered other branches of the Tainui family, and people of neighbouring iwi – Ngāti Tūwharetoa in the east, Ngāti Hāua (as distinct from Ngāti Hauā in the north) and other upper Whanganui people in the south, and Ngāti Tama in the south-west around Mōkau and Parininihi.

Such encounters sometimes led to conflict, and often to intermarriage, creating webs of ancestral connection that became increasingly complex with each successive generation.

Maniapoto's eldest son was Te Kawairangi, who travelled to Maungakiekie and married the twin sisters Mārei and Māroa, who were both of distant Tainui descent.<sup>180</sup> Te Kawairangi and Mārei had one son, Rungaterangi,<sup>181</sup> who married into Ngāti Tama and went from his Ōtorohanga home<sup>182</sup> to live at Mōkau.<sup>183</sup> Their children were Maniāopetini and Uruhina.<sup>184</sup> Te Kawairangi and Māroa also had a son, Tukemata.<sup>185</sup>

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179. Document A110, pp 57–60, 70–72, 123. Hinemania's son was Te Kawairangi. Hinewhatihua's son was Tūtakamoana. Paparauwhare's son was Rōrā.

180. Transcript 4.1.1, pp 16–17; transcript 4.1.5, p 32; doc A110, pp 59–60, 123–124, 128–129; doc A97, pp 90–91.

181. Some sources name Uekaha as Te Kawairangi's first son from a marriage prior to Mārei and Māroa, but most refer to Uekaha as being from Te Kawairangi's third marriage: doc A110, pp 69–70, 154; transcript 4.1.4, p 200.

182. Document A110, p 358.

183. Document A110, p 60; transcript 4.1.4, p 216; transcript 4.1.5, p 111.

184. Document A110, p 61.

185. Document A110, p 154.

Te Kawairirangi was killed by his wife's family during a visit to Maungakiekie, and Tukemata and Rungaterangi were both killed by Ngāti Tama warriors. Each of these slayings created *take* (causes) that lasted through several generations.<sup>186</sup> Maniapoto's third son, Rōrā, also married into Ngāti Tama and was killed by his wife's parents, though according to Jones and Biggs this was regarded as justified *utu* for his own killing of a Ngāti Tama leader.<sup>187</sup>

Maniāopetini, as a young man, set off for Tāmaki to seek *utu* for his grandfather's death, but drowned along the way. He was found covered in *iro* (maggots); this is one of several possible explanations for the name of his grandson, Hikairo I.<sup>188</sup>

Maniāopetini's eldest son Taitengāhue married Kaputuhi. Their children were Maniāuruahu I<sup>189</sup> and Parekura. Maniāuruahu is recalled as a great *rangatira* and *tohunga*, and as one of the most senior figures in the Tainui network of *whare wānanga*. He was sometimes known as Te Kauhanganui ('The Great Council'), and sometimes as Te Kanawa Whatuhero.<sup>190</sup> His first marriage to Oneone produced male heirs, who continued the senior line of descent to the nineteenth-century leaders Te Rangituataka I and Te Rerenga Wetere.<sup>191</sup> The claimant Kaawhia Te Muraahi referred to this as a *tohunga* line.<sup>192</sup>

Te Kawairirangi's second marriage to Māroa produced many descendants, including a grandson, Maniāuruahu I, who married Rangatahi (granddaughter of Maniapoto, and the eponymous ancestor of Ngāti Rangatahi).<sup>193</sup> Rangatahi's marriage produced a son and three daughters, including Urunumia, eponymous ancestor of Ngāti Urunumia. Together, through a combination of intermarriage and military prowess, the descendants of Rangatahi's four children strengthened Ngāti Maniapoto influence throughout the Tūhua district, and extended it into

186. Document Q29(a) (Wetere), paras 5–6; transcript 4.1.5, pp 32, 110–113; transcript 4.1.1, pp 16–17; doc A110, pp 123, 154–155, 358. Also see doc A97, pp 90–91; Jones and Biggs, *Nga Iwi o Tainui*, pp 232–235. William Wētere (Ngāti Rungaterangi) gave evidence that Mārei's brothers saw Te Kawairirangi and his son as threatening their power among their Waiohua people.

187. Jones and Biggs, *Nga Iwi o Tainui*, pp 182–187.

188. Transcript 4.1.5, p 112; doc F8 (Maniapoto-Anderson and Wetere), pp 6–7; doc A108, pp 316–317. In some traditions, the name Hikairo comes from the drowning of another ancestor, Ngātoroirangi: doc A98, pp 54–55; transcript 4.1.2, p 279; transcript 4.1.4, p 44.

189. Maniāuruahu I was descended from Te Kawairirangi through his second marriage to Māroa. The male line of descent was Te Kawairirangi to Tukemata to Maniāuruahu. Maniāuruahu I (also known as Te Kanawa Whatuhero) was of a senior line but a later generation. He was descended from Te Kawairirangi through his first marriage to Mārei. The male line of descent was Te Kawairirangi to Rungaterangi to Maniāopetini to Taitengāhue to Maniāuruahu I. Many sources refer to Maniāuruahu without distinguishing between the two: see transcript 4.1.4, pp 200, 203–204; doc A110, pp 61–63, 68–69; doc s1, p 7.

190. Document s1, pp 4–5; doc G32, pp 4–5, 7; doc A110, p 62.

191. Document A110, pp 62–63; doc G32, pp 5–6.

192. Document G32, pp 3, 7.

193. Transcript 4.1.4, p 200; doc A110, pp 68–69.

neighbouring areas.<sup>194</sup> According to Rovina Maniapoto, Rangatahi was ‘tūturu Maniapoto’ (properly or really Maniapoto), and from her children came the whakapapa that bound Waikato and Maniapoto. Hekeiterangi provided her link to Waikato and the Kingitanga; Tūmārouru was the mother of Hikairo, providing her link to Kāwhia; Tūkawekai and his Ngāti Rangatahi people provided the link to Ōhura and Taumarunui in the south; and Urunumia bound all of Te Rohe Pōtae. Together, they were ‘the bastions’ of Ngāti Maniapoto, protecting its borders and populating its heartlands.<sup>195</sup>

Urunumia married Te Kawairirangi II, a descendant of Uruhina, and together they had three sons, Te Kanawa Whatupango, Ingoa, and Te Kōrae.<sup>196</sup> Te Kōrae is recalled as a tohunga, and the others as warriors.<sup>197</sup> All were instrumental in establishing the limits of Ngāti Maniapoto influence from Kāwhia and Ngāroto in the north to Ōhura and Parininihi in the south. Of the three, the leader was Te Kanawa Whatupango, who became a highly renowned and feared military and political operator.<sup>198</sup>

He and Maniāuruahu II (Te Kanawa Whatuwhero) were contemporaries, and their shared names were not coincidental. According to Ms Maniapoto, the name Te Kanawa harked back to the establishment of Te Ahurei and the raising of the limestone pillars Hani and Puna on the foreshore below. As the original settlers died off, their mana was handed down to future generations of high priests known as Te Kauhanganui (the name was later used for Te Wherowhero’s Parliament). Each of these high priests had a formal name, along with appropriate clothing and a stone patu used for ceremonial purposes.<sup>199</sup>

#### 2.4.4 Te Kanawa Whatupango: ancestor of chiefs

Prior to about 1700, most of the conflicts that had occurred in the district could be classed as family disputes. There were exceptions, such as the Ngāti Raukawa conquest of Ngāti Kahupungapunga, and Tūpāhau’s reoccupation of Marokopa, but for the most part outbreaks of violence occurred over marital disputes or other personal slights, and did not lead to sustained warfare or significant reallocation of territory.

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194. Document H8 (Maniapoto-Anderson), p 3; transcript 4.1.4, pp 206, 208; transcript 4.1.13, p 29; doc A44, pp 2, 14; doc A108, pp 79–82, 84; doc A110, pp 68–69. Hekeiterangi appears in Tainui whakapapa as the wife of Hekemaru and mother of Mahuta and Pāoa, and again as the wife of another senior Waikato rangatira, Ngāwaero. The two marriages appear to have been several generations apart. Most traditions refer to Hekeiterangi, daughter of Maniāuruahu I and Rangatahi, as having married Ngāwaero. The earlier Hekeiterangi, mother of Mahuta and Pāoa, was the daughter of Tumanawahoe (Mataatua) and Kahutaramoa (Ngāti Huiāo): see doc E4; Jones and Biggs, *Nga Iwi o Tainui*, pp 162, 170, 240–247, 250–253, 295, 297, 301. Also see J B W Robertson, ‘The Significance of New Zealand Tribal Tradition’, *Journal of the Polynesian Society*, 1958, vol 67, no 1, p 50; doc H8, pp 4–5; transcript 4.1.3, p 139; doc A110, p 88.

195. Transcript 4.1.4, pp 204–208. Also see doc H8, pp 3–5; doc L4 (Wi), p 5.

196. Document A110, pp 63, 68.

197. Document G32, p 6.

198. Document S1, pp 4–5; doc L7 (Tūwhangai), p [19]; doc A114, p 215.

199. Transcript 4.1.4, pp 217–218. Also see doc S1, pp 1, 4–5.



From around Te Kanawa Whatupango's time (late 1600s or early 1700s), that began to change, largely due to population growth and the resulting competition for land and food resources. As we have seen, the familiar pattern of settlement was based on hapū exploring and settling new lands, which were then divided every few generations or so as populations reached a critical mass. That approach reached its natural limit as Maniapoto's descendants pushed out towards territories held by other groups.

As land and resources became scarcer around their Ōtorohanga and Orahiri homelands, Maniāruahu's son Tukawekai led a hapū south to Ōhura, where they settled among and married into Ngāti Hāua and other upper Whanganui tribes. This group became known as Ngāti Rangatahi, in honour of Tukawekai's mother.<sup>200</sup>

At around this time an important development occurred. Te Kanawa Whatupango and the Ngāti Tūwharetoa rangatira Tūtētēwhā are said to have established the boundary between their two peoples, thereby settling tensions that had remained alive since Raukawa's time. Tradition has it that they raced along the ridgelines from Titiraupenga in the north to Waituhi in the south (via Pureora, Hurakia, and Hauhangaroa), with Te Kanawa blowing his trumpet at Tūhua to signal his victory.<sup>201</sup>

The race – which followed a route very similar to that of Rakataura and Kahurere many generations earlier – is commemorated in various stories and sayings,<sup>202</sup> and in the meeting house Hia Kaitupeka on the Taringamotu River, which has Tūtētēwhā on one ridgepole and Te Kanawa on the other.<sup>203</sup> The two tribes settled peace at Oruaiwi (the place of two tribes) south of Tūhua, and secured it through marriage between Te Kanawa's son Wairakei and Rurupuku of Ngāti Tūwharetoa.<sup>204</sup>

The northern part of these boundaries around Pureora and Hurakia had been settled long ago by descendants of Raukawa, including Ngāti Matakore, Ngāti Rereahu, and Ngāti Te Ihingārangi. Te Kanawa Whatupango left his fighting pā, Ōtūtewehi, on the Mangakahu Stream, in the possession of his Ngāti Urunumia

200. Document A66 (Young and Belgrave), p7; doc A108, pp80–82, 87–91, 127, 138; Waitangi Tribunal, *He Whiritauonoka*, vol 1, pp94–96. For whakapapa links, also see doc A44, app A, p2; doc A108, pp82, 84–85; transcript 4.1.4, p208. For Ngāti Hāua origins, see doc A108, p23; doc A124 (Young and Belgrave), pp11–18.

201. Document R13, pp15–17; transcript 4.1.4, pp62–63, 67–71, 73–74, 146–147, 254–255; doc A108, pp135–138. Napa Ōtimi (Ngāti Tūwharetoa) gave the boundary as running from Waituhi to Hauhangaroa to Hurakia to Pureora to Titiraupenga: transcript 4.1.4, pp69–70. Harold Maniapoto (Ngāti Paretekawa, Ngāti Maniapoto) gave the boundary running 'along the Rangitoto Ranges to Tūhua including the Hurakia, Pureora, and Titiraupenga ranges, thence to the Whanganui river'.

202. Tāme Tūwhangai referred to a famous Ngāti Maniapoto whakatauki: 'Te Tekō o Tūhua, Te Tekō o Te Kanawa' (The pinnacle of Tūhua, the pinnacle of Te Kanawa): transcript 4.1.4, p147. Napa Ōtimi (Ngāti Tūwharetoa) referred to another traditional saying that the waters flowing from the mountains east to Taupō are reserved for kōura (freshwater crayfish) and kōara (a species of whitebait) – that is, for Ngāti Tūwharetoa – and those flowing to the west are for pīharau (lamprey), tuna (eels), and kokopū (another species of whitebait) – that is, for Ngāti Maniapoto, Ngāti Rereahu, and Ngāti Raukawa: transcript 4.1.4, pp73–74.

203. Transcript 4.1.4, pp254–255; transcript 4.1.17, pp29, 32, 622.

204. Document S1, p10; doc A110, pp158, 181.

relatives, who settled in the districts west of Te Kanawa's boundary, founding Ngāti Hari, Ngāti Huru, and Ngāti Pāhere.<sup>205</sup> As in Ōhura, intermarriage subsequently blurred inter-hapū and inter-tribal boundaries.<sup>206</sup>

According to the Ngāti Huru claimant Tame Tūwhangai, not long afterwards Te Kanawa also saw off an invasion of Hurakia by Ngāti Whakatere and Ngāti Wheoro, once again securing peace through intermarriage.<sup>207</sup> During his lifetime, Te Kanawa was also influential in battles at Kāwhia, and around Pirongia, Waipā, and Ngāroto, which we will discuss below.<sup>208</sup> It was at Pirongia and southern Kāwhia locations that he is said to have mainly lived, though he also sometimes occupied Te Ana Ureure, Maniapoto's cave.<sup>209</sup>

Just as his brother Te Kōrae and his descendants had settled in the south, Te Kanawa's other brother Ingoa settled in the north near Te Kawa Swamp, marrying into Ngāti Unu and asserting Ngāti Maniapoto mana in the district.<sup>210</sup> Te Kanawa's last fight occurred north of there at Lake Ngāroto, where he and his brother Ingoa helped Ngāti Apakura see off a challenge from Ngāti Puhiaue. According to the claimant Martin Morehu McDonald (Ngāti Ingoa), this was the first time Ngāti Maniapoto had asserted mana north of the Pūniu River. After victory had been achieved, Ingoa claimed mana over the district, and some of his kin remained there.<sup>211</sup>

Te Kanawa's role in establishing and protecting Ngāti Maniapoto's boundaries earned him a formidable reputation throughout Te Rohe Pōtae and beyond. Claimants translated his name as meaning 'Te Kanawa of the baleful eye', referring to his eye for war; and also called him 'Te Kanawa ki te ringaringa nui hei whāwhā' (Te Kanawa with the strong hand to reach out and touch).<sup>212</sup>

Mr Tūwhangai described him as sheltering Ngāti Maniapoto under his kahu kura (impervious war cloak), by organising some hapū into specialist border protection forces, leaving others to concentrate on cultivation and harvesting.<sup>213</sup> Ngāti Urunumia, named for Te Kanawa's mother, is regarded as fulfilling this role, and claimants also referred to a 'Te Kanawa confederation' of fighting hapū occupying

205. Transcript 4.1.4, pp 143–147, 257; doc A66, pp 13–17; doc S1, p 12; doc A110, pp 173–174, 316.

206. Transcript 4.1.4, pp 146–147; doc A114, p 70.

207. Document S1, p 11.

208. Document S1, pp 9–13; transcript 4.1.1, pp 52–53, 72–73.

209. Transcript 4.1.2, pp 194–195; transcript 4.1.1, pp 93–94; doc A110, pp 351, 353; Jones and Biggs, *Nga Iwi o Tainui*, pp 276–277.

210. Transcript 4.1.1, pp 51–54, 70–73, 114, 126, 133–134.

211. Transcript 4.1.1, pp 52–54; transcript 4.1.4, pp 62, 69–70, 73; doc A110, pp 305, 351.

212. Another epithet was 'Te Kanawa, he waha kai atua' ('Te Kanawa whose mouth devours the gods'), reflecting the regularity with which he called others to war: doc S1, pp 1, 10; see also transcript 4.1.2, p 161; transcript 4.1.4, p 147; transcript 4.1.1, pp 52–54; doc L7, p 19; doc A110, p 316; doc A108, p 135.

213. Document S1, pp 8–9. Mr Tūwhangai and some other sources also referred to Te Kanawa as an ariki or paramount chief of Ngāti Maniapoto, a description that reflected his considerable mana as a fighting chief: doc L7, p 19; doc A110, p 226.

lands in both north and south, and travelling to where they were needed. This legacy was to endure into future generations.<sup>214</sup>

Of equal significance were Te Kanawa's marriages to Waikohika (Ngāti Matakore) and Whaeapare (Ngāti Apakura). Their children continued his legacy, defending Ngāti Maniapoto borders, avenging past causes, and, at times, extending Ngāti Maniapoto mana beyond traditional boundaries. In turn, their marriages established or deepened alliances which linked Ngāti Maniapoto to powerful iwi in the district. His daughters married descendants of Māhanga, Mahuta, Apakura, and Raukawa, among others, thereby establishing links with most of the peoples of Ngāti Maniapoto's northern borders.<sup>215</sup>

Te Kanawa's descendants included the first Māori King, Pōtatau Te Wherowhero and his son Tāwhiao, as well as Peehi Tūkōrehu, Hikairo 11, Rewi Maniapoto, Wahanui Huatare, Taonui Hikaka (1 and 11), and most of the district's other leading rangatira of the eighteenth and nineteenth centuries.

### The Roles of Rangatira

Within hapū, leadership was provided by rangatira, who were typically people of senior descent who also had proven ability to unite, lead, defend, and provide for their people.<sup>1</sup>

Rangatira fulfilled several functions. Within hapū, they mediated in disputes; guided collective decision-making among whānau leaders; and coordinated communal economic activities such as larger-scale cultivation, hunting, eeling, and fishing expeditions, and the construction of waka, whare, and pā.<sup>2</sup>

Rangatira were also required to manage relationships with other hapū, in a manner that served the interests of their people. This required them to be masters of diplomacy, able to build and maintain social bonds through intermarriage, hospitality, gift exchange, and appeals to common interest and descent. It also required

1. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, vol 1, pp30–31; Mead, *Tikanga Māori*, pp41–42, 44–49; Durie, *Custom Law*, pp33–34, 36–37.

2. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, p30; Durie, *Custom Law*, pp16–17, 18.

214. Document s1, pp9, 14; doc L7, p19; doc L4, p5. One impact of this system, according to Mr Tūwhangai, was that Ngāti Te Kanawa and other fighting forces held very little land in their own right; their role was not to hold and use land, but to defend it for others.

215. Document A110, pp63–67, 150, 158, 169, 199; doc A94, pp151, 155; doc A98, p142; doc A100, p11; transcript 4.1.3, p3.

them to be masters of politics and warfare, able to build alliances, form tactics, and lead their people into battle.<sup>3</sup>

Depending on its size, each hapū might have a leading rangatira and two or three lieutenants, each fulfilling different functions. In some groups, the eldest male took on the role of spiritual leadership, leaving politics and warfare to younger siblings or cousins. This was the case, for example, in the relationships of Te Kanawa Whatupango and his brother Te Kōrae, and more recently in Te Rerenga Wētere and his brother Te Rangituataka 11.<sup>4</sup>

Maniāuruahu played the role of spiritual leader while his younger cousin Te Kanawa Whatupango organised the tribal military alliance.

In colonial times, divisions of labour can be seen between Rewi Maniapoto (as military leader), Wahanui Huatare (as diplomat), and Taonui Hīkaka 11 (whose mana and whakapapa relationships gave him authority to establish the aukati around Ngāti Maniapoto lands).

Women, too, played important but distinct leadership roles – often acting as mediators or peacemakers, as with Maniapoto's sister Te Rongorito.

Because mana was distributed among all members of a hapū, rangatira could never be absolute rulers. On the contrary, they could lead only so long as they retained the support of their people, which depended on their ability to serve and protect the collective mana.

Within the hapū, they were expected to lead by consent, and to act in ways that served their people's interests.

In external relations, rangatira could speak for their hapū, and their words were regarded as binding on the whole hapū – they were regarded as tapu, and embodied the collective mana. But rangatira were also expected to act in accordance with hapū wishes (whether express or implied). In any matter of major significance they could be expected to consult their people before making a decision, as we will see in chapter 8 when we consider the negotiation of Te Ōhākī Tapu.<sup>5</sup>

3. Transcript 4.1.1, pp 67–68; doc L14(a), p 28; Durie, *Custom Law*, pp 21, 28–29, 32; Mead, *Tikanga Māori*, pp 177–191, 193–204, 233.

4. Document G32, p 6; 'Death of a Chief of Ancient Race', *Taranaki Herald*, 18 June 1904, p 3.

5. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 109–112; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, vol 1, pp 30–31; Mead, *Tikanga Māori*, pp 229–230; Waitangi Tribunal: *He Whiritaunoka*, vol 1, pp 99–102.

## 2.5 CONFLICT AND REALIGNMENT

In the generations following Te Kanawa, a series of conflicts broke out that helped reshape and solidify the rights held by hapū and iwi across the district. Following these conflicts, peace agreements were reached, which allowed for new relationships to emerge over rights and resources. During this period, Ngāti Maniapoto were able to cement their position in their respective territories, as were Waikato

groups, Ngāti Raukawa, and Ngāti Apakura in the north, and Ngāti Tūwharetoa and Whanganui groups in the south.

### 2.5.1 1700–1800: rising conflict

Te Kanawa's lifetime coincided with growing tension around this district's borders, in particular around Waipā and Kāwhia. After his death, the tensions continued to grow, and significant conflicts also erupted in the southern borders. These tensions culminated in the early nineteenth century with a series of major battles that fundamentally realigned the tribal landscape.

Remarkably, even amid all of this conflict, the vast bulk of Ngāti Maniapoto territory remained secure. Geography no doubt played some part in this: the dense forests of Te Nehenehenui were not as easy to invade and conquer as easily accessible harbours or plains further north, and nor were they as economically important. This is not to say, however, that they were inaccessible or unimportant. Five rivers converged at Ōtorohanga, and all were easily navigable.

The continued security of Te Rohe Pōtae was in no small measure due to Te Kanawa's descendants and the defensive system they operated. As tensions grew at the borders, the district's heartlands increasingly emerged as a place of security and refuge, not only for Ngāti Maniapoto but also for other Tainui kin.

We will consider each part of this district in turn, but first we will take a small detour to address an important part of Ngāti Maniapoto history. The death of Te Kawairangi at the hands of Waiohua had remained unavenged for several centuries. His grandson Maniāopetini set off to seek utu, but drowned on the way.<sup>216</sup>

Many generations later, Te Kanawa's son Tutunui led a war party to Maungakiekie, but was goaded into attacking the Waiohua pā alone and was killed. A new generation of leaders was named for this incident: Wahanui 1 (not to be confused with his younger relative Wahanui Huatare<sup>217</sup>) was named for Tutunui's infamously loud voice; Te Whata-karaka for the kāraka platform on which Tutunui's body was laid out; and Peehi Tūkōrehu for the low-lying mist that shrouded Maungakiekie as Tutunui approached.<sup>218</sup> Wahanui 1 and his brother Te Hurinui (later known as Maungatautari<sup>219</sup>) subsequently avenged the deaths of Tutunui and Te Kawairangi.<sup>220</sup>

216. Transcript 4.1.5, p 112.

217. Wahanui 1 was of Ngāti Maniapoto and Ngāti Matakore, but could also claim descent on his mother's side from Raukawa. In some accounts, Wahanui 1 and Tutunui are the same person: Te Hurinui, *King Pōtatau*, p 22; doc A110, pp 66; doc A83, p 115; doc O16 (Henry), p 4.

218. Transcript 4.1.2, pp 206–207; transcript 4.1.6, pp 393–394; doc O16 (Henry), p 4; doc S1, p 16; Jones and Biggs, *Nga Iwi o Tainui*, pp 322–323; see also transcript 4.1.6, p 393; doc A110, p 358.

219. Te Hurinui took the name Maungatautari to commemorate the place where his father, Irohanga, who died in battle against a combined Ngāti Raukawa–Ngāti Kauwhata army: doc A83, pp 125–126.

220. Jones and Biggs, *Nga Iwi o Tainui*, pp 332–333; doc A110, pp 316, 355; transcript 4.1.4, p 143. For whakapapa of Wahanui 1 and Te Hurinui, see doc A110, pp 65–66, 150. According to some accounts, Wahanui and Te Hurinui were accompanied by Te Kanawa's nephew Hari.

**2.5.1.1 Change in authority at Kāwhia**

Turning back to this inquiry district, the 1700s were a highly volatile time in the north of the district around Kāwhia–Aotea and Waipā, as well as in the Waikato. The first battles Te Kanawa Whatupango fought in had been at southern Kāwhia, as various Tainui factions sought to assert their dominance over the area. In very broad terms, Ngāti Maniapoto sided with Ngāti Tūirirangi against an alliance involving Ngāti Toa-rangatira, the emerging hapū of Ngāti Koata and Ngāti Te Wehi,<sup>221</sup> and Ngāti Mutunga of Taranaki. Also involved was a faction of Ngāti Māhanga, which sought to push Ngāti Tūirirangi from northern Aotea.<sup>222</sup>

Fortunes wavered, and there were significant deaths on both sides, but the general outcome was to redraft the tribal map of Kāwhia, strengthening the hands of Ngāti Toa-rangatira and Ngāti Koata, while weakening the position of Ngāti Tūirirangi, who remained at Kāwhia as clients of Ngāti Koata. Ngāti Te Wehi, meanwhile, moved north and occupied Aotea, forming an alliance with Waikato tribes. In some narratives, the Kāwhia battles are presented as contests for possession over a dogskin cloak, Pipitewai, and a greenstone mere, Karioi-mutu, which were said to have belonged to Te Kanawa Whatupango or one of his close kin, and which later found their resting place in the cave Ruakurī.<sup>223</sup>

**2.5.1.2 The emergence of Paretekawa**

As these battles were occurring, others were also taking place inland around Maungatautari, as Ngāti Raukawa sought to push into lands held by Waikato tribes and, at the same time, fend off incursions by Arawa tribes from the east.<sup>224</sup>

Further south, a series of conflicts took place between Ngāti Maniapoto and Ngāti Raukawa (in particular its Ngāti Whakaterere branch). On one occasion a Raukawa-led alliance attacked Te Haupeehi, in the south of the district near Tūhua. Several other battles occurred in the lands north of the Rangitoto Range, between the Waipā and Pūniu Rivers. Wahanui I and Te Hurinui were instrumental in leading the Ngāti Maniapoto forces, which emerged victorious after a disastrous Ngāti Whakaterere attack on the Ngāti Maniapoto stronghold at Hurimoana.<sup>225</sup>

221. These hapū were led respectively by the half-brothers Kāwharu and Te Wehi. The names Ngāti Koata and Ngāti Te Wehi were not yet in use, but have been used here for convenience.

222. Document s1, pp 9–10, 14; doc A98, pp 60–69; doc A104, pp 16–17, 40, 76–87, 88–89; doc A94, pp 31–32, 53–54, 104–106, 158–160; doc A99, p 55. Tame Tūwhangai said Te Kanawa's first battle was called Opuatangehe and occurred near Te Maika in the late 1600s. The decisive battle took place on Kāwhia beach and was known as Te Moana Waipū. Also see Robertson, 'The Significance of New Zealand Tribal Tradition', p 52; John White, *The Ancient History of the Maori, His Mythology and Traditions*, 13 vols (Wellington: Government Printer, 1888), vol 4, pp 99–101.

223. Document s1, pp 9–10; transcript 4.1.6, p 274; doc A98, pp 60–69; doc A104, pp 16–17; doc A99, pp 40, 43, 55; Jones and Biggs, *Nga Iwi o Tainui*, pp 260–270.

224. Document A83, pp 109–111; Jones and Biggs, *Nga Iwi o Tainui*, pp 252–255, 294–301, 324.

225. Document A83, pp 111–126, 252–253; Jones and Biggs, *Nga Iwi o Tainui*, pp 336–347.

The key battle sites included Te Haupeehi, Totorewa, Pukerimu, Tokanui, Whiti-te-marama, Tangimania, and Hurimoana. It was during these conflicts that Te Hurinui adopted the name Maungatautari, apparently commemorating the place where his father, Irohanga, died in battle: doc A83, p 125; transcript 4.1.1, p 40.

By the late 1700s, Ngāti Raukawa had made or was making enemies of Ngāti Mahuta, Ngāti Maniapoto, and Ngāti Apakura, among others. At about this time, the tribe split from within, with several of its emerging leaders – led by Peehi Tūkōrehu and his brother Te Akanui – shifting allegiance from Ngāti Raukawa to their Ngāti Maniapoto kin.<sup>226</sup>

This momentous decision was sparked by the killing of one of their close relatives, either their grandmother Paretekawa or a younger relative of the same name.<sup>227</sup> The original Paretekawa was Te Kanawa Whatupango's daughter; by naming their hapū for her, Peehi and his brother invoked the mana of their famous tupuna.<sup>228</sup>

Ngāti Raukawa retaliated for Peehi's disloyalty, and for the defeat at Hurimoana, by launching another series of raids into Ngāti Maniapoto territory, reaching as far south as Arapae. Ngāti Maniapoto, in turn, gathered a war party which pushed Hape's people out of the Pūniu and Wharepūhanga districts, forcing them north to Maungatautari.<sup>229</sup> We will return to Peehi below.

### 2.5.1.3 *Te Horangapai*

Around Taumarunui, a dispute erupted in the late 1700s between Ngāti Maniapoto and Ngāti Hāua, sparked by tensions between Hari 1 (Te Kanawa Whatupango's nephew, whom we mentioned earlier) and Tūtemahurangi, who was of Ngāti Hāua and Ngāti Rangatahi descent.<sup>230</sup>

According to some accounts, Hari 1 blamed Tūtemahurangi for the death of his brother, and so arranged for him to be killed. A series of battles erupted, involving Ngāti Hāua on one side and the Ngāti Rōrā and Ngāti Urunumia hapū of Ngāti Maniapoto on the other, before Hari was killed at Te Maire on the Whanganui River.<sup>231</sup>

The conflict only ended after the intervention of Hikairo 11, who was related to both Hari 1 and Tūtemahurangi. Hikairo is said to have been part of a taua (war party) which had come to join the hostilities. Seeing that the Whanganui pā was impregnable, he called out to its leader, referring to their shared whakapapa and offering peace.<sup>232</sup>

226. Transcript 4.1.1, pp 42–43, 60; doc A110, pp 161–164, 226–229, 741; doc A83, p 119.

227. Transcript 4.1.1, pp 42–43; doc A110, p 164; doc A83, pp 113–114; Jones and Biggs, *Nga Iwi o Tainui*, pp 340–341; see also 'The Wharepūhanga Block: Judgment of the Native Land Court', *New Zealand Herald*, 18 May 1892, p 3.

228. Transcript 4.1.1, pp 39–40, 175–176. According to Pei Te Hurinui Jones, Peehi also identified with the hapū Ngāti Ngāwaero, Ngāti Kahu, and Ngāti Uru: Jones, *King Pōtatau*, p 51.

229. Document A83, pp 120–122.

230. For accounts of these battles and their origins, see doc A108, pp 144–146, 193–195, 199–218; doc A44, pp 6–10. For whakapapa of the central figures in the conflict (Hari 1 and his brother Korotā, Tūtemahurangi, and Hikairo 11, all descended from Maniāuruahu and Rangatahi), see doc A108, pp 82, 84, 86, 183–189; doc A44, app A. The conflict is also mentioned in Waitangi Tribunal, *He Whiritaunoka*, vol 1, pp 94–96.

231. Document A108, pp 144–146, 202–218; doc A44, pp 6–8.

232. Document A108, pp 150–152; doc A44, p 8; Waitangi Tribunal, *He Whiritaunoka*, vol 1, pp 55–57.

The peace ceremony took place at the confluence of the Ōngarue and Taringamotu Rivers, and was led by senior tohunga from both sides, invoking the gods Maru and Uenuku to bind all involved to the tapu of the agreement. As was customary, intermarriage followed. The peacemaking is known as Te Horangapai, and the tract of land where the agreement was concluded still bears that name.<sup>233</sup>

The claimant Piripi Crown explained how agreements such as this had the power of law, and were recalled and explained in waiata, haka, pātere, whakataukī, and karakia, as well as in the names of children produced through intermarriage, who therefore became living contracts, preserving the relationships between former foes and ensuring that the intention behind the peacemaking was sustained.<sup>234</sup>

#### 2.5.1.4 *Peace at Mōkau*

As peace was being made inland, conflicts were occurring in the lands around the Mōkau River. In the generations after Maniapoto, his descendants had spread out along the river in successive waves, intermarrying with Ngāti Hia, Ngāti Te Paemate, and Ngāti Rākei peoples. Rungaterangi and his half-brother Tukemata were the earliest of Maniapoto's descendants to settle in the district, followed some generations later by Te Kanawa's descendants Waiora and Waikōrara.<sup>235</sup>

The lands immediately surrounding the Mōkau thereby became Ngāti Maniapoto territories, and those surrounding the Mōhakatino River further south were traditional territories of Ngāti Tama. The few miles in between were whenua tautohetohe, contested or uncertain lands, in which both tribes sometimes lived and each sometimes claimed the ascendancy.<sup>236</sup>

During times of peace and peace-making, intermarriage was common. Ngāti Rākei, a Ngāti Maniapoto hapū that traditionally lived around the Mōkau river mouth and sometimes as far south as Mōhakatino, was heavily intermarried with Ngāti Tama. Other hapū on both sides could similarly claim descent from the other tribe.<sup>237</sup>

As had occurred in other parts of the district, from the late 1700s the tensions began to grow, with events further north making a direct contribution. Ngāti Mutunga had aided Ngāti Toa-rangatira and Ngāti Raukawa in their battles against Waikato and Maniapoto forces, giving them cause for retribution. When a combined Waikato–Ngāti Hauā force marched south in about 1780, Ngāti Tama met it at Te Kawau, and turned it back.<sup>238</sup> Subsequently, a Waikato–Maniapoto

233. Document A108, pp 146–154; doc A44, pp 8–11; Waitangi Tribunal, *He Whiritaunoka*, vol 1, pp 55–57.

234. Document 12, pp 5–6. For more general information about tatau pounamu (peace agreements), see Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 106–108; Mead, *Tikanga Māori*, pp 177–191; Durie, *Custom Law*, pp 42–45.

235. Transcript 4.1.4, pp 216, 243, 245; transcript 4.1.5, pp 12–13, 15, 17–18, 30–31, 53, 74, 89, 108–109, 125, 160–161, 174, 176–177, 191–192; transcript 4.1.6, p 392; transcript 4.1.8, p 1066; doc F9 (Henskens), p 8; doc F12 (White), p 3.

236. Document A28, pp 16–18, 20 see also Wai 143 ROI, doc M21 (Byrnes), pp 3–7.

237. Transcript 4.1.5, p 174; doc A28, pp 15, 20; doc A147, p 4; doc A110, pp 84, 312; see also Wai 143 ROI, doc M21, p 5.

238. Document A110, p 255; Jones and Biggs, *Nga Iwi o Tainui*, pp 326–327.



force sought to push southwards, and was again pushed back by Ngāti Tama. The warrior-chief Maungatautari (discussed above) was killed, and his son took the name Poutama in memory of the place where this occurred.<sup>239</sup> We will return to these conflicts below.

### Retention and Transfer of Land Rights

Just as human relationships change, relationships with land and other resources could also change during a person's lifetime. A person born with ancestral rights in a territory or resource maintained those rights through membership of the hapū and ongoing use. This did not necessarily mean that he or she had to occupy the territory in question. Continued use, through seasonal visits for fishing or birding, or other temporary occupation, could be enough.<sup>1</sup>

But the principle of ahikāroa (keeping the fires burning) meant that rights could be extinguished through long-term lack of use. How this worked depended on the circumstances. A person who voluntarily moved away from his or her hapū to live with another nonetheless retained an ancestral connection and might be able to return and take up residence with the hapū's consent.<sup>2</sup>

But such rights would be extinguished (ahi mātaotao) if left unused for generations. A whakapapa connection on its own was not enough to establish rights, as the Ngāti Maniapoto rangatira Hauāuru acknowledged when he told the Native Land Court in 1888: 'I am closely connected with Ngāti Hauā through ancestry but I do not claim their land.'<sup>3</sup>

Such rights could also be extinguished if a hapū or tribe was forced from its lands or left to escape conquest or annihilation (as with Ngāti Toa-rangatira's departure from Kāwhia). We saw in other sections how important it was for hapū to have the ability to defend territory from encroachment, and the importance of relationships (including military alliances) in achieving that.<sup>4</sup>

As well as discovery and ancestral connection, rights in land and resources could be acquired through other means. Migration and conquest could trigger the transfer of rights, but were not sufficient on their own. If a hapū arrived in an area where

1. Document A110, p 282; Durie, *Custom Law*, pp 64–66, 80–83; Mead, *Tikanga Māori*, pp 291–292, 306–307.

2. Document A110, p 282; Durie, *Custom Law*, pp 64–66, 73; Mead, *Tikanga Māori*, pp 291–292; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 30–31; Waitangi Tribunal, *The Pouakani Report 1993*, pp 13–14.

3. 'Te Heuheu Tukino – Claim to have his children's names inserted in the Rohe Potae list' (doc A110, p 281); see also Durie, *Custom Law*, pp 64–66, 76; Mead, *Tikanga Māori*, pp 291–292; doc M5, pp 6–7.

4. Durie, *Custom Law*, p 76.

239. Jones and Biggs, *Nga Iwi o Tainui*, pp 334–335.

it had no kin connections, it had no rights until it could marry into an existing group. Otherwise, its occupation was ‘noho tikanga kore’ (without rights) or ‘poka noa’ (without the sanction of custom), and it could remain only if tolerated by the existing occupants.<sup>5</sup>

Similarly, although military conquest could establish mana over people, it was not alone sufficient to establish mana over land. That came from ancestral connections, and for that reason conquest was typically followed by intermarriage with the women of the conquered group. Such intermarriage, followed by generations of occupation and use, created new layers of ancestral connection and therefore established new rights of occupation and use.<sup>6</sup> Mr Te Ruki referred to the marriages of Ngāti Unu having ‘a claim and a long standing in the land’ due to the marriages of its men to women of the pre-*Tainui* hapū Ngāti Kahupungapunga.<sup>7</sup> Conquest did not always lead to transfer of land, though it often led to transfer of resource rights such as access to coastal fishing or inland eeling grounds.<sup>8</sup>

Another way in which rights could be transferred was through ‘gifting’ – that is, by a hapū voluntarily transferring rights to another. Where land rights were transferred to another, this was done as part of an ongoing relationship, with expectation of the gift being reciprocated. Peehi Tūkōrehu’s gift of land at Ōtāwhao to Te Wherowhero, for example, reflected the bonds of kinship and mutual obligation forged through wartime alliance and marital relationships.<sup>9</sup>

Such gifts were typically for limited periods – often for life or a more limited timeframe, but the timeframe could be indefinite so long as the relationship continued to be mutually beneficial and involve reciprocal obligations. In chapter 9 we will consider the transfer by Ngāti Maniapoto of land for the North Island Main Trunk Railway, and what mutual obligations that might have created.<sup>10</sup>

5. Durie, *Custom Law*, pp 64–66, 69; Mead, *Tikanga Māori*, pp 291–292; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 30–31; Waitangi Tribunal, *The Pouakani Report 1993*, pp 13–14; doc M5, pp 6–7.

6. Durie, *Custom Law*, pp 64–66; Mead, *Tikanga Māori*, pp 291–292.

7. Transcript 4.1.1, p 66.

8. Durie, *Custom Law*, p 45.

9. Durie, *Custom Law*, pp 76–80; Mead, *Tikanga Māori*, pp 186–187; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 30–31; Waitangi Tribunal, *The Pouakani Report 1993*, pp 13–14; doc M5, pp 6–7.

10. Durie, *Custom Law*, pp 76–80.

### 2.5.2 1800–40: realignment, exodus, and peace

Although the 1700s had seen numerous battles between the various Tainui factions and their neighbours, none had decisively altered the district’s tribal landscape. The Ngāti Maniapoto hegemony continued throughout most of this district. The southern and eastern borders were secure, due to the peace made at

Te Horangapai and the earlier agreement between Ngāti Maniapoto and Ngāti Tūwharetoa. Kāwhia, Pirongia, and the lands south of Mōkau remained contested.

### 2.5.2.1 *Battle of Hingakākā*

From the 1800s to the early 1830s, a series of battles occurred which decisively altered the tribal makeup of the district. Of those, the most famous was Hingakākā, which took place around the turn of the century, pitting a Waikato–Maniapoto coalition against a huge fighting force gathered from throughout the North Island by the Ngāti Toa–rangatira leader Pikauterangi. Each side is supposed to have numbered in the thousands, and the name of the conflict – translated as ‘fall of the kākā’ – is said to refer to the huge number of rangatira who died.<sup>240</sup>

The battle is usually explained as having arisen from a conflict for control over Marokopa’s lucrative fishing grounds, and more specifically over an insult hurled at Pikauterangi by a group of Ngāti Apakura warriors.<sup>241</sup> As noted in section 2.2.1.2, another explanation given by Pei Te Hurinui Jones is that it was linked to the alleged theft of whatu ahuru – inscribed stones from Hawaiki, which were used to raise tohunga to the highest levels of priesthood – from the whare wānanga Te Ahurei. Jones also described the conflict as a Ngāti Toa–rangatira rebellion against the rest of Tainui.<sup>242</sup> To support their war efforts, Ngāti Maniapoto invoked Uenuku, the ancestor-god brought from Hawaiki and held at Kahuwera.<sup>243</sup>

The Waikato–Maniapoto commander at Hingakākā was Te Rauangaanga, who was the leader of Ngāti Mahuta but could also claim descent from several other Tainui iwi including Ngāti Apakura, Ngāti Māhanga, and Ngāti Maniapoto: his great-grandfather was Te Kanawa Whatupango.<sup>244</sup> One of his deputies was Wahanui 1 of Ngāti Maniapoto. Peehi Tūkōrehu also took part on the Ngāti Maniapoto side.<sup>245</sup>

As their enemies converged from the south and east, the hugely outnumbered Waikato–Maniapoto forces refused to engage until they reached their preferred battle site, a narrow ridge between two lakes at Te Mangeo, near Lake Ngāroto, which was then a much larger body of water. Te Rauangaanga famously placed cloaks and albatross feathers over the scrub on one side of the ridge, creating an impression that a large force was being kept in reserve. Exploiting the confusion this caused, his forces then attacked on three fronts, routing Pikauterangi’s army

240. Document A83, pp 123–130; doc A110, pp 247–249; doc A97, pp 103–106; doc A98, pp 81–82, 85, 88; Te Hurinui, *King Pōtatau*, pp 7–15.

241. Document A83, pp 124, 130, 138.

242. Te Hurinui, *King Pōtatau*, pp 35–36, 42–43; doc A98, pp 81–82.

243. Transcript 4.1.1, pp 8, 46; transcript 4.1.4, p 220; transcript 4.1.5, pp 104, 214–215. Uenuku is also said to have bound the peace at Te Horangapai: transcript 4.1.4, p 144.

244. For Te Rauangaanga’s whakapapa, see: doc A83, pp 126, 132; doc A94, pp 149–150; doc A97, pp 46–47, 103; doc A101, p 6; doc A110, pp 62–65, 196–197, 374.

245. Document A110, pp 248, 328, 379; doc A83, pp 126–127, 128; doc A97, p 105; doc A98, p 82.

and killing its leader.<sup>246</sup> When the battlefield was cleared, so much of it was red that Te Rauangaanga named his newly born son Te Wherowhero.<sup>247</sup>

The significance of this battle cannot be measured only in its scale. Of lasting importance was its impact on the Waikato–Maniapoto alliance. According to the claimant Tom Roa, Hingakākā ‘was the binding of Waikato and Maniapoto’ – joint military action pulling closer the ties that had already been formed through generations of intermarriage. From Hingakākā on, Waikato and Maniapoto mana would be mentioned in the same breath.<sup>248</sup>

### 2.5.2.2 *The emergence of Ngāti Hikairo*

For a time after Hingakākā, tensions in the north of Te Rohe Pōtae were kept alive through a series of smaller conflicts. There were clashes between the Kāwhia-based coalition of Ngāti Toa-rangatira and Ngāti Koata and their northern neighbours Ngāti Māhanga and Ngāti Te Wehi,<sup>249</sup> and numerous outbreaks of violence between Ngāti Toa-rangatira and Waikato–Maniapoto coalitions, punctuated by periods of uneasy peace.<sup>250</sup>

It was around this time that Ngāti Hikairo began to emerge as an iwi in its own right, under the leadership of Hikairo II and his son Whakamarurangi. Hikairo II was known as a Ngāti Apakura warrior chief, with extensive interests in the Waikato and also Rotorua. He was also closely related to Ngāti Maniapoto, and fought alongside Wahanui I in the conflicts against Ngāti Raukawa. His descendants tell of him splitting from Ngāti Apakura after they attacked and killed his mother’s hapū. He died in about 1810, along with his father Puku, and Wahanui I’s father Irohanga, at a battle known as Pukerimu.<sup>251</sup>

### 2.5.2.3 *Stability in the north*

Peehi Tūkōrehu emerged as a key figure soon after Hingakākā. The fertile lands around Kakepuku and the Pūniu River, where Peehi had grown up, lay at the border between Ngāti Maniapoto, Ngāti Raukawa, Ngāti Apakura, and Waikato iwi,

246. Document A83, pp 123–130; doc A110, pp 246–249; doc A97, pp 103–106; doc A98, pp 81–82, 85, 88; Jones, *King Pōtatau*, pp 1–15.

247. Transcript 4.1.1, p 32; Jones, *King Pōtatau*, p 4.

248. Transcript 4.1.1, pp 32, 54, 210–211. Also see doc A23 (O’Malley), p 29; transcript 4.1.10, pp 401–402.

249. Jones, *King Pōtatau*, pp 42–43.

250. Document A94, pp 54–55, 120–123, 128, 159–160; doc A83, pp 130–131, 138–139; doc A97, p 35; Jones, *King Pōtatau*, pp 44–49.

251. Document A98, pp 88–89; doc A97, pp 83–86, 88, 234; doc A83, pp 125–126; Jones and Biggs, *Nga Iwi o Tainui*, pp 324–325. For Hikairo II’s whakapapa, see doc A98, pp 43–44, 53, 74–76; doc A83, p 166.

and had been contested for decades.<sup>252</sup> Having seen off his Ngāti Raukawa kin, Peehi was able to bring stability to this volatile area, and also strengthen the security of Ngāti Maniapoto's northern borderlands.<sup>253</sup>

A significant aspect of his success was his alliance with the young Waikato leader Te Wherowhero, which played a critical role in the broader Waikato–Maniapoto alliance. As Te Wherowhero reached adulthood, Peehi arranged for him to marry his daughter Ngāwaiata. When that marriage produced no heirs, Peehi offered Te Wherowhero his second daughter, Ngāwaero.<sup>254</sup> In many of the battles to follow, Te Wherowhero and Peehi fought together, just as their descendants would in colonial times.

Peehi based himself at Mangatoatoa, a pā on the Pūniu's northern banks near where he had grown up. From there, he could patrol movements into and out of Maniapoto territories.<sup>255</sup> According to the claimant Harold Maniapoto (Ngāti Paretekawa), he established an aukati (a no trespass boundary: see panel below) at the Pūniu, refusing to let anyone through in either direction if they had aggressive intentions. This line of control was to last through conflicts spanning several decades, including the Waikato War.<sup>256</sup>

Mangatoatoa's significance is reflected in the saying 'Mōkau ki runga, Tāmaki ki raro, Mangatoatoa ki waenganui' (Mōkau is above, Tāmaki is below, Mangatoatoa is in the centre), which refers to the deaths of Te Kawairangi and Rungaterangi (who were killed at Tāmaki and Mōkau respectively) while also broadly setting out the northern and southern boundaries of Tainui peoples.<sup>257</sup>

252. Transcript 4.1.6, pp 90–91; transcript 4.1.1, p 42; doc A110, pp 226–229.

253. Document K16 (Maniapoto), pp 5–8.

254. Transcript 4.1.10, pp 324–325, 401–402, 691; doc K16, p 6; Jones, *King Pōtatau*, pp 128–137. Jones refers to these marriages occurring after Hingakākā and before the departure of Ngāti Toa-rangatira in 1821.

255. Document S1, pp 15–16; doc A110, p 227; doc A97, p 104; transcript 4.1.1, p 42; transcript 4.1.6, pp 90–91. Some sources say that Mangatoatoa was built during the time of Te Kanawa's children; others say it was built as part of a network established by the Waikato and Maniapoto alliance in the leadup to Hingakākā. Those pā also included Nukuhau (on the southern outskirts of present-day Hamilton), Waiari (on the Mangapiko Stream south-west of Ngāroto), Ngāroto, and Maniapoto: doc A97, pp 104, 195. Peehi is said to have had other pā at Te Māwhe where the railway now crosses the Pūniu River (the pā was called Haere-awatea or Noho-awatea) and in Wharepūhunga (called Whareraurēkau). He also acquired interests at Ōtāwhao after his defeat of Hape of Ngāti Raukawa: doc A110, pp 227–229, 235, 237, 344, 353, 738; doc A97, p 146; doc K16, pp 5–10; see also doc A60, pp 198–204; doc S1, p 15.

256. Document H17(e) (Maniapoto), p 5; doc A110, pp 164, 227.

257. Eketone and others, 'Te Kawenata', 1904 (doc S19(a)), pp 31–32; doc S1, p 16; doc A110, p 123; doc A97, pp 90–91. In modern times, people sometimes say 'Poutama ki runga' reflecting the extension of Ngāti Maniapoto interests into northern Taranaki during the 1830s: transcript 4.1.5, p 177.

### Aukati

An aukati is a notional boundary between two territories, which may not be crossed. Sometimes described as a ‘no-trespass line’, aukati were used to control movement and thereby minimise conflict between neighbouring peoples.

The Tribunal in its *Ngāti Awa Raupatu Report* explained an aukati as ‘a line that no one may cross with any intention that may be judged as hostile to those on the other side’:

It was a most common custom in Maori law . . . Pakeha called it a ‘cut’ or ‘cutty’ which is how it sounded to their ears, especially because it was sometimes abbreviated in the Maori vernacular to ‘kati’. It was not a declaration of war, as Pakeha often saw it to be. Quite to the contrary, it was usually a declaration in a time of crisis that war was not sought . . . It was like saying ‘we accept that there is trouble about us, but until we can settle the problem and to stave off war in the meantime, we will keep to our side of the line if you will keep to yours.’<sup>1</sup>

The claimant Rovina Maniapoto referred to an aukati boundary being established in Maniapoto’s time on either side of Te Marae o Hine, a mile-wide area of land east of Ōtorohanga where Ngāti Maniapoto and Ngāti Raukawa interests met. By prohibiting warriors from entering, the aukati thereby provided others with safe passage.<sup>2</sup>

Later, Peehi Tūkōrehu established an aukati at the Pūniu River, separating Ngāti Maniapoto from the aggression of some northern neighbours. As discussed in the sidebar in section 2.4.2, the river did not mark the northern border of Ngāti Maniapoto interests. It did provide a clear zone of control for purposes of keeping peace.

An aukati was tapu and had the force of law. Where an aukati was breached, enforcement action would follow. A typical first step might be to challenge transgressors and warn them off. If they persisted, they might be met with force. The ultimate sanction for violating an aukati was death. We will see in section 2.5.2 how Te Rauparaha’s violation of Te Marae o Hine was a factor in escalating hostilities between him and the Waikato–Maniapoto coalition.

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1. Waitangi Tribunal, *The Ngāti Awa Raupatu Report* (Wellington: Legislation Direct, 1999), p35.

2. Transcript 4.1.6, p393.

#### 2.5.2.4 *The departure of Ngāti Toa-rangatira*

Although Hingakākā shifted the district’s power balance, it did not end the fighting. On the contrary, between 1810 and 1821, battles continued to erupt at regular

intervals between the Waikato–Maniapoto and Toa-Raukawa coalitions.<sup>258</sup>

Waikato–Maniapoto forces conducted long sieges of Ngāti Raukawa and their Ngāti Kauwhata allies at two pā near Maungatautari: Tangimania in 1812, and Hangahanga (a Ngāti Kauwhata pā) in 1816. The first of these sieges was led by Te Hiakai, a cousin of Te Rauangaanga; and the second was led by Peehi Tūkōrehu and his brother Te Akanui. In both sieges, the defenders were eventually allowed to escape. After Hangahanga, Peehi negotiated a peace settlement with his Ngāti Raukawa kin.<sup>259</sup>

At Motutawa, a small island in the estuary of the Mōkau River, a local conflict erupted between Ngāti Tama and Ngāti Rākei in about 1812. The Ngāti Maniapoto retaliation forced Ngāti Tama to retreat south of the Mōhakatino River.<sup>260</sup> Some time later, a high-ranking Ngāti Urunumia woman was murdered in Ngāti Tama lands. Ngāti Urunumia and Ngāti Rōrā responded in 1820, pushing Ngāti Tama back almost as far as Parininihi. The battle is known as Tihimanuka. The Ngāti Maniapoto leaders included Tāriki, the Ngāti Rōrā brothers Te Rangituatea II and Taonui Hikaka I, and Maungatautari's grandson Hauāuru.<sup>261</sup>

But the central figure in this new round of fighting was Te Rauparaha, who was Ngāti Toa-rangatira on his father's side and Ngāti Raukawa on his mother's.<sup>262</sup> Much of the conflict seems to have been motivated by unresolved grievances from Hingakākā, as well as by the continued contest for dominance over Kāwhia. Senior rangatira from both sides were killed in the early skirmishes, before Te Rauparaha left Kāwhia to seek support from his Ngāti Raukawa relatives, and from Arawa people at Taupō and Rotorua. It was at Lake Rotoaira that he narrowly escaped capture and death, as described in the famous haka *Ka Mate*.<sup>263</sup>

On Te Rauparaha's return to Kāwhia, his people became embroiled in several more skirmishes against Waikato iwi. Then, in 1819, Te Rauparaha joined a Ngāpuhi war party which travelled southwards through Taranaki as far as Te Whanganui-a-Tara and the Wairarapa, causing considerable destruction.<sup>264</sup>

Ngāpuhi had already been involved in conflicts against Ngāti Whātua, Hauraki, and Waikato iwi for many years, and their increasingly aggressive

258. Document A83, pp 130–131, 138–139; doc A110, p 309; doc A94, pp 54–55, 121–123, 128, 159–160; Jones, *King Pōtatau*, pp 44–49.

259. Document A83, pp 131–135, 253; doc A110, p 255; transcript 4.1.10, pp 1390–1395. For a whakapapa of Te Hiakai and Te Rauangaanga, see doc J4 (Papa), p 3.

260. Document A110, pp 256–257; transcript 4.1.5, p 174; doc A108, pp 138–139. This is known as the Battle of the Two Floodtides.

261. Document A110, pp 257–258; doc Q29(a), paras 21–26. For whakapapa of Taonui and Te Rangituatea II, see doc A110, pp 71–73; transcript 4.1.1, pp 18–19; transcript 4.1.4, p 228.

262. Document A83, pp 122–123, 135–137; Steven Oliver, 'Te Rauparaha', in *1769–1869, vol 1 of The Dictionary of New Zealand Biography*, ed W H Oliver (Wellington: Allen & Unwin; Department of Internal Affairs, 1990), pp 504–507; see also Jones, *King Pōtatau*, pp 44–46.

263. Document A83, pp 138–139; doc A94, pp 54–55; Jones, *King Pōtatau*, pp 44–49.

264. Jones, *King Pōtatau*, p 50; doc A94, pp 54–55; doc A83, pp 138–140. In Jones's version, the slaying of Moerua occurred on one of three 'peace tracks' Tainui people used to connect inland areas to the coast, in violation of Tainui tikanga.

expeditionary raids were a catalyst for instability elsewhere. It was during this trip that Te Rauparaha – already sensing that his possession of southern Kāwhia was becoming untenable – appears to have formed the idea of resettling near Te Whanganui-a-Tara.<sup>265</sup>

He returned to find that Ngāti Mahuta had arranged for the killing of one of his wives. His forces retaliated by killing the Ngāti Maniapoto rangatira Te Moerua at Te Marae o Hine, thereby violating a tapu that had been respected by Tainui peoples for centuries. Other incidents followed, including an unsuccessful attack on Mangatoatoa and the slaying by Te Rauparaha's men of two high-born Waikato women.<sup>266</sup>

From a Waikato and Maniapoto point of view, this cycle of violence could not continue, lest it escalate into another Hingakākā. In Jones's words, Te Rauparaha had 'embroiled himself in a sea of troubles' in which he was 'encircled by a ring of inveterate foes'.<sup>267</sup>

But it was the contest between the Waikato–Maniapoto coalition and Ngāti Toa-rangatira that was to have the greatest consequences, not only for this district but elsewhere. The decisive battle in this conflict occurred at Kāwhia in 1820, where a Waikato–Maniapoto–Hikairo force attacked a coalition of Ngāti Toa-rangatira, Ngāti Koata, and Ngāti Rārua. Te Rauparaha also sought aid from Ngāti Tama, but most of this force was repelled by Ngāti Maniapoto before reaching the theatre of war.<sup>268</sup>

As in other battles of this era, the Battle of Kāwhia (as it became known) was fought between coalitions of independent rangatira. Ngāti Maniapoto's forces under Peehi and the Ngāti Rōrā leader Te Rangituatea 11 attacked Kāwhia from the south; Ngāti Hikairo attacked from the north; and Ngāti Mahuta and Ngāti Māhanga attacked from the sea. The overall campaign was led by Te Wherowhero, whose forces came overland from the east, striking directly at Te Rauparaha's southern Kāwhia homelands.<sup>269</sup>

North of the harbour, peace was concluded fairly quickly, owing to the close relationship between the Ngāti Koata defenders and the Ngāti Te Wehi attackers. In the Ngāti Toa-rangatira strongholds to the south, the invading forces pushed Te Rauparaha from pā to pā, showing little mercy, until a severely ill Te Rauparaha and the remnants of his forces were forced to take refuge at Te Arawi on the coast outside the harbour entrance.<sup>270</sup>

265. Jones, *King Pōtatau*, pp 47–48, 50; doc A94, pp 54–55; doc A83, pp 138–142.

266. Jones, *King Pōtatau*, pp 50–52; doc A83, pp 138–142.

267. Jones, *King Pōtatau*, p 52.

268. Jones, *King Pōtatau*, pp 52–56. One of the Maniapoto leaders in this battle was Wahanui Huatare.

269. Document 14, pp 1–3; transcript 4.1.9, pp 25–26; doc A86, pp 112–116; doc A120, pp 110–115; Jones, *King Pōtatau*, pp 54–55, 78–81.

270. Document 14, pp 1–3; transcript 4.1.9, pp 25–26; doc A86, pp 112–116; doc A110, p 338; Jones, *King Pōtatau*, pp 79–81.



Surrounded by cliffs and joined to the mainland by a narrow track, Te Arawā was difficult to take, but equally difficult to escape from. The Waikato–Maniapoto army kept Te Rauparaha trapped inside for several weeks, until Te Rangituatea II and the Waikato rangatira Te Hiakai brokered a solution, allowing the besieged Ngāti Toa-rangatira warriors to leave on condition that they leave Kāwhia and never return. If Te Rauparaha attempted to go to his relatives in Maungatautari, he was warned, ‘the upper jaw will close down on the lower’ – meaning the combined Waikato and Maniapoto forces would crush Ngāti Raukawa and Ngāti Toa-rangatira together.<sup>271</sup>

Te Rangituatea II is said to have been motivated by kinship links with his opponents, and by a debt he owed to Te Rauparaha, who had spared his life during an earlier battle. Another reason was that Te Rauparaha’s departure would allow Te Rangituatea II to assert Ngāti Maniapoto mana over the rich fishing grounds of southern Kāwhia before Ngāti Mahuta could take control of the district.<sup>272</sup>

Within days, Te Rauparaha had departed, accompanied by Ngāti Toa-rangatira and parts of Ngāti Koata. The heke was long and difficult. They stopped for a time among Ngāti Tama and Ngāti Mutunga in northern Taranaki before continuing on to Kapiti and Te Whanganui-a-Tara, accompanied by other peoples including Ngāti Rangatahi of Ōhura. The events of Kāwhia – which in some respects echo the earlier departure of *Tainui* from Hawaiki – were to have profound impacts on people elsewhere in Aotearoa, but that is another history.<sup>273</sup>

Though Te Rauparaha’s people left, some descendants of Toa-rangatira remained behind. As had occurred elsewhere in the district, neighbouring groups had intermarried, including Ngāti Toa-rangatira and their Ngāti Maniapoto neighbours, particularly those of Ngāti Kinohaku and Ngāti Waiora hapū. The Ngāti Maniapoto warrior Wahanui I was descended from Toa-rangatira, as was Te Rauangaanga II, who brokered Te Rauparaha’s departure.<sup>274</sup>

### 2.5.2.5 *Te Amiowhenua*

Not long after Te Rauparaha’s departure, Waikato–Maniapoto under Peehi Tūkōrehu joined Ngāti Whātua in a major war party which traversed the lower North Island seeking utu against those who had fought against them at Hingakākā and Kāwhia. Te Amiowhenua (encircling the land), as it is known, began with

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271. Document 14, pp 1–3; transcript 4.1.9, pp 25–26; doc A86, pp 112–116; doc A120, pp 110–115; Jones, *King Pōtatau*, pp 54–55, 78–81.

272. The claimant Ray Wī provided a whakapapa from Toa-rangatira to Te Rangituatea I. Most sources referred to kinship links without specifying them: doc 14, pp 2–3; doc S47, p 5; transcript 4.1.9, pp 25–26; doc A83, pp 141–142; doc A86, pp 112–116; doc A120, pp 110–115; doc A94, pp 54–55; doc A110, pp 208–209, 332, 338; Jones, *King Pōtatau*, p 84; doc S61(a), p 9.

273. Document A108, pp 91–99, 110; doc A66, p 7; Jones, *King Pōtatau*, pp 81–87, 92–102.

274. Document 14, pp 1–3; transcript 4.1.9, pp 25–26; doc A83, pp 139–144; doc A86, pp 112–116; doc A120, pp 110–115; doc A94, pp 54–55; doc A110, pp 208–209, 332, 338; Jones, *King Pōtatau*, pp 80–85, 94–102; doc S61(a), p 9.

a journey to Te Urewera. Peehi assisted Tūhoe in a battle against Te Arawa and formed a bond with the Tūhoe rangatira Te Purewa, which in turn contributed to the Tūhoe decision to support Ngāti Maniapoto in the New Zealand Wars.<sup>275</sup>

The invading force continued down the east coast to Wairarapa before crossing to Te Whanganui-a-Tara and returning up the west coast.

Peehi's forces reached Taranaki at the same time as Te Rauparaha and his people did on their migration south, probably in the summer of 1821–1822. Ngāti Toa-rangatira joined with northern Taranaki iwi including Te Atiawa, Ngāti Mutunga, and Ngāti Tama and trapped the Te Amiowhenua taua in Pukerangiora pā on the Waitara River.<sup>276</sup>

On hearing of his father-in-law's troubles, Te Wherowhero gathered a large army and marched southwards, encountering Te Rauparaha and Ngāti Mutunga. A major battle took place at Ōhoke pā, during which Te Hiakai was killed, and Te Wherowhero might have been too if not for an intervention by Te Rauparaha (which may have been repayment for his own escape from Te Arawā).<sup>277</sup>

Soon afterwards, Te Wherowhero famously defeated more than 50 Taranaki warriors in individual combat before his party continued on their way to Pukerangiora, setting Peehi free. This, as it turned out, was the first of three Waikato–Maniapoto invasions of Taranaki.<sup>278</sup>

### 2.5.2.6 Ngāpuhi arrive

As they returned from Taranaki in 1822, the Waikato–Maniapoto coalition faced a new threat with the arrival of Hongi Hika and his invading Ngāpuhi taua.<sup>279</sup> Waikato and Maniapoto forces had hitherto mainly fought in traditional ways – through hand-to-hand combat using mere, patu, taiaha, and (in Te Wherowhero's case) digging kō.<sup>280</sup> They had encountered muskets at Kāwhia and Ōkoki, but only a few. Hongi's entire force was armed with muskets.<sup>281</sup>

Hongi's forces captured Mātakitaki, a large pā at the junction of the Waipā and Mangapiko Rivers, and another Ngāti Maniapoto pā at Mangauikā, taking many prisoners. Ngāpuhi then established bases at Orahiri and Kāwhia, from which

275. Transcript 4.1.4, p 221; transcript 4.1.6, pp 92–95; doc A120, pp 98–99, 102; Jones, *King Pōtatau*, pp 92–102; transcript 4.1.7, p 57; doc H(c) (Roa), p [15].

276. Document A120, pp 98–99, 102, 114–115, 289; doc K36(a) (Maniapoto-Anderson), pp 2–3; Jones, *King Pōtatau*, pp 92–102; transcript 4.1.1, pp 43–44; transcript 4.1.13, pp 126–127.

277. Document A120, pp 114–115; transcript 4.1.10, pp 400–401; doc K36(a), pp 2–3; Jones, *King Pōtatau*, pp 98–100; transcript 4.1.1, pp 43–44; transcript 4.1.13, pp 126–127.

278. Jones, *King Pōtatau*, pp 92–102; doc A120, pp 98–99, 102, 114–115; doc K36(a), pp 2–3; transcript 4.1.1, pp 43–44; transcript 4.1.13, pp 126–127.

279. Jones, *King Pōtatau*, p 110.

280. Jones, *King Pōtatau*, p 98.

281. Transcript 4.1.1, pp 43–44, 96; transcript 4.1.10, pp 1395, 1450–1451; doc A120, pp 98–99; doc 017(a) (Roa), pp 4–5; doc A98, pp 206–210; doc A97, pp 106–109; doc A110, pp 227–228, 381–387; transcript 4.1.4, pp 144–145; Jones, *King Pōtatau*, p 110.

they controlled the surrounding lands, forcing the Waikato–Maniapoto survivors to retreat southwards.<sup>282</sup> At Te Koipō, a Ngāti Kinohaku pā near Te Anga in the Marokopa Valley, they massacred almost everyone inside.<sup>283</sup>

Te Wherowhero and his people sheltered at Ōrongokoekoeā, south of Te Kūiti in the headwaters of the Mōkau River. Most accounts name his host as Te Ota Peehi of Ngāti Matakore; others say he sheltered under the mana of Taonui Hikaka 1 of Ngāti Rōrā. Te Wherowhero remained for some months; during which time he and his wife Whakaawi had a son, Tūkaroto, who would later become Kingi Tāwhiao. Meanwhile, the Ngāti Urunumia leader Haupōkia Te Pakarū led a section of Ngāti Maniapoto south to Te Horangapai, where they settled among their kin. Haupōkia built a pā, Papawaka, to defend against any northern invasion.<sup>284</sup>

Ngāpuhi forces continued into the district, camping on the banks of the Waipā River at Ōtorohanga. They had taken many Ngāti Maniapoto women as captives. After regrouping, the Waikato–Maniapoto forces approached the camp. As one of the captured women came to the river to collect water, a warrior approached her. He told her that the Ngāti Maniapoto women should ‘entertain’ their Ngāpuhi captors and wear them out. As dawn approached and the Ngāpuhi warriors lay sleeping, Waikato–Maniapoto forces surprised the camp, seizing its muskets and killing the Ngāpuhi men. The site of this battle is known as Huipūtea (caught in one basket).<sup>285</sup>

Rather than take on a now heavily armed Waikato–Maniapoto force, Hongi Hika withdrew and made peace. Not all Ngāpuhi accepted this. Later in the 1820s, a taua led by Pōmare was ambushed at Te Rore and Pōmare was killed. Taonui Hikaka wore a flute around his neck made from the leg bone of Pōmare.<sup>286</sup>

Just as Hingakākā had repercussions that would last for decades, so too did the Ngāpuhi invasion. First, it caused a significant realignment of the district’s population. As Ngāpuhi forces left Te Rohe Pōtae, Peehi invited his Waikato allies to live near his homelands at the confluence of the Waipā and Pūniu Rivers. Te Wherowhero had a kāinga at Ōtāwhao, just north of the Pūniu, and also lived for a time at Whatiwhatihoe. By gathering here, they could put some distance between

282. Document A97, pp 106–109; doc 017(a), p 4; Jones, *King Pōtatau*, pp 110–116.

283. Transcript 4.1.6, pp 186–187; doc A110, pp 153, 335. Also see doc A97, p 132.

284. Transcript 4.1.7, pp 48–50; doc 017(a), pp 1, 3–5; doc S9(b), pp 2–3; doc A97, pp 108–109; doc A110, pp 227–228, 305, 319, 384–385; transcript 4.1.4, pp 144–145; transcript 4.1.21, p 287; Jones, *King Pōtatau*, pp 116, 118, 125; doc S9(b), pp 2–3; doc A44, p 12.

285. Transcript 4.1.6, pp 48, 93, 244; transcript 4.1.13, pp 387–388; doc 017(a), pp 54–56; doc S9(b), p 3; doc A110, p 356; transcript 4.1.7, pp 48–50; doc G17, p [27]; doc H9, p [9]; doc H9(c), p [9]. According to several accounts, one of the captives was Te Riutoto, the wife of Te Hiakai. In some accounts, she was the woman who met the Waikato–Maniapoto warrior and relayed the message to the Ngāti Maniapoto women: ‘Nga Moteatea’ (pt I) in *Journal of the Polynesian Society*, vol 65, 1956, no 54, p 175.

286. Document A110, p 385; Jones, *King Pōtatau*, p 142.

themselves and Ngāpuhi, and provide joint security.<sup>287</sup> In 1832, Te Wherowhero pursued Ngāpuhi forces north to Tutukākā, inflicting a heavy defeat that brought hostilities to a close.<sup>288</sup>

Secondly, the defeat at Mātakitaki had emphasised the importance of security, and therefore of muskets and trade with Europeans. Just as it was security that brought Waikato–Maniapoto peoples to Waipā, it was trade that brought them to Kāwhia. The muskets obtained at Huipūtea were a small step towards righting the power imbalance, but they were not enough.<sup>289</sup> From the mid-1820s onwards Ngāti Mahuta, Ngāti Maniapoto, and Ngāti Apakura – key tribes in the Waikato–Maniapoto alliance – pursued an increasingly lucrative flax-for-muskets trade.

The departure of Ngāti Toa-rangatira and Ngāpuhi from Kāwhia had left much of the harbour available for occupation. Haupōkia Te Pakarū brought his Ngāti Urunumia people back from Te Horangapai to occupy the southern shores, where he was joined by several other Ngāti Maniapoto rangatira. Their Ngāti Mahuta allies commanded both sides of the harbour entrance. Ngāti Hikairo, displaced from their Waipā homelands by the Ngāpuhi invasion, moved to occupy lands between Pirongia and the northern shores of Kāwhia Harbour.<sup>290</sup> Peehi's brother Te Akanui joined this shift towards Kāwhia, apparently motivated by a conflict with another close relative, Paiaki. But Te Akanui did not stop there and instead proceeded south to Marokopa and Mōkau, before travelling inland to Piopio. There, he founded Ngāti Paretেকawa ki Napinapi.<sup>291</sup>

### 2.5.2.7 Ngāti Raukawa migrations

As the Waikato–Maniapoto coalition was realigning and occupying different parts of the district during the 1820s, Ngāti Raukawa and its Ngāti Kauwhata and Ngāti Wehi Wehi allies were also in a state of transition. Ngāti Maniapoto had made peace with these tribes after the battle of Hangahanga, and allowed some from Ngāti Raukawa to return to their homes in Wharepūhunga.<sup>292</sup>

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287. Document A110, pp 227–228; doc A97, p 112. Also see 'Native Land Court Judgment', *New Zealand Herald*, 2 February 1893, p 3. According to Rewi Maniapoto's evidence to the Native Land Court's hearing on the Maungatautari block, several Waikato hapū including Te Patukoko, Ngāti Paretuaki, Ngāti Ruru, Ngāti Koura, Ngāti Parehaehaeroa, and Ngāti Te Aweroa lived at Otāwhao (Te Awamutu), along with Ngāti Naenae of Taupiri and Ngāti Ngāmuri of Whatawhata. Ngāti Apakura lived at Kaipaka, having been invited by Ngapapa after the battle of Mātakitaki. Ngāti Hourua lived at Ngāmoko, and Ngāti Pou at Ōrākau: doc A110, pp 227–228.

288. Jones, *King Pōtatau*, pp 142–143.

289. Document K23 (McDonald), pp 6–7; transcript 4.1.13, pp 117–119; see also doc A110, pp 386–387, 434–435.

290. Rewi Maniapoto described the peacemaking to the Native Land Court in the 1880s, and named the Ngāti Raukawa kāinga as Pukewhakaahu, Te Mania, Aratitaha, and Whakarongopu. His grandfather Te Akanui settled at Ngamako, and Peehi Tūkōrehu at Pōkuru: doc A86, p 122; see also transcript 4.1.10, pp 1390–1398, 1450–1451; doc A83, p 134; doc A97, p 68; doc K16, p 6.

291. Document A83, pp 147–152, 209–223, 261–263.

292. Rewi Maniapoto described the peacemaking to the Native Land Court in the 1880s, and named the Ngāti Raukawa kāinga as Pukewhakaahu, Te Mania, Aratitaha, and Whakarongopu. His grandfather Te Akanui settled at Ngamako, and Peehi Tūkōrehu at Pōkuru: doc A86, p 122; see also transcript 4.1.10, pp 1390–1398, 1450–1451; doc A83, p 134; doc A97, p 68; doc K16, p 6.

However, most of Ngāti Raukawa did not take up this offer, instead remaining at Maungatautari or making preparations to migrate to other parts of the North Island. A small group of Ngāti Raukawa had followed Te Rauparaha south in 1821, buoyed by his stories of the prosperity to be had from Kapiti's fertile lands and musket trade. Others attempted to establish a new home at Heretaunga (Hawke's Bay), sparking conflict that would last for several years. Taupō also offered a temporary home to some.<sup>293</sup>

As the decade wore on, a series of conflicts occurred around Maungatautari, where Ngāti Raukawa, Ngāti Kauwhata, and Ngāti Wehi Wehi all had interests, as did Ngāti Hauā, and Ngāti Marutūahu, who had been pushed out of Hauraki by Ngāpuhi. In 1825 and again in 1827, further small groups of Ngāti Raukawa migrated south to join Te Rauparaha; and in 1828 a larger migration, known as Te Heke-mai-i-raro (the migration from below) took most of Ngāti Raukawa, Ngāti Kauwhata, and Ngāti Wehi Wehi south as well.<sup>294</sup>

In Wharepūhanga, only a very small number of Ngāti Raukawa remained behind, occupying ancestral lands without attempting to defend them from Ngāti Maniapoto (in particular, Ngāti Paretekawa) who also occupied parts of the area. The reasons for the departure of Ngāti Raukawa and its allies are contested. Some see them as having been pushed from Maungatautari by ongoing conflict, and from Wharepūhanga by loss of mana due to previous defeats; others see the migration as an entirely voluntary one, motivated by the desire for a more prosperous and secure future under Te Rauparaha's patronage.<sup>295</sup>

Whatever the causes, the result was to restore stability and balance to the district's northern borders. Having seen off numerous threats, by 1830 Waikato-Maniapoto hapū had control of the district's northern territories, and for the most part were ready to turn their attention from warfare to trade.

### 2.5.2.8 Taranaki and Mōkau

Only one outstanding cause remained: Taranaki. Between 1826 and 1834, Waikato and Ngāti Maniapoto launched a series of incursions into that district. In 1826, warriors led by Tūkōrehu, Te Kanawa, and Te Wherowhero joined with Ngāti Tama and Ngāti Mutunga to support Te Atiawa against Ngāti Ruanui and Taranaki iwi.<sup>296</sup>

But Waikato-Maniapoto rangatira also sought utu for the deaths of Te Hiakai and others a decade or so earlier, and more generally for the assistance that Ngāti Tama, Ngāti Mutunga, and Te Ātiawa had given to Ngāti Toa-rangatira and Ngāti Raukawa. Late in 1831, an enormous taua led by Te Wherowhero and including Te Ngohi (Rewi Maniapoto's father), and Māori from Mōkau advanced south through

293. Document A83, pp 147–152, 209–223, 261–263.

294. Transcript 4.1.10, pp 1390–1398, 1450–1451; doc A97, pp 68, 109–110, 111–114; doc A83, pp 152, 261–263.

295. Transcript 4.1.10, pp 1390–1398, 1450–1451; doc A97, pp 68, 111–114; doc A83, pp 134, 147–152, 209–223, 261–263.

296. Ron Crosby, *The Musket Wars: A History of Inter-Iwi Conflict, 1806–45* (Auckland: Reed Books, 1999), pp 167–169.

Urenui and besieged Te Ātiawa in Pukerangiora. The pā was sacked with great loss of life and many members of the northern Taranaki iwi were captured and taken north. Te Ātiawa retreated to Ngāmotu, the islands off the coast near present-day New Plymouth, where they mounted a successful resistance. The Taranaki groups then made a partially successful raid on Motutawa at Mōkau, but it was clear to all that a further attack from Waikato–Maniapoto was inevitable.<sup>297</sup>

Te Wherowhero and Tūkōrehu joined again in 1833 to besiege Mikotahi pā at Ngāmotu; again, some Te Ātiawa survivors were taken north to Kāwhia. The following year, first Te Wherowhero and then Tūkōrehu attacked Ngāti Ruanui in south Taranaki.<sup>298</sup>

The consequences of these assaults were far reaching. On the Poutama coast south of Mōkau, the Waikato–Maniapoto taua used the former Ngāti Tama pā Te Kawau as a staging post and pushed Ngāti Tama south beyond the Waipingao Stream (on the southern side of Parininihi).<sup>299</sup> These Poutama lands were occupied although they do not seem to have been heavily populated. Te Rangituataka 11 and his brother Te Rerenga Wētere lived there, and Ngāti Rōrā and other Ngāti Maniapoto hapū also claimed interests due to their role in the conquest.<sup>300</sup>

In a series of heke, most of Ngāti Tama, Ngāti Mutunga, and Te Ātiawa who had not been taken north left for the south, to Waikanae, Te Whanganui-a-Tara, Te Wai Pounamu, and Te Wharekauri (the Chatham Islands). Other than on the offshore strongholds at Ngāmotu, northern Taranaki lay virtually deserted until the early 1840s.<sup>301</sup> The extent to which Ngāti Maniapoto gained and retained authority over these lands and the terms of agreement by which the former inhabitants returned became important questions for Crown officials and are matters we address in chapter 6.

### 2.5.2.9 Return to peace

A relative state of peace returned to the district's northern and southern borders. The mana of the many hapū making up the Waikato–Ngāti Maniapoto coalition was uncontested throughout all of the district.

During the 1830s, Te Wherowhero spent increasing amounts of time with the Ngāti Tūwharetoa leader Te Heuheu Tūkino, and in 1839 he travelled to Ngāpuhi territories and there signed He Whakaputanga – the Declaration of Independence. The following year, he travelled to Ōtaki and invited Ngāti Raukawa to return to Maungatautari, an offer that was declined.<sup>302</sup> Some from Ngāti Tama and Ngāti

297. Jones, *King Pōtatau*, pp 102, 144–146; Crosby, *The Musket Wars*, pp 246–250, 255–256, 270–271; doc A28 (Thomas), p 18; doc A110, p 515.

298. Crosby, *The Musket Wars*, pp 270–273, 276–280.

299. Document A147, p 7; doc A110, pp 260, 309; transcript 4.1.5, pp 91, 241, 249. Also see doc Q29(a), paras 21–26; Jones, *King Pōtatau*, pp 102, 144–146.

300. Document A110, pp 261, 310–311; see also doc A108, p 140; doc L7, p 7; doc R20, pp 6–7.

301. Document A147, pp 7, 10–11; doc A110, pp 260, 309; doc A23, p 26; transcript 4.1.5, pp 91, 241, 249; see also doc Q29(a), paras 21–26; Jones, *King Pōtatau*, pp 102, 144–146.

302. Jones, *King Pōtatau*, pp 147, 149–150.

Rangatahi, however, did take up similar offers from Taonui Hikaka I of Ngāti Maniapoto to return to their ancestral lands.<sup>303</sup>

It was into this world of conflict, peacemaking, and Waikato–Maniapoto strength that Pākehā traders arrived. From the late 1820s, these Pākehā traders were quickly absorbed into the hapū of senior Waikato and Maniapoto rangatira. Missionaries followed in the 1830s, as we will see in chapter 3.

The authority of the Waikato–Maniapoto coalition remained unchallenged until the 1860s, when Crown troops entered Waikato seeking to impose settler authority over the Kingitanga. Ngāti Maniapoto authority would remain intact until the 1880s, and its territories would again serve as a refuge for Waikato leaders retreating from war. We will discuss those events in chapters 6 and 7.

### Hapū Formation and Reformation

Hapū were by their nature highly dynamic. New hapū formed with considerable regularity, as existing hapū grew too large for their territories, or hapū leaders came into conflict, or neighbouring hapū merged through intermarriage. Just as new hapū formed, old hapū names faded away as a result of marriages, mergers, migrations, and defeats. Hapū could also take on different names for different purposes, depending on which familial bonds needed emphasis in particular circumstances, whether patrilineal or matrilineal descent was being emphasised, and whether hapū were identifying by local names or larger confederations (Ngāti Hari or Ngāti Urunumia, for example).<sup>1</sup> Pei Te Hurinui Jones produced a map which named 20 Ngāti Maniapoto hapū as having existed at the time of the Treaty,<sup>2</sup> yet by 1908 the Māori electoral option identified 142. In 2005, The Ngāti Maniapoto Māori Trust Board identified 47 constituent hapū; this inquiry has received claims from a similar number.<sup>3</sup>

1. Durie, *Custom Law*, p 17–20; doc A66, pp 4–5.

2. Document A114, p 70.

3. Document A114, pp 48–53; doc A110, p 218; doc A97, p 118; see also Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 22; Durie, *Custom Law*, pp 16–18.

## 2.6 THE TRIBAL LANDSCAPE IN 1840

The Take a Takiwā chapters of this report will describe the tribal landscape in detail for each part of this district. Here, we provide a brief snapshot, explaining which territories hapū and iwi occupied in 1840.

Hapū in the district affiliate to a number of iwi from in and around the district, including Ngāti Māhanga and Tainui Awhiro, Ngāti Hikairo, Ngāti Raukawa,

303. Document R20, p 8; doc A108, pp 106–109; doc A28, pp 60–62, 68–69; doc A147(b) (Stirling), pp 19–20.



Map 2.2: Hapū and iwi of the district, circa 1840



Ngāti Tūwharetoa, Ngāti Tama and Whanganui iwi, though most affiliate to Ngāti Maniapoto, as its rohe coincides almost completely with the inquiry district's boundaries.

It is important to acknowledge that Māori interests in land and other parts of the environment cannot be accurately described by drawing lines on a map and assigning each portion to an individual hapū or iwi. Rather, such rights are defined by whakapapa, and depend on ancestral relationships, which do not follow physical boundaries. Iwi and hapū interests typically intersect and overlap, as articulated by Miria Tauariki and Paul Meredith:

Outlining clear tribal boundaries is fraught with numerous challenges given that Māori identity and tribal affiliations and associated tribal boundaries are complex, fluid and political. Māori society was not traditionally, and is not contemporaneously, precise, clear and unambiguous.<sup>304</sup>

Hapū and iwi territories can better be understood as possessing zones of occupation (both permanent and seasonal), along with broader zones or spheres of interest and influence. Some of these zones were agreed; others were contested. Some were heavily populated; others were not.

This section does not represent an exhaustive account of hapu in the district but rather reflects the kōrero of iwi and hapū who have engaged with the Tribunal during the inquiry. We reiterate that hapū names have changed over time; the names of hapū extant in 1840 do not necessarily match those used in modern times, though in many cases they do.

We also acknowledge the limitations of map 2.1 above, which depicts the location of hapū and iwi of the district at about 1840. The map is indicative only and does not attempt to portray the rohe of hapū and iwi. Nor does it show the areas in which they asserted interests. It was rare for hapū and iwi to remain settled in the same place or places across time. Often, they followed seasonal food sources. Migrations also took place as a result of conflict and peacemaking.

With those caveats in mind, we can describe the broad spheres of influence of each iwi in this district in 1840, and the locations of individual hapū so far as they can be determined. Our intention is to locate the district's people in the land, not to determine the rights and wrongs of overlapping or competing claims to particular territories.

### **2.6.2.1 North: Pūniu to Hangatiki**

The Pūniu River is sometimes seen as the northern boundary of Ngāti Maniapoto influence, because it marked the southern boundary of the Crown's Waikato

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304. Document A114, p 55.

confiscations, and because it was used in the 1883 petition of Ngāti Maniapoto and others seeking a hearing on the Aotea-Rohe Potae land block.<sup>305</sup>

But Ngāti Maniapoto witnesses in the Native Land Court and again in this inquiry clearly regarded the tribe as having mana north of the Pūniu in 1840. Their claims appear to have been based mainly on the influence of Peehi Tūkōrehu, who wrested control of the area from his Ngāti Raukawa kin and lived north of the river between Pirongia and present-day Te Awamutu.<sup>306</sup>

According to Harold Maniapoto, Peehi and his immediate descendants had exclusive authority over the lands between the Pūniu River and the Mangapiko and Mangaōhoi (also known as Mangahoe) Streams, surrounding and spreading north and east of present-day Te Awamutu. Ngāti Paretekawa territories therefore encompassed the settlements at Ōtāwhao, Moeāwhā, Kihikihi, and Ōrākau, their mana extending 'over all the people of the area surrounding the Mangatoatoa Pā extending from Kakepuku to Wharepūhanga, Wharepapa to Nukuhau on the banks of the Waikato river, to the Waipā river, Kakepuku, and Te Kawa.<sup>307</sup>

Mr Maniapoto told us that Peehi established this authority with the consent of the area's hapū, including Ngāti Te Kanawa, Ngāti Paretekawa, Ngāti Unu, and the closely related Ngāti Ngāwaero, Ngāti Ngutu, Ngāti Huiao, and Ngāti Kaputuhi. Te Kanawa, Paretekawa, and Unu were his tūpuna, and he was closely related to the others.<sup>308</sup> These groups, along with Ngāti Paiariki and Ngāti Kahu, occupied territories around Kakepuku, Te Kawa, and south-eastern Pirongia.<sup>309</sup>

The lands encompassing Ōtorohanga, Hangatiki, and Waitomo are heartland Ngāti Maniapoto territories, and many hapū also have connections there. In particular, the area is associated with Ngāti Urunumia, Ngāti Huiao, Ngāti Uekaha, Ngāti Kinohaku, Ngāti Te Kanawa, Ngāti Rōrā, and Ngāti Peehi. Each of these hapū shares close relationships with the others, and has distinct but overlapping interests.<sup>310</sup> Ngāti Wharekōkōwai, descendants of Wharekōkōwai and Rangimakiri, also have strong connections to the area, though their lands at Ōtorohanga were alienated during surveying.<sup>311</sup>

Ngāti Urunumia originated in Ōtorohanga and retained interests there even after its migrations to Te Horangapai and southern Kāwhia.<sup>312</sup> Ngāti Parewaeono

305. Document A110, pp 218, 223–242; doc A60, p 202; see also Pei Te Hurinui Jones's 1940 map attempting to describe 1840 hapū and territories: doc A114, p 70; and LG Kelly's 1949 map of Tainui rohe: doc A97, p 100.

306. Document A110, pp 223–242.

307. Document K16, p 6.

308. Document K16, p 6.

309. Transcript 4.1.1, pp 62–63, 66–68, 70, 72–73, 86, 89, 113; transcript 4.1.6, pp 290–291; doc A110, pp 79–80, 83, 142, 144, 158, 235, 737; doc A60, pp 198–204, 688, 748–749. Ngāti Kahu are the remnants of Ngāti Kahupungapunga, the original occupants of the Waipā. They survive through intermarriage with Ngāti Unu, though their histories have largely been forgotten. Ngāwaero is a fourth generation descendant of Unu and Hine Marama. She married Ingoa, the younger brother of Te Kanawa Whatupango, to make peace after Te Kanawa had killed one of Ngāwaero's close relatives.

310. Document S36 (Koroheke), p 2; claim 1.2.81, paras 10–11; claim 1.2.81, paras 10–11.

311. Transcript 4.1.1, pp 85–86; transcript 4.1.6, pp 306–307.

312. Document A110, pp 130, 173–175; doc L4, p 5; transcript 4.1.6, p 214.

and Ngāti Kaputuhi were also based around Ōtorohanga, where they both had marae (Te Keeti and Kaputuhi respectively).<sup>313</sup>

Ngāti Uekaha is most closely associated with territories between Ōtorohanga and the Waitomo Valley, including Haurua – which was a fighting pā and later became the site where Te Wherowhero sought his uncles' permission to accept the Kingitanga<sup>314</sup> – and the cave Ruakurī where Uekaha lived for a time.<sup>315</sup> Ngāti Huiiao had pā at Hangatiki, at the top of the Waitomo Valley, as well as further north at Pökuru, where Ngāti Huiiao is closely related to Ngāti Ngutu and Ngāti Paretekawa. Like Ngāti Uekaha, Ngāti Huiiao has a close association with Haurua.<sup>316</sup>

Ngāti Kinohaku territorial interests were extensive, encompassing territories from Ōparure, Hangatiki, and Waitomo in the east to southern Kāwhia and the Marokopa and Awakino coasts in the west, as well as extending north into Hauturu. Ngāti Kinohaku also had influence in the Mōkau River catchment immediately south-west of Te Kūiti, and are closely related to Ngāti Waiora and Ngāti Te Paemate in that area. All share associations with the great fighting pā Arapae.<sup>317</sup> According to the claimant Glen Katu, Ngāti Kinohaku 'inherited much of the interest in Ngāti Toa Rangatira and Ngāti Rāruru' when those groups departed to the south.<sup>318</sup> Another hapū with extensive territory was Ngāti Rōrā. Their base was at Te Kūiti where they had several pā, but their influence was extensive, overlapping that of many other hapū. Ngāti Rōrā interests encompassed Hangatiki, Pureora, and Waimiha, Taumarunui for a time in the 1830s, and much of the Mōkau River catchment.<sup>319</sup>

Pei Te Hurinui Jones regarded the Mangapiko as the northern boundary of Ngāti Maniapoto influence, noting that the 'small strip' between the Pūniu and the Mangapiko were the only Ngāti Maniapoto lands confiscated after the Waikato war (see chapter 6).<sup>320</sup> In a 1940 sketch map of hapū territories, he showed Ngāti Paretekawa lands as fully surrounding Ōtāwhao and Kihikihi, but not including Rangiaowhia.<sup>321</sup> The Ngāti Hikairo claimants Frank Kingi Thorne and Meto Hopa

313. Transcript 4.1.1, p 59; transcript 4.1.6, pp 51, 213–214.

314. Transcript 4.1.6, pp 231, 275.

315. Transcript 4.1.6, pp 117–119, 263–264, 270–274; transcript 4.1.2, pp 201–202; doc G7 (Tauriki), p 2; doc A110, pp 69, 128, 154–156, 355; Jones and Biggs, *Nga Iwi o Tainui*, 2005, pp 214–217; see also doc A114, p 70.

316. Transcript 4.1.6, pp 225–227, 230–232, 235, 273; doc S36, pp 2, 4, 6; doc G14, pp [24].

317. Transcript 4.1.6, pp 233–235, 274; submission 3.1.323, app A, p 2; doc G16 (Davis) p [8]; see also transcript 4.1.6, pp 60, 97–98, 113, 186–188; transcript 4.1.21, pp 19–20, 1630; doc Q11, p 3; doc S37(b) (Jensen), p 2; doc A110, pp 134, 152–153, 320, 333–336; doc A60, pp 301–305; doc A114, p 70; doc A106, pp 9–13; submission 3.4.80, para 9.

318. Transcript 4.1.21, p 1630.

319. Submission 3.4.279, pp 6–7; transcript 4.1.6, pp 15, 26; doc S47, p 3; transcript 4.1.4, pp 107–108, 216; doc E2, p [2]; doc A110, p 207; see also 'Native Land Court Judgment', *New Zealand Herald*, 2 February 1893, p 3, which discusses the competing interests in the Pukenui district and refers to migrations after Mātakitaki: docs L2, L4, and L7.

320. Document A110, p 237.

321. Document A114, p 70.

also used the Mangapiko Stream as an inland boundary for that tribe's Kāwhia–Pirongia interests.<sup>322</sup>

Other hapū with interests in the area immediately north of the Pūniu at 1840 included Ngāti Apakura, Ngāti Hauā, and several other Waikato hapū. Traditional Ngāti Apakura territories encompassed Ngāroto in the north, the Waipā in the west, and the northern and eastern outskirts of modern-day Te Awamutu in the south. Key Ngāti Apakura pā included Taurangamirumiru at Ngāroto, and Rangiaowhia to the east of Te Awamutu.<sup>323</sup> When the Crown took Waikato lands after the Waikato war, many from Ngāti Apakura went to live among Ngāti Hikairo, Ngāti Maniapoto, Ngāti Mahuta, and Ngāti Tūwharetoa, and over time came to be identified as members of those communities.<sup>324</sup>

As noted earlier, Te Wherowhero also lived in this district for some time, along with related Waikato hapū. Ngāti Maniapoto regard Waikato as living in these areas under the mana of Peehi Tūkōrehu's Ngāti Paretekawa and Ngāti Ngutu hapū, however, we did not hear from Waikato claimants on this matter.<sup>325</sup>

### 2.6.2.2 East: Wharepūhunga to Ōngarue

A little further east, the Wharepūhunga area was occupied in 1840 by members of Peehi's Ngāti Paretekawa hapū and by members of Ngāti Raukawa who remained on the land when the main body of that tribe migrated south. Ngāti Raukawa had been allowed to return after the 1816 defeat at Hangahanga, and appear to have had interests east of Tokanui and the Pūniu.<sup>326</sup>

We have already described the eastern boundary, which was set by Te Kanawa Whatupango and Ngāti Tūwharetoa rangatira Tūtētēwhā, and remained uncontested in 1840.<sup>327</sup> Over the generations, people along the borders have intermarried. Te Heuheu Tūkino II, paramount chief of Ngāti Tūwharetoa in 1840, could claim descent from Ngāti Maniapoto and Ngāti Raukawa.<sup>328</sup>

Several related hapū had overlapping interests in the thickly forested territories east and south-east of Te Kūiti, encompassing Pureora and Waimiha. Ngāti Whakatere ki te Tonga occupied land at Maraeroa. It is generally regarded as belonging to Ngāti Raukawa, though Pei Te Hurinui Jones described it as a Ngāti Maniapoto hapū.<sup>329</sup>

322. Document A110, pp 253–254.

323. Document A97, pp 98–101; doc A98, pp 103–104; see also doc A97, pp 90–98.

324. Transcript 4.1.6, pp 241–242; transcript 4.1.1, pp 21–22; transcript 4.1.2, p 134; doc A60, pp 80–83.

325. Document K16, pp 6–7; doc A110, pp 227–228, 234–236.

326. Document A110, pp 242–252, 287–288, 351; doc A83, pp 254–255; doc A60, pp 1208–1214; see also doc A114, p 70; doc A97, p 100.

327. Transcript 4.1.4, pp 73–74, 146; transcript 4.1.17, pp 29, 32, 622.

328. In the Native Land Court, Ngāti Tūwharetoa claimed rights in the Aotea-Rohe Potae and Wharepūhunga land blocks, and Ngāti Maniapoto, Ngāti Matakore, and Ngāti Raukawa objected to the inclusion of the Hurakia and Maraeroa blocks (in the Pureora forest, a prized bird-snaring district) in the Tauponui-a-Tia block: doc A110, pp 268–269, 276–291; doc A60, pp 1209–1212.

329. Document A110, pp 180, 226, 327–328, 331; doc A114, p 70; Jones and Biggs, *Nga Iwi o Tainui*, pp 340–342; see also Maraeroa A and B Blocks Claims Settlement Act 2012, 12(2).

Ngāti Te Kohera were based at at Tūaropaki, residing in the eastern areas of the district, including the Hauhungaroa Range, Pureora, and Titīraupenga.<sup>330</sup>

Ngāti Rereahu takes its name from Maniapoto's father. Its main territorial interests lie between Te Kūiti, Pureora, and the Waimiha and Ōngarue river catchments.<sup>331</sup>

### 2.6.2.3 South: Ōngarue to Mōkau

In the south, Ngāti Maniapoto territories bordered those of Ngāti Hāua and other Whanganui iwi. In the Native Land Court, claimants from both sides agreed that Whanganui–Maniapoto boundaries broadly form an east-west line a little south of Ōhura, with a bite taken out for Taumarunui – the boundary there being at Te Horangapai, near the Taringamotu river mouth. The picture is slightly complicated by generations of intermarriage giving Ngāti Hāua and Ngāti Maniapoto descendants claims on either side of the boundary; it is also complicated by the common practice of including Ngāti Rangatahi, who migrated south with Te Rauparaha, as a hapū of Ngāti Hāua.<sup>332</sup> According to the historian Anthony Pātete, Ngāti Hāua and Ngāti Maniapoto interests overlapped in the areas later defined by the Native Land Court as Umukaimata, Waiaraia, and Taurangi.<sup>333</sup> The southern boundary and its outcomes are further discussed in later chapters.

The district's south-eastern corner was occupied by Ngāti Urunumia and related hapū. Ngāti Pāhere was closely related to Ngāti Urunumia and Ngāti Te Ihingārangi, and had territories near Ōngarue just south of those of Ngāti Raerae and Ngāti Te Ihingārangi.<sup>334</sup> Ngāti Urunumia and Ngāti Hari territories centred around the Taringamotu River, extending north to Ōngarue and west to the Mōkau River headlands. As noted, Ngāti Urunumia also had interests near Ōtorohanga and in other parts of Te Rohe Pōtae.<sup>335</sup> Ngāti Huru, a hapū of Ngāti Te Kanawa and therefore closely related to Ngāti Urunumia, occupied hill territories in the Hurakia (Hauhungaroa) Ranges. Ngāti Huru also intermarried with Ngāti Tūwharetoa.<sup>336</sup>

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330. Transcript 4.1.1, p153.

331. Transcript 4.1.6, pp 345, 362–364, 368; transcript 4.1.4, p130; doc s40 (Peni), pp 2–3; doc s41 (Anderson), p 2; doc A110, pp 135–137, 322, 331; see also doc A60, pp 481–482, 484, 487, 502; doc A114, p70. Claimants in the Native Land Court referred to Ngāti Karewa, Ngāti Poutu, Ngāti Whakatere, and Ngāti Pikiahu as hapū of Ngāti Matakore with interests in Maraeroa. Ngāti Matakore also had interests in Ketemaringi.

332. Transcript 4.1.4, pp 196–198, 200–201, 208, 210; submission 3.4.205, pp 4, 6–7; see also doc A114, p70.

333. Document A110, pp 268–273; doc A112, p 5; doc A124, pp 7–10; see also doc A108, pp 23, 78–79, 87–91; doc A114, p70; doc A97, p100.

334. Transcript 4.1.4, pp 144–145, 228–230; submission 3.4.199, p 54; submission 3.4.176, pp 3–5, 17, 61, 98–99; see also doc A114, p70.

335. Document A44, pp 2, 5; doc R20, p3; transcript 4.1.4, pp 140, 143–146, 200–201, 205, 208; transcript 4.1.6, p 214; transcript 4.1.5, p 230–233, 255; transcript 4.1.2, p 161; doc A66, pp 13–16; submission 3.4.199, pp 3–6, 25; doc L4, p 5; doc A110, pp 172–175, 316; see also doc A114, p70.

336. Transcript 4.1.4, pp 146–147; submission 3.4.168, pp 3–4, 6–7.

Ngāti Te Ihingārangi, named for Maniapoto's brother, occupied territories in the southeast of the district from Mangapehi to Waimiha and Te Kōura.<sup>337</sup> Ngāti Tūtakamoana occupied territories a little further inland but overlapping with their neighbours, encompassing the Mangaokewa Valley and also extending from Mangapehi to Ōngarue and Te Kōura.<sup>338</sup> Ngāti Raerae territories were centred around the Ōngarue and Mangakahu catchments extending inland to Tangitū. They were closely related to Ngāti Rōra and Ngāti Te Ihingārangi.<sup>339</sup>

As well as Ngāti Tūwharetoa and Ngāti Hāua (which comprises Ngāti Hāuaroa and Ngāti Hekeāwai), other iwi or hapū with interests in the south-eastern borders included Ngāti Hekeāwai and Tamahaki of Whanganui, as well as Ngāti Hinemihi, Ngāti Hikairo ki Tongariro (distinct from Ngāti Hiakiro in the north), Ngāti Hinewai and Ngāti Hotu.<sup>340</sup>

We have already discussed the south-western corner of the district, which was for many years contested between Ngāti Maniapoto hapū and Ngāti Tama. The 1820 Ngāti Maniapoto expedition which pushed Ngāti Tama southwards was conducted by inland hapū – Ngāti Urunumia, Ngāti Rōra, and Ngāti Kinohaku – accompanied by Ngāti Rākei of Mōkau. This was followed up with occupation by Mōkau hapū (named in the Native Land Court as Ngāti Waikorara, Ngāti Rākei, Ngāti Hinerua, and Ngāti Tū) under the mana of the Ngāti Maniapoto rangatira Waitara, who later took the name Takerei or Sir Grey.<sup>341</sup>

By 1840, a succession of Waikato–Maniapoto taua had either taken north or forced south most Ngāti Tama, Ngāti Mutunga, and Te Ātiawa inhabitants of northern Taranaki.<sup>342</sup>

The Mōkau River was a critical transport route with several significant Ngāti Maniapoto settlements,<sup>343</sup> and major fighting pā including Te Arapae, Tokitokinoa (close to Napinapi), and Mātangiāwha (in Piopio).<sup>344</sup>

South-west of Te Kūiti, the lands surrounding Kahuwera (encompassing Piopio and Aria, extending south-west to Tāwhitiraupēka) were occupied by Ngāti Waiora and Ngāti Te Paemate. These hapū were closely related to each other and, in turn, to Ngāti Kinohaku.<sup>345</sup> Also closely related to these hapū was Ngāti Rungaterangi, which occupied territories around Aorangi (east of Aria) and Mahoenui. As men-

337. Submission 3.4.220, pp 2, 3–6; submission 3.4.170, pp 66–67; doc A110, pp 322, 325, 331.

338. Submission 3.4.156, pp 2–3, 8; submission 3.4.220, pp 4–6; doc L22 (Wi), p 4; doc A114, p 70.

339. Transcript 4.1.4, p 131; doc Q10 (Rata), pp 3–8; submission 3.4.175(b), p 4.

340. Submission 3.4.211, pp 3–7; submission 3.4.234, pp 2–3; submission 3.4.163(a), p 4; submission 3.4.281, pp 2–4; submission 3.4.187, pp 7–8; submission 3.4.227, pp 3–5; see also Waitangi Tribunal, *He Kāhui Maunga*, vol 1, pp 49–56, 65–70, 74–75.

341. Document A110, pp 255–265; doc A28, p 56; doc A147(b), pp 5–10 (also see pp 10–32); see also doc A124, pp 7–10; Waitangi Tribunal, *Ngāti Maniapoto/Ngāti Tama Settlement Cross-Claims Report* (Wellington: Legislation Direct, 2001), p 1.

342. Document A23, p 26.

343. Transcript 4.1.5, pp 30, 46–47, 97, 200–201.

344. Transcript 4.1.5, pp 9, 14, 91, 162, 249.

345. Transcript 4.1.5, pp 13, 18, 30–31, 46–48, 53, 74, 89, 104; transcript 4.1.4, p 243;

transcript 4.1.3, pp 41–42; transcript 4.1.15(a), p 513; doc A60, pp 1149–1157; submission 3.4.246, p 6; submission 3.4.135, p 7.

tioned earlier, Ngāti Paretekawa had a settlement a little south along the Mōkau River at Napinapi.<sup>346</sup>

We have already discussed the various hapū who occupied the Mōkau coast, including the Poutama lands. They included Ngāti Rākei, Ngāti Tū, Ngāti Waikorara, and Ngāti Hinerua. Ngāti Rōrā, Ngāti Urunumia, and Ngāti Kinohaku also claimed interests, arising from their defeat of Ngāti Tama. Ngāti Waiora, Ngāti Paemate, and Ngāti Rungaterangi also had interests on the coast.<sup>347</sup> Ngāti Toa Tupahau were located north of Mōkau at Marokopa.<sup>348</sup>

Ngāti Rārua traditionally occupied lands around the Waikawau coast, but are said to have left before Te Rauparaha did.<sup>349</sup> Those lands became associated with Ngāti Kinohaku, as did the lands further north at Marokopa where Ngāti Te Kanawa and Ngāti Peehi also had interests.<sup>350</sup>

#### 2.6.2.4 Harbours and Pirongia

Travelling up the coast, the lands between the Kāwhia and Aotea Harbours and Pirongia were probably the most heavily contested in the district. After the departure of Ngāti Toa-rangatira, several groups occupied and claimed interests in the Kāwhia and Aotea Harbours and their surrounds.

Te Wherowhero stationed two of his lieutenants, Kiwi Te Roto and Te Kanawa, at Kāwhia, securing Ngāti Mahuta interests there. Ngāti Mahuta territories straddled the harbour entrance and included Taharoa in the south, allowing them to patrol the harbour and ensure Ngāti Toa-rangatira did not attempt to return.<sup>351</sup>

Southern Kāwhia was otherwise Ngāti Maniapoto territory. Several Ngāti Maniapoto pā and settlements dot the harbour's southern fringes, and several Ngāti Maniapoto rangatira and hapū had interests there, including Ngāti Te Kanawa, Ngāti Kinohaku, Ngāti Urunumia, Ngāti Ngutu, and others.<sup>352</sup> Pei Te Hurinui Jones, in his map of 1840 Ngāti Maniapoto territories, named southern Kāwhia as being occupied by Ngāti Te Kanawa, though other hapū names are more commonly used now.<sup>353</sup>

346. Transcript 4.1.1, pp 139–142; transcript 4.1.5, pp 14, 27–28, 30–31, 33–34.

347. Transcript 4.1.5, pp 31, 89, 140–141, 148, 159–160, 174–177, 191–192; transcript 4.1.4, p 216; doc A60, pp 424–425, 550–551, 1149–1157; doc A110, pp 255–265, 309; doc A147, pp 5–8; see also doc A114, p 70; doc A97, p 100.

348. Transcript 4.1.2, pp 141–142.

349. Transcript 4.1.2, p 163; transcript 4.1.5, pp 137, 175, 224–225.

350. Transcript 4.1.2, p 163; claim 1.1.257, p 3; doc A110, pp 130, 134.

351. Transcript 4.1.2, pp 90, 92, 98; Jones, *King Pōtatau*, pp 55, 59, 60; see also doc A114, p 70. For a whakapapa of Kiwi Te Roto and Te Wherowhero, see doc 14, p 3.

352. Transcript 4.1.2, pp 159, 162–165, 168–169, 194–196; transcript 4.1.1, pp 93–94; doc c8 (Kaati), pp [3], [4].

353. Document A114, p 70.

Ngāti Hikairo interests extended from northern Kāwhia some distance inland to the eastern side of Pirongia.<sup>354</sup> We were told that the Pirongia boundary between Ngāti Maniapoto and Ngāti Hikairo has never been fixed.<sup>355</sup>

Ngāti Te Wehi was the largest grouping among several with interests that encircle the Aotea Harbour. Ngāti Te Wehi had pā at Matakowhai and Manuaitū, and populous settlements at Raoraokauere and Waiteika near the eastern side of the harbour.<sup>356</sup> Claimants also referred to close relationships between Ngāti Te Wehi and Ngāti Hikairo, their neighbours in central Kāwhia.<sup>357</sup>

Meanwhile, Ngāti Whawhākia occupied a strip along the southern edge of the Aotea Harbour,<sup>358</sup> and Ngāti Patupō occupied territories straddling the harbour mouth and extending a small way inland.<sup>359</sup> Claimants described how Ngāti Patupō<sup>360</sup> and Ngāti Te Reko operated as specialist fighting forces securing Aotea and northern Kāwhia for the Waikato–Maniapoto coalition.<sup>361</sup> Ngāti Whakamarurangi, with links to both Ngāti Hikairo and Ngāti Māhanga, also had territories north of Aotea extending almost to Karioi.<sup>362</sup>

Further north were found Ngāti Māhanga, whose territories encompassed much of the area between Aotea and Whāingaroa, heading a good distance inland towards the Waipā River.<sup>363</sup> Ngāti Tamainupō, related to Ngāti Māhanga through marriage, also occupied southern Whāingaroa around Okete and Te Uku.<sup>364</sup> Also at Whāingaroa were several other Waikato hapū, who were consolidated in the nineteenth century under the name Tainui Awhiro, and had a close connection with the maunga Karioi at the mouth of the harbour.<sup>365</sup>

Whāingaroa, the district's most northern harbour, was occupied by Tainui Awhiro. The Ngāti Māhanga rohe covers the entire harbour, extending south of Aotea Harbour and inland to the Waipā River.<sup>366</sup> Ngāti Tamainupō, now comprising the Ngā Toko Toru collective with Ngāti Te Huaki and Ngāti Kotata, have a similar area of interest, running from the harbour east to the Waikato River and including Whatawhata and Taupiri.<sup>367</sup>

354. Document A98, pp 31, 100–111; transcript 4.1.2, pp 5, 17–18, 27–28, 238, 290–291. The rohe is mapped in doc A98, pp 31, 110; see also doc A60, p 749; doc A114, p 70.

355. Document A110, pp 253–254.

356. Transcript 4.1.2, pp 39, 44–48, 56, 65–68, 76, 85, 228–229; doc A94, p 113; see also doc C4, p [18]; doc A114, p 70.

357. Transcript 4.1.2, pp 47, 226.

358. Transcript 4.1.6, pp 330, 333; doc G26 (Reti, Ormsby, and King).

359. Transcript 4.1.2, pp 28, 76; transcript 4.1.12, pp 388, 400–401, 406–407.

360. Transcript 4.1.12, pp 1206–1207; transcript 4.1.2, p 76.

361. Transcript 4.1.2, p 60.

362. Transcript 4.1.3, pp 96–97, 111.

363. Transcript 4.1.3, pp 16–19, 25–26, 37; see also doc A97, p 100.

364. Transcript 4.1.3, pp 147–148, 174–176; see also doc A114, p 70.

365. Tainui Awhiro includes Ngāti Koata (ki Whāingaroa), Ngāti Kahu, Ngāti Tahau, Ngāti Te Kore, Ngāti Pūkoro, Ngāti Te Ikaunahi, Ngāti Tira, Ngāti Heke, Ngāti Rua Aruhe, Ngāti Hounuku, Te Paetoka and Ngāti Te Karu, among others: transcript 4.1.3, pp 196–197, 199–201, 205–206; see also doc D6 (Ellison); doc D8 (Greensill), pp [1], [3]; doc A99, p 8.

366. Transcript 4.1.3, p 206; doc A94, pp 26, 29, 79–80.

367. Transcript 4.1.3, pp 146–148, 159, 181.



Most groups at Aotea and Kāwhia Harbours similarly descend from the *Tainui waka*. Though predominantly based at Kāwhia, the Ngāti Hikairo rohe covers both harbours and extends inland to Waipā. Ngāti Te Wehi share close ties with Ngāti Hikairo and are based around both harbours, remaining closer to the coast than Ngāti Hikairo.<sup>368</sup> Though based further inland at Te Kūiti, Ngāti Te Kiriwai interests extended as far west as the Te Kauri and Awaroa river mouths at Kāwhia Harbour.<sup>369</sup>

Ngāti Whakamaruruangi are similarly based close to the coast, occupying the area running from Karioi maunga to Raukūmara, at the southern end of Aotea Harbour.<sup>370</sup> They share close relations with Ngāti Mahuta, whose rohe encompasses Kāwhia Harbour, Taumatatōtara maunga, and the Taharoa lakes district.<sup>371</sup>

Ngāti Patupō and Ngāti Whawhākia were both based around southern Aotea.<sup>372</sup>

## 2.7 NGĀ RANGATIRA O TE ROHE PŌTAE

As described in section 2.4.4, rangatira fulfilled several different functions for and on behalf of their hapū. As Pākehā settlement increased in the district, so did the roles and responsibilities of rangitira as they sought to influence, amongst other things, the developing patterns of settlement, trade, and religion in the area. This section highlights some of the rangatira in the district in the lead-up to 1840, many of whom later signed the Manukau–Kāwhia or Waikato–Manukau sheets of the Treaty. Here, they have been organised by broad tribal grouping, though it is acknowledged that several rangatira were affiliated with multiple iwi or areas within the region. While not exhaustive or definitive, the following descriptions provide a sense of some of the key figures in the district and their motivations prior to the arrival of the Treaty.

### 2.7.1 Ngāti Maniapoto rangatira

#### 2.7.1.1 Peehi Tūkōrehu

Peehi was of Ngāti Raukawa and Ngāti Maniapoto. He and his brother Te Akanui decisively shifted allegiance to the latter iwi when they founded the hapū of Ngāti Paretekawa.<sup>373</sup> His pa at Mangatoatoa was the ‘political centre of the Tainui waka’ in the late eighteenth century.<sup>374</sup> Peehi was a key figure in the alliance between Waikato and Ngāti Maniapoto. He betrothed his daughters Ngāwaiata and Ngāwaero to Te Wherowhero.<sup>375</sup>

368. Transcript 4.1.2, pp 17–18, 39; doc A98, p 100.

369. Transcript 4.1.6, p 291.

370. Transcript 4.1.3, p 96. Also given as Tūrangatapuwaē in Frank Thorne’s Ngāti Hikairo evidence: transcript 4.1.2, p 17.

371. Transcript 4.1.2, pp 92, 115.

372. Transcript 4.1.6, pp 330, 332, 337; transcript 4.1.2, pp 76, 219–225.

373. Document A110, p 161.

374. Document A110, p 737.

375. Document A110, p 162.

A tupuna named Peehi signed the Treaty giving his affiliation as Ngāti Ruru, as further discussed in section 2.7.4.5. According to Harold Maniapoto, this could not have been the Ngāti Paretekawa leader Peehi Tūkōrehu, as he died in 1836. On his death, Tūkōrehu's mana passed to others from the hapū, including his cousin Rewi Manga Maniapoto, his son Tupotahi, and his grandson Tūkōrehu, none of whom signed.<sup>376</sup>

### 2.7.1.2 *Te Ngohi Kāwhia*

Te Ngohi (also known as Te Ngohi Kāwhia or Kāwhia Te Ngohi) was a rangatira of Ngāti Paretekawa and Ngāti Maniapoto, with mana in the Pūniu and Kāwhia districts. Te Ngohi's father was Te Akanui, another of the founders of Ngāti Paretekawa. His son was Rewi Manga Maniapoto, who was educated at a mission school at Te Kōpua.<sup>377</sup> Te Ngohi signed the Treaty at Waikato Heads in late March or early April 1840.<sup>378</sup>

### 2.7.1.3 *Te Pakarū*

Te Pakarū was a Ngāti Maniapoto rangatira of southern Kāwhia and Marokopa. He signed the Treaty at Waikato Heads in late March or early April 1840. It appears that he was the son of Haupōkia Te Pakarū, who signed the Treaty on 21 May 1840.<sup>379</sup>

### 2.7.1.4 *Te Waraki (Nūtoni Te Waraki)*

Te Waraki (Ngāti Ngutu, Ngāti Paretekawa, Ngāti Maniapoto) was the eldest son of Peehi Tūkōrehu. He and his extended family lived at Pōkuru, but his interests are said to have extended from southern Kāwhia inland to Te Kawa and Pūniu. During the 1830s he supported the establishment of the Church Missionary

376. Transcript 4.1.10, p 325; transcript 4.1.1, pp 39, 41; doc P15(a). Peehi Tūkōrehu had a great-great-grandson named Peehi Maniapoto, but he could not have signed the Treaty. The line of descent was from Peehi Tūkōrehu to Tupotahi to Winitana Tupotahi (who fought at Ōrākau) to Maniapoto III to Peehi Maniapoto: doc H8, p 6; transcript 4.1.1, pp 39, 41; doc P15(a). Te Ota Peehi of Ngāti Matakore, who sheltered Te Wherowhero after the Ngāpuhi invasion, was alive at the time of the Treaty signing, but there is no evidence of him having Ngāti Ruru affiliation or living at Ōtāwhao: transcript 4.1.6, pp 244, 248, 356.

377. Document B1, p 5; doc K28, p 5; doc K7, p 7; see also doc A110, pp 308, 413–415.

378. Claudia Orange, *An Illustrated History of the Treaty of Waitangi* (Wellington: Bridget Williams Books, 2004), p 298.

379. 'Haupokia' signed the English-language Waikato–Manukau sheet at Waikato Heads on 11 April 1840, and 'Te Pakaru' signed the te reo Māori Manukau–Kāwhia sheet at Kāwhia on 21 May 1840. Moepātu Borell and Robert Joseph speculated that Haupōkia Te Pakarū may have signed the Treaty twice – once at Waikato Heads in late March or early April using the name Te Pakarū, and then at Kāwhia on 21 May 1840 using the name Haupokia. Alternatively, they suggested that his son, also Te Pakarū, signed at Waikato Heads. The latter is more likely: the Kāwhia sheet bears a cross beside Haupōkia's name, whereas the Waikato Heads sheet bears a partial signature beside the name 'Te Pakaru', indicating greater familiarity with written language: doc A97, p 148; see also doc A23, pp 69–71; doc R20, pp 7–8; doc S21(b), pp 20–21; Orange, *An Illustrated History of the Treaty of Waitangi*, p 296.

Society mission at Mangapōuri, and provided it with food from extensive gardens. He signed the Treaty at Waikato Heads in late March or early April 1840.<sup>380</sup>

### 2.7.1.5 Tāriki

Tāriki was a Ngāti Maniapoto rangatira.<sup>381</sup> His main pā was at Paripari, an important settlement a few kilometres east of present-day Te Kūiti. Tāriki signed the Treaty on 21 May 1840 at Kāwhia.<sup>382</sup>

The French writer and artist George Angas visited Paripari in 1844, a few months after Tāriki's death. He recorded Tāriki's name as 'Te Ariki (lord)', and described him as 'the most celebrated chief of all Mokau'. According to Angas's account, the death of Tāriki meant that Taonui Hikaka I became the senior rangatira of the district.<sup>383</sup>

### 2.7.1.6 Haupōkia Te Pakarū

Haupōkia Te Pakarū (also known as Te Pakarū Nuitonu<sup>384</sup>) was a leader of Ngāti Urunumia, Ngāti Kinohaku, Ngāti Maniapoto, and Ngāti Apakura.<sup>385</sup> After the Ngāpuhi invasion in the early 1820s, he led his people south to live among their Ngāti Hari kin.<sup>386</sup> When that conflict had ended, he led some of them to occupy lands around southern Kāwhia.<sup>387</sup>

In 1830, Haupōkia and another Ngāti Maniapoto and Ngāti Apakura rangatira, Te Waru, travelled to Sydney where they formed a relationship with the trader Joseph Montefiore, who returned to Kāwhia and subsequently sent several traders to live among Waikato and Ngāti Maniapoto.<sup>388</sup> Haupōkia also had a close

380. Orange, *An Illustrated History of the Treaty of Waitangi*, p 298; doc s1, p 18; doc P24(a), p 5; transcript 4.1.6, p 290; transcript 4.1.1, pp 95–96; see also doc A23, p 69.

381. Document A110, pp 474–475.

382. Document A23, p 73; Orange, *An Illustrated History of the Treaty of Waitangi*, p 296; transcript 4.1.21, pp 266–267; doc A28, pp 65–66; doc A97, p 147; doc A35, p 4; doc A23, p 73; doc A98, p 225. Also see transcript 4.1.4, pp 255–256; doc A105, p 28; doc A110, pp 359–360.

383. Document A28, p 30; George Angas, *Savage Life and Scenes in Australia and New Zealand: Being an Artist's Impressions of Countries and People at the Antipodes*, 2 vols (London: Smith, Elder & Co, 1847), vol 2, p 82.

384. Document s1, p 18; doc n(e), pp 2–6; doc A44, p 36; transcript 4.1.21, pp 1609–1610.

385. Document s55, pp 12–13; doc s52, p 2; doc s21(b), pp 19–21, 48; doc A110, p 339; transcript 4.1.13, p 392; transcript 4.1.10, pp 150–151; transcript 4.1.21, pp 1609–1610; doc A25, p 32; doc A44, p 15; doc R20, p 7–8; doc L7, p 14; doc A108, pp 142, 157; transcript 4.1.1, p 743; transcript 4.1.7, p 742. Haupōkia Te Pakarū was descended from Te Kanawa Whatupango, through Tiramanuhiri, Waiora, and Haupōkia I: doc F14, p 1. Another whakapapa shows descent from from Te Kanawa Whatupango through Tiramanuhiri, Pirimaiwaho, and Taraunahi: doc A44, p 36.

386. Document R20, pp 13–14; doc A108, pp 142, 157; doc A44, p 36; transcript 4.1.17, p 749; transcript 4.1.4, pp 144–145; transcript 4.1.1, pp 52–53; doc R20, pp 5–6; see also doc A66, pp 13–17.

387. In particular, Te Pakarū is associated with lands around the Waiharake inlet, Te Rangiora pā, and Kinohaku territories: doc s52, pp 2, 9–10; doc A110, p 339; doc H15, p 6; transcript 4.1.7, pp 100–101; see also doc s21(b), pp 20–21; doc n(e), p 5.

388. Document A97, p 137; doc s21(b), p 19; doc A25, p 32; doc H15, p 6; doc A110, p 435; doc A26, p 17; doc A25, p 32; transcript 4.1.7, p 435.

relationship with the Wesleyan mission at Kāwhia. He built the mission house at Waiharakeke, and subsequently granted land to several missionaries.<sup>389</sup>

Claimant Meri Walters said that her tupuna, Haupōkia, signed the Treaty following explanations by the Wesleyan missionary John Whiteley, who she said described the Treaty as a ‘mechanism for safeguarding property’. For Haupōkia, she said, the Treaty ‘became about the protection of our lands, mana and Tino Rangatiratanga.’<sup>390</sup> Haupōkia signed the Treaty, along with Tāriki, at Kāwhia on 21 May 1840.

### 2.7.1.7 *Taonui Hikaka I*

Taonui was a senior rangatira of Ngāti Rōrā and Ngāti Maniapoto. According to the claimant Yorkie Tohe Taylor, he had ‘the confederated whakapapa of all Rangatira of Te Rohe Pōtae.’<sup>391</sup> He was regarded as one of the most powerful Ngāti Maniapoto leaders, and (according to George Angas) described himself as ‘lord of all Mōkau’ following Tāriki’s death.<sup>392</sup>

Though his main main pā was at Paripari he also resided in the upper reaches of the Mōkau River, and further south at Ōngarue, and travelled freely throughout the district.<sup>393</sup>

According to the claimant Mike Wī (Ngāti Rōrā), it was Taonui who made the decision to shelter Te Wherowhero in Ngāti Maniapoto territories after the battle of Mātakitaki, and Taonui who led the expedition which forced Ngāpuhi out of Ngāti Maniapoto lands.<sup>394</sup> Taonui signed the Treaty at Kāwhia on 15 June 1840.<sup>395</sup>

### 2.7.1.8 *Ngāmotu*

Ngāmotu was a Ngāti Te Kanawa and Ngāti Maniapoto leader who lived at Waiharakeke in southern Kāwhia. In 1831 he fought alongside Pōtatau Te Wherowhero in Taranaki. Later that decade he guided John Whiteley on a journey south to Taringamotu. Ngāmotu signed the Treaty on 27 August 1840 at Kāwhia.<sup>396</sup>

### 2.7.1.9 *Takerei Waitara*

Takerei was a Ngāti Maniapoto chief based at Mōkau. Like other Mōkau chiefs, he was eager to take advantage of trade opportunities with Pākehā, particularly

389. Document s55, pp 13–14.

390. Document s52, pp 9–10.

391. According to Mr Wī, Taonui’s land interests also extended into Taranaki and Whanganui: doc s61, p 6. Taonui was descended from Maniapoto through Rōrā, Kuraroa, Paruparu, Hokotahi, Te Rangituatea, and Ngarue. Rōrā was the son of Maniapoto and his third wife Paparauwhare: doc s9(b), pp 1–2; doc A110, pp 71–72.

392. Document s9(b), pp 2–3; doc A110, p 395; doc A28, p 66.

393. Document s9(b), pp 2–3; submission 3.4.279, pp 2–3; doc s19, pp 8–10.

394. Document s9(b), pp 2–3.

395. Orange, *An Illustrated History of the Treaty of Waitangi*, p 296.

396. Orange, *An Illustrated History of the Treaty of Waitangi*, p 296; doc s1 p 18–20; doc R20, p 7; doc K19, p 6; doc H15, p 14; doc F15, p 4. Ngāmotu was descended from Te Kanawa Whatupango and his wife Whaeapare, through Noke, Urunumia 11, and Te Hono: doc s1, pp 18–19; see also doc A70, pp 41–42.

wheat and coastal shipping.<sup>397</sup> In June 1847, it was reported that ‘[Takerei] Waitara & nearly all the people have gone to NP [New Plymouth] with pigs to purchase hand mills, as nearly every native has this year a patch of wheat in.’<sup>398</sup>

### 2.7.1.10 *Te Rangituatea*

Te Rangituatea was a descendant of Maniapoto and an important Ngāti Rōrā rangatira. For much of his early life Te Rangituatea was based in the southern areas of the region around Mōkau, though was for some time based at Kāwhia during conflicts with Te Rauparaha. He also fought with Ngāti Maniapoto against the Ngāti Toa confederation and was involved in the Waikato–Maniapoto invasion of Taranaki.<sup>399</sup>

## 2.7.2 Ngāti Apakura rangatira

### 2.7.2.1 *Te Waru*

Te Waru, also known as Hori Te Waru, was a Ngāti Apakura rangatira of Rangiaowhia, east of present-day Te Awamutu. He signed the Treaty at Kāwhia on 25 May 1840. Like other rangatira, he was very active in promoting trade and agriculture to bring greater prosperity to his people. With Haupōkia Te Pakarū, he travelled to Sydney in 1830 to establish a trading network.<sup>400</sup> He later played an important role in agricultural development in the Waipā Valley, and in the establishment of the district’s first flour mill at Rangiaowhia.<sup>401</sup> He signed the Treaty at Kāwhia on 25 May 1840.<sup>402</sup>

### 2.7.2.2 *Pungarehu*

Pungarehu (also known as Kahawai Pungarehu) was a Ngāti Apakura rangatira who lived at Pārāwera, Ōtāwhao (present-day Te Awamutu), and Rangiaowhia. He was regarded as Te Waru’s equal.<sup>403</sup> He signed the Treaty at Waikato Heads sometime in late March or early April 1840.<sup>404</sup>

## 2.7.3 Ngāti Hikairo rangatira

### 2.7.3.1 *Kikikoi*

Kikikoi, also known as Kīngi Te Waikawau, was born around 1780 in the Waipā and was a leading Ngāti Hikairo rangatira. According to oral history he took the name Waikawau following his involvement in the invasion of Ngāti Rārua

397. Document A110, p 458.

398. Schnackenberg to Reverend John Whiteley, 29 June 1847 (doc A19, p 108).

399. Document s61(d) (Taylor), pp 4–5.

400. Document A25, p 32; transcript 4.1.10, pp 104–105.

401. Document H15, pp 8–9; doc A110, p 455; doc A26, pp 24–25; transcript 4.1.10, pp 104–105; doc A97, pp 169–171; doc A44, pp 11–12; doc A60, p 638; James Cowan, *The Old Frontier: Te Awamutu, The Story of the Waipa Valley: The Missionary, the Soldier, the Pioneer Farmer, Early Colonization, the War in Waikato, Life on the Maori Border and Later-day Settlement* (Te Awamutu: The Waipa Post Printing and Publishing Company, 1922), pp 14–17.

402. Orange, *An Illustrated History of the Treaty of Waitangi*, p 296.

403. Document K22, p 20; doc A97, pp 49, 52, 55, 146, 148–149; doc A110, pp 469, 568.

404. Document A97, pp 142–143; Orange, *An Illustrated History of the Treaty of Waitangi*, p 298.

at Waikawau. He later played a central role in facilitating the early rūnanga hui in Kāwhia, where support of the Kīngitanga was debated by rangatira from the region.<sup>405</sup>

#### 2.7.3.2 *Pikia Haurua*

Pikia Haurua was also born in the Waipā, around 1810. He is remembered as having a significant role in the land wars at Waikato and Taranaki and for being a faithful follower of Tāwhiao, who he travelled to Taranaki with in 1866. He went on to sign the 1883 petition on behalf of Ngāti Hikairo.<sup>406</sup>

#### 2.7.3.3 *Hōne Te One*

Hōne Te One was born at Mātakitaki around 1810.<sup>407</sup> He opposed the kīngitangi, for fear it could aggravate relations between Māori and Pākehā, though he later played a significant role in facilitating hui between supporters and opponents of the Kīngitanga.<sup>408</sup> He also signed the 1883 Te Rohe Pōtae petition.

### 2.7.4 *Waikato-affiliated rangatira*

#### 2.7.4.1 *Pōtatau Te Wherowhero*

Pōtatau was a senior Waikato rangatira. In 1839, he signed He Whakaputanga (the Declaration of Independence), but soon afterwards he refused to sign the Treaty of Waitangi and encouraged others to do the same.<sup>409</sup> After 1840, he spent much of his time in Māngere where he formed close relationships with governors. In 1858, Te Wherowhero was crowned the first Māori King at Ngāruawāhia, reflecting his mana as a warrior-rangatira and his kinship connections with many other iwi and hapū in Te Rohe Pōtae.

#### 2.7.4.2 *Te Kanawa Te Ikatu*

Te Kanawa Te Ikatu (Ngāti Mahuta, Ngāti Hauā) was a close associate of Te Wherowhero, who led Ngāti Mahuta taua during the 1820s and 1830s. After the departure of Ngāti Toa-rangatira, Ikatu occupied Kāwhia, living at Maketū pā (at the southern edge of the modern township).<sup>410</sup> With other Kāwhia rangatira, he became active in the flax trade during the 1830s. He settled the trader Thomas Smith (Tamete) at Maketū in northern Kāwhia.<sup>411</sup> Te Kanawa signed the Treaty of Waitangi on 21 May 1840 at Kāwhia.<sup>412</sup>

405. Document A98, p 329.

406. Document A98, p 330.

407. Document A98, pp 334–335.

408. Document A78, pp 165–167.

409. Document A23, p 68; Claudia Orange, *The Treaty of Waitangi* (Wellington: Bridget Williams Books, 2015), p 70.

410. Document A101, pp 11–14, 18; see also doc J11, p 5; doc J20, pp 5–6; transcript 4.1.21, pp 1046–1047.

411. Document A110, pp 389–390.

412. Document J5, pp 2–3, 6–8; Orange, *An Illustrated History of the Treaty of Waitangi*, p 296.

### 2.7.4.3 *Kiwi Te Roto*

Kiwi Te Roto was a senior Ngāti Mahuta rangatira. Along with Te Kanawa Ikatu, he occupied northern Kāwhia at Te Wherowhero's request after the departure of Ngāti Toa-rangatira. Of the two, Kiwi was regarded as the senior.<sup>413</sup> During the 1830s, Kiwi encouraged missionaries and traders, providing land for a Wesleyan church and school, and settling the flax trader John Cowell senior (Te Kaora) on land at Pouewe.<sup>414</sup> Kiwi signed the Treaty at Waikato Heads in late March or early April 1840.<sup>415</sup>

### 2.7.4.4 *Hoana Riutoto*

Hoana Riutoto (also known as Te Riutoto) was the great-granddaughter of Te Kanawa Whatupango.<sup>416</sup> She was a Ngāti Mahuta chieftainess who lived at Kāwhia, but also appears to have had land interests inland at Te Kōpua.<sup>417</sup> Te Riutoto was the widow of the Ngāti Mahuta and Ngāti Taimainū rangatira Te Hiakai, who was killed during the Waikato–Maniapoto battles against Ngāti Toa-rangatira.<sup>418</sup> She was subsequently allocated land at Kāwhia. During the early 1820s, she was taken and held captive by Ngāpuhi following the battle of Mātakitaki.<sup>419</sup> She was one of two women who went on to sign the Treaty, signing it at Waikato Heads in late March or early April 1840.<sup>420</sup>

### 2.7.4.5 *Te Mokoroa, Te Pūata, and Peehi*

Ōtāwhao is typically associated with Ngāti Apakura and the Ngāti Paretekawa hapū of Ngāti Maniapoto. But in 1840, three Ōtāwhao rangatira signed the Treaty giving their affiliation as Ngāti Ruru. They were Te Pūata, Te Mokoroa, and Peehi.<sup>421</sup>

Sources in this inquiry variously described Ngāti Ruru as a hapū of Ngāti Kauwhata, Ngāti Hauā, Ngāti Korokī, and Ngāti Apakura.<sup>422</sup> Rewi Maniapoto in the Native Land Court referred to Ngāti Ruru as a Waikato hapū which lived at Ōtāwhao at the invitation of Peehi Tūkōrehu following the marriage of his daughters to Te Wherowhero, but subsequently returned to their homelands further north.<sup>423</sup>

413. Document A101, pp 3, 11–15; doc J20, pp 5–7; transcript 4.1.9, pp 25–26.

414. Document A110, pp 389–390, 398; doc J20, p 7; doc A98, p 212; doc A97, p 137; doc A23, pp 22, 94–95; transcript 4.1.9, pp 25–26.

415. Orange, *An Illustrated History of the Treaty of Waitangi*, p 298.

416. Document A94, p 128.

417. Document A97, p 143; doc O3(d) (Roa), p 144; doc A101, p 12.

418. Document S61(a), p 17; doc A94, p 128.

419. Document O17(a), p 5; doc H9(c), paras 48–49.

420. Orange, *An Illustrated History of the Treaty of Waitangi*, p 298.

421. Document A110, p 469; doc A23 p 70; doc A97, p 146; Orange, *An Illustrated History of the Treaty of Waitangi*, pp 298, 300.

422. Document K22(f), p 1; doc A120, pp 34, 38–40, 56, 166, 212; doc K1, pp 20, 29; doc A124, pp 21–22; doc K16, pp 12–14, 25; doc A110, pp 227–228, 354. Also see Angela Ballara, *Iwi: The Dynamics of Māori Tribal Organisation from c 1769 to c 1945* (Wellington: Victoria University Press, 1998), p 148.

423. Document A110, pp 227–228; also see doc K35, p 5; transcript 4.1.10, p 346; doc K16, p 19.

**2.7.4.6 Wiremu Nera Te Awaitaia**

Te Awaitaia was the leading rangatira of Ngāti Māhanga. Though his birthplace was inland at Waipā, he lived at Whāingaroa for most of his adult life, having forced Ngāti Koata to move south. With his relative Te Wherowhero, he took leading roles in the campaign to oust Ngāti Toa-rangatira from Kāwhia, and in the Waikato conquest of northern Taranaki.<sup>424</sup>

During the 1830s he sponsored the establishment of a Wesleyan mission at Whāingaroa, and in 1836 he was baptised, taking the name Wiremu Nera, after the missionary William Naylor.<sup>425</sup>

He signed the Treaty at Waikato Heads in late March or early April 1840. He also encouraged others to sign.<sup>426</sup> In 1844, he told Governor FitzRoy that they had signed the Treaty having been informed that ‘nothing but kindness proceeded from her [Majesty’s] government’.<sup>427</sup>

**2.7.4.7 Kiwi Ngārau, Tūnui Ngāwaka, and Kāmura Whareroa**

Kiwi Ngārau, Tūnui Ngāwaka, and Kāmura Whareroa were rangatira of Ngāti Tāhinga. They signed the Treaty at the Anglican mission at Maraetai, Waikato Heads in late March or early April 1840.<sup>428</sup>

**2.7.4.8 Te Whata**

Te Whata was a Ngāti Tipa rangatira from Whāingaroa, who signed the Treaty at Waikato Heads in late March or early April 1840.<sup>429</sup>

**2.7.4.9 Muriwhenua**

Muriwhenua was a rangatira of Ngāti Whakamarurangi and Ngāti Hauā.<sup>430</sup> He lived inland at Waipā, but settled with his people at Aotea after the battles of the early 1820s. He signed the Treaty sometime in late March or early April 1840. Like other Aotea leaders, he initially embraced contact with Europeans, supporting the establishment of missions and the development of agriculture. He was baptised at

424. Document P4(b), p 26; doc N49, p 4.

425. Document M9(a), p 2; doc M17, p 6.

426. Orange, *An Illustrated History of the Treaty of Waitangi*, p 298; doc M5, p 2.

427. Document A23, pp 66–67.

428. Document M19(b), pp 5–6; transcript 4.1.16, pp 1137–1138; Orange, *An Illustrated History of the Treaty of Waitangi*, p 298.

429. Document J7, p 8; doc A110, p 469; doc A23, p 70; Orange, *An Illustrated History of the Treaty of Waitangi*, p 300.

430. Three people named Muriwhenua lived at about the same time, and were closely related. This Muriwhenua was sometimes known as Pāora or as Kaitangata. He was the grandson of Whakamarurangi of Ngāti Hauā, the son of Te Umu-ki-whakatane and Pareongaope, daughter of Te Kanawa Whatupango. He was the nephew of another Muriwhenua, who was the son of Pareongaope and Te Aho-o-te-Rangi (Ngāti Hourua). A third Muriwhenua was also known as Hōne Kingi or Hōne Kingi Uekoha. He was a descendant of Te Aho-o-terangi and Te Rawatihoro (Ngāti Hōrua). He also signed the Manukau–Kāwhia sheet, using his Christian name: doc A94, pp 154–157.



a Wesleyan church established on his land.<sup>431</sup> Muriwhenua's relative Hone Kingi Muriwhenua (Ngāti Māhanga) signed the same copy of the Treaty.<sup>432</sup>

#### 2.7.4.10 *Te Aoturoa*

Te Aoturoa (Ngāti Te Wehi, Ngāti Paiaka) was a Ngāti Te Wehi rangatira with influence over much of eastern Aotea.<sup>433</sup> According to Aroha da Silva, Te Aoturoa oversaw trade and small-scale agricultural development and supported the establishment of a flour mill at Aotea.<sup>434</sup> He took the name Hōne Waitere in honour of the missionary John Whiteley. Te Aoturoa signed the Treaty using the name Hōne Waitere on 15 June 1840 at Kāwhia.<sup>435</sup>

#### 2.7.4.11 *Hako and Te Noke/Te Moke*

Two other Ngāti Te Wehi rangatira signed the Treaty. One was Hako, or Hakiwaka, of Aotea, who signed the Treaty in late March or early April 1840. The other was recorded as Te Noke, but may have been Te Moke, who supported the establishment of the Aotea mission station. He signed a copy of the Treaty printed in te reo. The date of this signing is unknown.<sup>436</sup>

### 2.7.5 Ngāti Tūwharetoa, Raukawa, and Whanganui rangatira

#### 2.7.5.1 *Te Heuheu Tūkino Mananui*

Te Heuheu Tūkino Mananui was a Ngāti Tūwharetoa rangatira credited with unifying many tribes in the central North Island, particularly through arranged marriages and the exchange of taonga.<sup>437</sup> He is most widely remembered for his fierce opposition to the Treaty of Waitangi and Pākehā settlement of Ngāti Tūwharetoa lands.<sup>438</sup>

#### 2.7.5.2 *Te Whatanui*

Te Whatanui was a rangatira of Ngāti Raukawa. Spurred in part by continued conflict with Waikato groups, he led a heke in 1828 or early 1829 comprising several Ngāti Raukawa hapū and allied groups from Maungatautari to the Kapiti coast,

431. Document M14(a), p 5; doc A94, pp 155–156; see also doc M18(a), pp 70–71; doc A120, p 94; doc A100(a), pp 5–7, 13; doc M14(a), p 5.

432. Document A94, pp 71, 132, 155–156.

433. His descendants refer to him having homes at Te Pirau, Te Papatapu, Matakowhai, Makomako, and Motakotako: doc N45, p 2; doc A104(i), p 37; doc A103, p 9; transcript 4.1.2, p 48; doc A94, pp 28, 71.

434. Document A104(i), pp 12–13.

435. Document A104(i), pp 112–113; Orange, *An Illustrated History of the Treaty of Waitangi*, p 296.

436. Doc A104(i), p 112; doc A23, p 70; Orange, *An Illustrated History of the Treaty of Waitangi*, p 301. The printed sheet was witnessed by the missionary Robert Maunsell. Claudia Orange speculated that it may date from 1844: Claudia Orange, *The Treaty of Waitangi* (Wellington: Allen & Unwin, 1987), p 62.

437. Document J22, para 15.

438. Document J22, para 11.

known as Te Heke Mai-i-raro.<sup>439</sup> He later established the pā Rangiuru at the Ōtaki river mouth.<sup>440</sup>

### 2.7.5.3 *Te Peehi Tūroa*

Te Peehi Tūroa was a significant Whanganui rangatira whose whakapapa connected him to Ngāti Patutokotoko and Uenuku. Te Peehi claimed descent to four different waka (*Te Arawa, Aotea, Tainui, and Takitimu*), reflecting the period of peace, cemented through a series of marriage alliances, that he was born into.<sup>441</sup> He signed the Treaty at Pākaitore on 23 May 1840.<sup>442</sup>

## 2.8 CONCLUSION

This chapter has described the world of Ngāti Maniapoto and other iwi living in Te Rohe Pōtae before 1840. It was a world in which a dynamic and distinct society developed. As seen throughout this chapter, Te Rohe Pōtae Māori had their own traditions, histories, laws, systems of organisation and conduct, values, and beliefs, all of which contributed to and facilitated this society and their relationships and responsibilities to it. Since the arrival of the great waka and the legendary pre-waka ancestors before them, the district had seen periods of conflict, peace, and realignment, further developing and redefining the world Te Rohe Pōtae Māori lived in. It was a world underpinned by whakapapa and governed by the chiefs and their spiritual, political, and cultural obligations. It was also a world where tikanga regulated relationships. It was into this world that the Treaty of Waitangi was introduced.

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439. Document A86, p 131; Angela Ballara, *Taua: 'Musket Wars', 'Land Wars' or Tikanga? Warfare in Maori Society in the Early Nineteenth Century* (Auckland: Penguin, 2003), p 342.

440. Ballara, *Taua*, p 344.

441. Document A112, pp 19–20.

442. Waitangi Tribunal, *He Whiritaunoka*, vol 1, pp 79–80, 130–131.

## CHAPTER 3

### TE TIRITI O WAITANGI I TE ROHE PŌTAE

Ka uru nga rangatira o Ngati Maniapoto ki tena kotahitanga o nga rangatira o te motu, ki te whakatu i tena tikanga nui, i runga i te mahara tera o puta mai he ora i runga i taua tikanga ki te whakatu i tena tikanga nui.<sup>1</sup>

#### 3.1 INTRODUCTION

Between late March and early September of 1840, some 55 rangatira signed copies of the Treaty of Waitangi at Manukau, Waikato Heads, and Kāwhia. Of those rangatira, at least 22 were from the Te Rohe Pōtae district, including prominent leaders of Ngāti Maniapoto, Ngāti Apakura, Ngāti Mahuta, Ngāti Hauā, Ngāti Te Wehi, Ngāti Māhanga, and Ngāti Ruru. Most of these rangatira were from the north of the district, in particular from the coastal settlements around Whāingaroa, Aotea, and Kāwhia, and the inland settlements at Ōtāwhao and Parawera (east of present-day Te Awamutu). Two – Tāriki and Taonui Hikaka – were very senior Ngāti Maniapoto rangatira based at Te Kūiti, with mana that extended throughout the central and southern parts of the district.

Most signed during a large hui called by the Church of England missionary Robert Maunsell at Waikato Heads late in March 1840. No Crown official attended. Nor had any Crown official set foot in Te Rohe Pōtae prior to the signing. The Treaty text that most of those rangatira signed was an English-language copy, though Maunsell (an able linguist who was highly proficient in te reo Māori) is presumed to have explained it in Māori. Some rangatira subsequently signed a Māori-language copy during visits to the Wesleyan mission at Kāwhia over a period of several months.

By this time, a small group of Europeans had been living in the district for little more than a decade. A handful of traders arrived in the late 1820s and settled around Kāwhia under the protection of Ngāti Mahuta rangatira.<sup>2</sup> Missionaries had arrived during the following decade, settling at Whāingaroa, Kāwhia, and Waipā. Māori welcomed these early arrivals, and valued them for the access they brought

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1. The description of Ngāti Maniapoto motivations for signing the Treaty of Waitangi in the 1904 Kawenata. Tom Roa translated these words as follows: 'Leaders of Ngati Maniapoto entered into that union of the leaders of Maoridom in that significant event believing it would be beneficial (for them and their people)': doc s19(a) (Te Kanawa), p 40.

2. Document A19 (Boulton), p 20; doc A23 (O'Malley), p 22.

to the European world – in particular its goods and technology, such as muskets, food crops, and the printed word.

The Treaty added a new layer to this emerging relationship between Europeans and Māori. From Britain's point of view, the Treaty was a necessary step towards its formal proclamation of sovereignty over New Zealand. Britain's primary motivation for acquiring sovereignty was to control the growing settler population elsewhere in the country, and more specifically to head off the New Zealand Company's attempts to establish colonies outside Crown control.

From the viewpoint of Te Rohe Pōtae Māori, control of settlers was not an immediate issue. The district had a Māori population that ran into the thousands,<sup>3</sup> and a European population that could probably be counted in the tens.<sup>4</sup> Māori in this district wanted settlers in 1840, mainly because their presence opened up new opportunities. Nonetheless, they would have been aware of the challenges that had arisen in other districts where settlement had occurred earlier and at greater pace.

### 3.1.1 The purpose of this chapter

The extent to which the Treaty was understood and signed by rangatira of the district is central to our task in the report. The Waitangi Tribunal's principal function is to consider claims that Māori have been prejudicially affected by Crown acts or omissions that were in breach of the Treaty's principles.<sup>5</sup> A critical first step in considering those claims is to determine the Treaty's meaning and effect as embodied in the two texts (English and Māori).<sup>6</sup> Those texts, as is now well understood, embody significant differences, which give rise to differing interpretations. More broadly, the two texts are a reflection of two legal cultures and two sources of authority.

Our determination of the meaning and effect of the Treaty includes the Treaty rights, obligations, and duties – together rendered as principles of the Treaty – that we consider should have guided the relationship between the Crown and Te Rohe Pōtae Māori after 1840. It is a determination that reflects the spirit of exchange that underpins the Treaty. That spirit emerged from the circumstances in which the Treaty was signed in 1840: how the Treaty was understood by the parties, and how it could have been given practical effect. In this sense, it is a determination that applies not just to the circumstances of 1840, but also to the range of situations

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3. The demographer Ian Pool estimated that in 1840 the 'Waikato tribes', including Waikato-Tainui and Ngāti Maniapoto, accounted for just over 20 per cent of the Māori population. He also estimated that the Māori population in 1840 was somewhere between 70,000 and 90,000. The resulting population range for Waikato tribes (between 14,000 and 18,000) roughly accords with an 1845 estimate (reported in the *New Zealander*) that the Māori population between Mōkau and Manukau Harbour was 18,400: Ian Pool, *Te Iwi Maori: A New Zealand Population Past, Present, and Projected* (Auckland: Auckland University Press, 1991), pp 51–52, 55–56; doc A23, p 81.

4. Dr O'Malley estimated the European population of the Waikato district at no more than a few hundred by the mid-1840s, and that Kāwhia – one of the main places of European settlement in Te Rohe Pōtae – had an estimated population of around 20 in 1841: doc A23, p 81.

5. Treaty of Waitangi Act 1975, ss 5(1)(a), 6.

6. Treaty of Waitangi Act 1975, s 5(2).

that governed the relationship between the Crown and Te Rohe Pōtae Māori in the following years.

As it happened, and as our subsequent chapters illustrate, very little occurred in Te Rohe Pōtae to give effect to the Treaty on the ground in the years immediately after it was signed. Nevertheless, the Crown proceeded to act in accordance with its understanding of the Treaty. Governor Hobson proclaimed British sovereignty in May 1840, before he had received the Treaty sheets which had been signed at Waikato Heads or Kāwhia, and in 1841 institutions of government were established with notional authority across the whole country.

None of these changes reached Te Rohe Pōtae, at least not for some decades. In the first few years after the Treaty, few British officials visited, and no effort was made to establish institutions of British government in the district, nor to discuss with Māori how such institutions might interact with existing Māori systems of law and authority. For all practical purposes, Te Rohe Pōtae continued to be possessed by iwi and hapū, and governed by their rangatira and people in accordance with tikanga.

While political changes did not ensue, economic and educational developments did begin to take place during the 1840s, largely due to the growing influence of missionaries. As the number of mission stations increased, so did the area of land planted in wheat, maize, potatoes, and other imported crops. Several flour mills were built. Mission schools were established, and young Māori leaders attended and learned about British ways. By 1849, Governor Grey wrote that the mission school at Ōtāwhao (in the north of the district) had the most thriving and contented people he had seen anywhere in the world.<sup>7</sup>

During the 1850s, settler numbers in New Zealand increased, and settlers' political influence grew. The Crown, in response, sought to assert its authority across a broader territory, and to acquire more Māori land to meet settler demands. In Te Rohe Pōtae, this included the confirmation of pre-Treaty land transactions, as well as Crown purchases of land in the Mōkau and Whāingaroa coastal districts (see chapters 4 and 5). Partly as a result of the Crown's approach to acquiring land for European settlement, Māori in these and neighbouring districts became more and more concerned with how they might protect their tino rangatiratanga. As the Crown granted responsible government to Ministers (responsible to a settler Parliament), Māori began to explore their own new institutions. The Kingitanga was born, and war followed (see chapter 6).

It was not until the 1880s that Te Rohe Pōtae Māori and the Crown were able to enter into sustained discussions about how the Treaty relationship might be brought into practical effect. At that time, the Crown, seeking land for the North Island Main Trunk Railway, began to negotiate with the district's Māori leaders. In return for taking down the aukati which had held their territories secure in the post-war years, and consenting to the railway, Māori imposed certain conditions. The Crown would have to pass laws and establish institutions that would secure

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7. Document A23, p123.

their continued authority. These negotiations, and the Crown's subsequent actions, are the subject of constitutional claims in this inquiry, which are addressed in chapter 8.

### **3.1.2 How the chapter is structured**

The chapter has three main parts. First, the views of the parties on the meaning and effect of the Treaty in this inquiry district are summarised. Secondly, the Treaty and its signatories in the district are presented and placed in their historical context. Thirdly, the chapter examines how the Treaty is best understood in the inquiry district. The rights guaranteed to Māori by the Treaty and the rights gained by the Crown are discussed, followed by an analysis of what the Treaty meant for the relationship between the Crown and Māori authority in the district. Lastly, we draw conclusions on the Treaty's meaning and effect in the district.

## **3.2 ISSUES**

The main purpose of this chapter is to establish the meaning and effect of the Treaty and its principles, so that its application to events in our district that occurred after 1840 is clear.

### **3.2.1 What other Tribunals have said**

The Waitangi Tribunal has built up a considerable body of jurisprudence about the Treaty's meaning and effect and its application in differing circumstances.

Other Tribunals have explained how, through the Treaty, the Crown acquired a right to govern, and in return acquired an obligation to actively protect Māori rights and interests. Māori retained tino rangatiratanga, while also acquiring the rights of British subjects. Those Tribunals, as well as the courts, have found that the Treaty created a partnership between Māori and the Crown, reflecting its original promise as a foundation for mutually beneficial co-existence between Māori and the Crown. Tribunals have also found that the Crown owed Treaty duties to hapū and iwi even if they were not given the opportunity to sign.

We discuss the views of these Tribunals in greater detail in section 3.4.

### **3.2.2 The parties' positions**

The parties in this inquiry had considerable differences over their understanding of the relationship between the Crown's authority (kāwanatanga) and that of Māori (tino rangatiratanga), and the relative power that each was to have.

The claimants see the Treaty relationship as one of formal equals, whilst the Crown sees its governing power as superior to the tino rangatiratanga guaranteed to Māori.

#### **3.2.2.1 The claimants' position on the Treaty's meaning and effect**

Counsel for several claimant groups submitted that, prior to 6 February 1840, the only political authority that existed in New Zealand was the mana and

rangatiratanga of Māori hapū and their leaders. Māori in Te Rohe Pōtāe had complete sovereignty over their territories.<sup>8</sup> They submitted the Treaty did little to alter that authority. Rather, it provided for Māori communities to continue to govern themselves according to their own mana and tikanga, while allowing the Crown to establish a limited form of government that did not impinge on tino rangatiratanga. By signing the Treaty, rangatira committed to working cooperatively with the Crown in ways that would bring mutual benefit. They did not, however, agree to cede their sovereignty.<sup>9</sup>

In pleadings on constitutional issues, claimant counsel described sovereignty as ‘the supreme, absolute power by which any State is governed’, arguing that sovereignty ‘may be exercised internally as when it inheres to a people or its rulers, or externally, where it comprises the independence of one political body with respect to other political bodies’. Whereas the European concept of sovereignty centred on the nation-state and its institutions of civil government, the key components of sovereignty were ‘political organisation, specific territorial control and a factual independence.’<sup>10</sup>

Counsel submitted that the sovereign authority of Māori ‘flows from the fact that long before the arrival of Europeans in what is modern day New Zealand, Māori were living here in organised societies and occupying the land as their forefathers of many, many generations had’. Māori were governed according to tikanga, a system of law and regulation that governed daily activities and interaction among people and communities, was strictly enforced, and struck a balance between the sometimes competing needs of individuals, whānau, hapū, and iwi.<sup>11</sup>

Counsel submitted that, upon the arrival of Europeans, the fundamental legal and political institutions of iwi and hapū remained intact. Britain recognised the sovereignty of hapū and iwi in various ways prior to the Treaty, including in Lord Normanby’s 1839 instructions to Hobson.<sup>12</sup> Māori did not cede their sovereignty through the Treaty, and ‘understood that its effects were primarily directed at Pakeha and the better control of British subjects (not Maori)’<sup>13</sup>

With respect to the Māori and English texts of the Treaty, claimants submitted that signatories would not have understood the ‘kāwanatanga’ ceded in article 1 to mean sovereignty. Rather, they would have understood kāwanatanga to mean ‘a limited form of government.’<sup>14</sup> On the other hand, they submitted that signatories would have understood the guarantee of ‘tino rangatiratanga’ as a guarantee of sovereignty or of mana motuhake, which they characterised as independence, authority, and nationhood in accordance with tikanga. Those who signed therefore

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8. Submission 3.4.252, pp 13–17, 42, 123–125; submission 3.4.252(b), pp 21–23; statement 1.5.17, pp 3–5; see also submission 3.4.157(a).

9. Submission 3.4.252, pp 4, 123–125; submission 3.4.252(b), pp 5, 21–23; submission 3.4.127, p 4.

10. Statement 1.5.17, p 2.

11. Statement 1.5.17, paras 6–9.

12. Statement 1.5.17, paras 13, 16, 31.

13. Statement 1.5.17, paras 33, 36.

14. Submission 3.4.252, pp 13–17.

did not cede their sovereignty, and believed that the Treaty ‘would not affect their tribal authority’<sup>15</sup>

In addition, the claimants argued that the intention of the parties was an important matter for the Tribunal to consider. In looking at this issue, counsel submitted that basic contract law principles should be applied to make such a determination, which requires looking at the surrounding circumstances. This approach, they submitted, was adopted by the Waitangi Tribunal in the *Te Roroa Report*. These contract law principles are the source of the *contra proferentem* rule where ambiguities in a text are construed against the party that wrote the text. Counsel pointed out that this approach to interpreting the text of the Treaty was adopted by the Tribunal in the *Orakei Report*. Thus, in applying contractual principles to the interpretation of the Treaty, it was submitted that ‘all of the Māori signatories did not intend to cede sovereignty’.<sup>16</sup>

Further, claimants said that those who signed the English text could have understood it only through Māori language explanations, which may have included a reading of the Māori text and other verbal explanations of the Crown’s intentions. Their signatures indicated consent to these Māori-language explanations, not to the content of the English text.<sup>17</sup> Claimants told us that their tūpuna had grown to trust the missionaries and signed under their influence. They viewed the relationship in personal terms, as an alliance between themselves and the governor which would bring mutual protection and prosperity, while guaranteeing their ongoing independence.<sup>18</sup> Dan Te Kanawa, for example, told us that the time of the signing was ‘a period of great opportunity’, in which his Ngāti Maniapoto and Ngāti Apakura tūpuna retained full authority over tribal rohe (territories) and resources, and could control the entry of settlers while ‘acquiring new knowledge, skills and capability to realise the potential benefits of these new opportunities’.<sup>19</sup>

Claimants referred to contemporary statements from Māori who were present at the Treaty signings, including the Waikato rangatira Pōtatau Te Wherowhero (who was later established as the first Māori King), who wrote to Governor Robert FitzRoy in 1843 stating that those rangatira ‘fully assented’ to the Crown’s proposal ‘because that Treaty was to preserve their chieftainship’.<sup>20</sup> The continued insistence of rangatira on their independence after 1840 and their refusal to submit to European laws or accept Crown mediation in their disputes were also evidence of this understanding.<sup>21</sup>

15. Submission 3.4.252, pp 16–17.

16. Submission 3.4.252, pp 44–48.

17. Submission 3.4.252, pp 33–44.

18. Claim 1.1.114, p 1; doc 552 (Walters), pp 9–10; doc H15 (Kaati), p 4; doc S19 (Te Kanawa), p 9; doc B1 (Te Muraahi), pp 5–6; doc J5 (Maki-Midwood), p 17; transcript 4.1.10, pp 105–106 (Gordon Lennox, hearing week four, Mangakotukutuku Campus, 8 April 2013); doc K22 (Lennox), pp 20–22; doc M19(b) (Te Rangi), pp 5–6; doc M5 (Watene, Pihama, and Watene), pp 10–11; see also doc A23, p 142; doc A97 (Borell and Joseph), p 52.

19. Document S19, p 8.

20. Submission 3.4.252, p 50. For further discussion of Te Wherowhero’s letter, see section 3.4.3.2.2.

21. Submission 3.4.252, p 50; statement 1.5.17, pp 6–7.



Some claimants also pointed to the fact that a number of hapū and iwi in the district did not sign the Treaty. They submitted that those who did not sign are not bound by its terms, but that the Crown – by way of the Treaty – issued a unilateral set of promises to non-signatories.<sup>22</sup>

Claimants submitted that: ‘If, as the Crown asserts, the acquisition of Māori consent was a self-imposed condition precedent to its assertion of sovereignty, then the Crown has clearly failed to meet what it itself understood to be the requisite benchmark.’<sup>23</sup>

### **3.2.2.2 The Crown’s position on the Treaty’s meaning and effect**

The Crown saw the Treaty’s meaning and effect differently. The Crown submitted that the ‘essential nature of its Treaty relationship with Māori is the same despite regional differences in Crown-Māori engagement across the 19th century’.<sup>24</sup>

The Crown also referred to *jus gentium*, the law of nations, noting it pre-dates the body of law that today is known as ‘international law’. Counsel referred to the evidence of Paul McHugh before the Paparahi o Te Raki inquiry to contend that in accordance with *jus gentium*, the British Crown recognised the sovereignty of non-Christian polities. Thus, prior to entering into the Treaty, it had recognised that ‘the Māori tribes of New Zealand (including those of the Rohe Pōtae) held legal sovereignty over New Zealand’. The Crown then submitted that in 1840 it understood that *jus gentium* required it to obtain sufficient consent of Māori before it established sovereignty. The Treaty was the means by which it obtained that consent.<sup>25</sup>

The Crown’s position was that, ‘through the Treaty texts, signatories agreed to the Crown establishing a government in New Zealand that would have authority over all people and over all land in New Zealand’.<sup>26</sup> The Crown acknowledged the likelihood that there were many different intentions and understandings of the Treaty among Māori signatories, and that those understandings would have been based on the Māori text of the Treaty and the events surrounding the signing in the district.<sup>27</sup> The Crown’s view was that the Treaty’s incomplete coverage did not limit its effect across all of New Zealand.<sup>28</sup>

The Crown submitted that ‘[u]nder its own laws and practice’ it ‘did not acquire sovereignty simply through the Treaty of Waitangi itself, but through a series of constitutional and jurisdictional steps’. Those steps included obtaining consent for Crown sovereignty through the Treaty, issuing proclamations, and publication of those proclamations in the *London Gazette* on 2 October 1840.<sup>29</sup> The Crown submitted that the Court of Appeal (in the 1987 *Lands* case) ‘found that the Crown’s

22. Submission 3.4.252, pp 5, 124; submission 3.4.252(b), pp 3–4, 21; submission 3.4.127, pp 4–5.

23. Submission 3.4.127, p 6.

24. Submission 3.4.312, p 5.

25. Submission 3.4.312, p 8.

26. Submission 3.4.312, p 1.

27. Submission 3.4.312, p 4.

28. Submission 3.4.312, pp 4–5.

29. Submission 3.4.312, pp 1, 7–15.

sovereignty over New Zealand was beyond dispute once Captain Hobson's proclamations were gazetted' – a finding which the Crown relies on 'as to the fact of its sovereignty'.<sup>30</sup>

The Crown submitted that its acquisition of sovereignty through these jurisdictional steps did not diminish the constitutional significance of the Treaty, and nor did it diminish the Crown's Treaty obligations.<sup>31</sup> The Crown acquired sovereignty 'honourably, fairly, reasonably and in good faith', and in accordance with the rules of *jus gentium*.<sup>32</sup>

Sovereignty, the Crown submitted, 'denotes the paramount civil authority'. In 1840, British authorities associated this authority with 'the power to constitute a "civil government" whose members and subjects owed paramount allegiance to the Queen'. The sovereignty obtained over New Zealand 'extended over all of the area proclaimed, and all the people within that territory', and meant that the 'imperial Queen-in-Parliament held absolute and unfettered capacity to make any law'.<sup>33</sup>

The Crown also said that 'British sovereignty did not preclude local Maori authority continuing in place'. 'Maori customary law continued to apply between Maori, subject to colonial criminal law, and subject to those elements of custom considered to be contrary to fundamental principles of common law'.<sup>34</sup> In hearings, Crown counsel clarified that the Crown's Treaty duties to Māori did not place a 'legal fetter' on the Crown, but rather imposed a 'fetter in terms of the honour of the Crown'.<sup>35</sup>

The Crown further distinguished between *de jure* sovereignty (sovereignty under the law) and *de facto* sovereignty (the practical exercise of sovereignty).<sup>36</sup> Crown counsel noted in hearing:

The Crown's position is that it acquired *de jure* or legal sovereignty in 1840, but for many reasons it wasn't able from that point to exercise effective or *de facto* sovereignty in all places at all times from that point. The exercise of *de facto* sovereignty occurred incrementally over time, as a result of in part discussion and negotiations with Māori and that's very clearly demonstrated in this inquiry district.<sup>37</sup>

Prior to the mid-1880s, the Crown acknowledged, *de facto* sovereignty remained with Te Rohe Pōtae Māori, as was demonstrated by (among other things) their

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30. *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641, 690 per Somers J and Richardson J at 671 (submission 3.4.312, pp 1–2).

31. Submission 3.4.312, p 2.

32. Submission 3.4.312, p 11.

33. Submission 3.4.312, pp 12–13

34. Submission 3.4.312, p 13.

35. Transcript 4.1.24(a), p 51 (Crown counsel, hearing week 17, James Cook Hotel Grand Chancellor, Wellington, 11 February 2015).

36. Transcript 4.1.24(a), pp 37–38, 41–43, 55 (Crown counsel, hearing week 17, James Cook Hotel Grand Chancellor, Wellington, 11 February 2015).

37. Transcript 4.1.24(a), pp 41–43 (Crown counsel, hearing week 17, James Cook Hotel Grand Chancellor, Wellington, 11 February 2015).

establishment and enforcement of an aukati to control access to the district. Although Te Rohe Pōtae Māori retained practical authority over the district, the Crown's view was that they had no legal authority, and the aukati was therefore not supported by any legal authority.<sup>38</sup>

The Crown further stated that under the Treaty, the matter of how *de jure* sovereignty became *de facto* sovereignty was one of the matters for the Crown to negotiate with Māori. This negotiation was not required by law, but was part of the Treaty relationship.<sup>39</sup> The gap between assertion of *de jure* sovereignty and establishment of *de facto* sovereignty also reflected practical realities, including a need for resources to support the machinery of government,<sup>40</sup> and the need for the Crown to proceed with 'prudence' and with 'some caution and discretion' in establishing practical authority outside of European settlements.<sup>41</sup>

The Crown submitted that the assertion of *de facto* sovereignty 'was not legally inconsistent with the full legal sovereignty obtained in 1840'. Rather, it 'reflected the political and practical realities of colonial government':

The Crown submits that it was not legally obliged to seek further consent of the Rohe Pōtae Māori to the exercise of Crown authority in the district after 1840. Following 1840, the relationship between the Crown and Rohe Pōtae Māori was not a 'state to state' relationship. It was a political and constitutional relationship – a Treaty relationship manifested in a particular circumstance . . . [T]he relationship was not between two sovereignties, but between the Crown and iwi. Māori were entitled, under the Treaty, to specific consideration and engagement with the Crown. But this was not a function of any *de jure* statehood or quasi-state relationship.

However, the Crown accepts that the Tribunal may inquire into whether the Crown's conduct in exercising its sovereign authority in the district was consistent with Treaty principles.<sup>42</sup>

The Crown considered that the precise details of how its governing authority was to be exercised, and the institutional structures and relationships that would support it, were matters that remained to be worked out through further debate and discussion.<sup>43</sup> 'British sovereignty did not preclude all Māori authority or customary law from having legal status in the colony.' The Crown acknowledged that 'a proper matter for debate' was whether the Crown 'constituted new forms of government in a way consistent with Treaty principles.'<sup>44</sup>

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38. Transcript 4.1.24(a), p 43 (Crown counsel, hearing week 17, James Cook Hotel Grand Chancellor, Wellington, 11 February 2015).

39. Transcript 4.1.24(a), pp 37–38, 41–43 (Crown counsel, hearing week 17, James Cook Hotel Grand Chancellor, Wellington, 11 February 2015); submission 3.4.312, p 12.

40. Transcript 4.1.24(a), p 42 (Crown counsel, hearing week 17, James Cook Hotel Grand Chancellor, Wellington, 11 February 2015).

41. Submission 3.4.312, pp 12–14.

42. Submission 3.4.312, pp 11–12.

43. Submission 3.4.312, pp 1, 5.

44. Submission 3.4.312, p 1.

### 3.2.3 Issues for determination

Having reviewed the Tribunal Statement of Issues for this inquiry<sup>45</sup> and the differences between the parties, we are required to address the following questions in this chapter:

- ▶ What rights were guaranteed to Māori through the Treaty?
- ▶ What rights did the Crown acquire through the Treaty?
- ▶ How would the Crown and Māori work together?

We begin by describing the events that led to the signing of the Treaty in the district, including the arrival of Europeans, the political events that led the Crown to present the Treaty to Māori, and the signings of the Treaty by various rangatira. We then set out our analysis and conclusions on the Treaty's meaning and effect.

## 3.3 THE TREATY AND ITS SIGNATORIES

The Treaty was brought to the fringes of Te Rohe Pōtae in 1840, where a dynamic Māori world operated. Although European settlement had been very limited up to that point, many Te Rohe Pōtae Māori communities had demonstrated an interest in European goods, ideas, and technology. Although both Māori and Pākehā adapted their customs to some extent in order to ensure their relationships were successful, Māori remained in the majority and continued to exercise authority over the district. Rangatira engaged with Europeans because they had opportunities to advance their people's well-being in accordance with their duties as leaders.

### 3.3.1 The arrival of Europeans in Te Rohe Pōtae

Prior to 1840, contact between Europeans and Māori was fairly limited. Captain Cook sailed the *Endeavour* between Karewa and the entrance to Kāwhia Harbour in 1770, but did not land.<sup>46</sup> It is possible that Captain Felix Tapsell visited Kāwhia in 1805, but the evidence is not conclusive.<sup>47</sup>

#### 3.3.1.1 Early trade

Regular contact began in the late 1820s, with trade as the initial focus. After Waikato and Ngāpuhi made peace, the Kāwhia rangatira Te Puaha travelled to the Bay of Islands in 1828, returning with a European ship's captain named John Rodolphus Kent (Hamukete)<sup>48</sup> From this initial contact, a trading relationship grew. Kent travelled to Sydney, returning with other traders, who settled in the early 1830s among Ngāti Mahuta rangatira around Kāwhia Harbour. Kent married Te Wherowhero's daughter and settled at Heahea on the northern shore. Other traders lived under the protection of Kiwi Te Roto, Te Kanawa Te Ikatū, and Te Tuhi.<sup>49</sup>

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45. Statement 1.4.3, pp 17–21.

46. Document A23, p 20.

47. Document A23, p 21.

48. Document A23, pp 21–22.

49. Document A70 (Boulton), p 27; doc A26 (Francis), pp 8–15; doc A23, p 22; doc A97, p 141.

The senior Ngāti Maniapoto rangatira Haupōkia Te Pakarū and Te Waru, of southern Kāwhia, travelled to Sydney in 1830, also returning with traders who established stations at Ahuahu on Kāwhia Harbour, and further south at Mōkau.<sup>50</sup> Haupōkia's descendant, Moepātu Borell, told us that he made land available for inland Ngāti Maniapoto hapū to live on so they too could benefit from the trade.<sup>51</sup>

The trading relationship brought mutual benefit. Potatoes and pigs had already arrived in Kāwhia and the Waipā by the 1820s, as had maize, pumpkins, and some other vegetables, probably through trade among Māori. But trade brought access to a wider range of agricultural crops and goods, including muskets and gunpowder. These gave Waikato and Te Rohe Pōtae Māori security against further invasions from the heavily armed Ngāpuhi, and allowed them to seek utu in Taranaki. In turn, Māori offered foreign traders a steady supply of flax, as well as pork, potatoes, and other produce to help feed Australia's colonial settlements and penal colonies.<sup>52</sup>

As in other parts of the country, this early phase of contact occurred largely under Māori control. Traders lived among Māori communities under the protection of rangatira; some married into their host communities, and in some cases acquired rights to use and occupy land, at least for the duration of the marriage.<sup>53</sup> Two incidents highlight the traders' vulnerability. In one, a Mōkau-based trader was caught up in hostilities between two warring factions: an invading party from Aotea took him home with them (he later moved to Tolaga Bay).<sup>54</sup> In another, members of Ngāti Hikairo plundered tobacco and other goods from a visiting ship. This was an indication of the value of trade to Māori, though their leader, Pikia, then made reparations comprising 2,000 kete of potatoes and pork and one of his sons, who was ordered on board as a slave.<sup>55</sup>

### 3.3.1.2 *The arrival of missionaries*

Before long, traders were followed by missionaries. Both Wesleyans and Anglicans established missions in the district. The Wesleyan Missionary Society (WMS) opened missions at three locations: Kāwhia, in 1834; Ahuahu (later renamed Te Waitere), in April 1835; and at Whāingaroa, also in April 1835. In 1834, the Church Missionary Society (CMS) opened a mission at Mangapōuri, where the Waipā and Pūniu Rivers meet. These mission stations were abandoned in 1836 after a disagreement between the Wesleyan and Anglican missionary societies, but most subsequently reopened. The Church of England opened another mission at Ōtāwhao

50. Document A26, pp 10, 13; doc A70, pp 17, 28; doc A110, p 435 (Joseph).

51. Document 11(e) (Borell), pp 2–3; transcript 4.1.10, pp 150–151 (Moepātu Borell, hearing week four, Mangakotukutuku Campus, 8 April 2013).

52. Document A19, pp 19–20; doc A23, pp 22–25.

53. Document A23, p 24; transcript 4.1.8, pp 1212–1213 (Moepātu Borell, hearing week two, Waitomo Cultural and Arts Centre, Te Kūiti, 14 December 2012).

54. Kerryn Pollock, 'King Country region – Māori and European contact', *Te Ara – the Encyclopedia of New Zealand*, Ministry for Culture and Heritage, <http://www.TeAra.govt.nz/en/king-country-region/page-5>, last modified 30 March 2015.

55. Document A23, pp 22–23.

in 1841, and a Roman Catholic mission station was set up at nearby Rangiaowhia about 1844.<sup>56</sup>

These missions were established to be at least partially independent of their host communities – though they were nonetheless expected to make gifts to their hosts, such as axes, pencils and slates, and tobacco. The missionaries typically spoke at least some Māori.<sup>57</sup>

The missionaries' accounts indicate that they were enthusiastically received, with hundreds attending services.<sup>58</sup> Māori desire for technological and economic advancement appears to have been a significant factor: missionaries provided access to literacy, and to new agricultural techniques and crops, notably wheat, which was grown at Ōtāwhao and nearby Rangiaowhia from 1839.<sup>59</sup>

Rangatira who provided land for mission stations were doing so because they perceived benefits for their people. In turn, the willingness of missionaries such as John Whiteley at Kāwhia and John Morgan at Ōtāwhao to share knowledge gave them influence among Māori, allowing them to share their ideas for spiritual as well as material advancement.<sup>60</sup> We consider the various land transactions with the missionaries in chapters 4 (Wesleyan claims to land at Kāwhia and Whāingaroa) and 5 (the Ōtāwhao and Rangiaowhia transactions). Māori were interested in missionary ideas, and would selectively adopt them or incorporate them into existing belief systems. A few rangatira, such as Te Awaitaia of Ngāti Māhanga, were baptised during the 1830s and became strong supporters of missionary efforts.<sup>61</sup>

Māori interest in missionary ideas should not be overstated. Impacts varied from person to person, and from place to place, and missionaries themselves acknowledged that Māori who attended church services or were baptised were scarcely 'converted' to western beliefs and ways. Rather, they were adding new ideas to existing social and belief systems.<sup>62</sup>

The German naturalist Ernst Dieffenbach visited Whāingaroa, Aotea, Kāwhia, and Ōtāwhao in 1840, finding many Māori who professed themselves Christians, and some who had learned to read and write, while also noting that most rangatira remained aloof from the missionaries and tended not to convert.<sup>63</sup> Further south, missionaries had less impact. At Mōkau, Dieffenbach found Māori 'in very prosperous circumstances,' with European clothing and cultivations of potatoes, maize,

56. Document A23, pp 33–36; doc A26, pp 21–22; doc A70 (Boulton), p 19; doc A110, pp 422–425; doc A98 (Thorne), pp 219–223; doc A97, pp 150–151.

57. Document A23, pp 35–36; Kerry Howe, 'The Maori Response to Christianity in the Thames–Waikato Area, 1833–1840', in *New Zealand Journal of History*, vol 7, no 1 (1973), pp 34–46.

58. Document A23, pp 35–36; Howe, 'The Maori Response to Christianity in the Thames–Waikato Area', pp 34–46.

59. Document A23, pp 22–25; doc A97, pp 167–174.

60. Document A23, pp 33–36; Howe, 'The Maori Response to Christianity in the Thames–Waikato Area', p 35.

61. Document A23, pp 33–36.

62. Document A23, pp 33–36; Howe, 'The Maori Response to Christianity in the Thames–Waikato Area', p 35.

63. Document A23, pp 39–40.

melons, taro, tobacco, and other crops along the riverbanks. But direct contact with Europeans was rare, and Māori in that location were sceptical of missionaries and Europeans generally.<sup>64</sup> It was not until after 1840 that the first mission station was established at Mōkau.<sup>65</sup>

In Te Nehenehenui, the great inland forest of Ngāti Maniapoto, where contact was rarer, missionary and European influence was similarly limited. We have no evidence that traders or missionaries entered the interior of the inquiry district before 1840. The artist George Angas travelled through the interior in 1844. Angas found that the influence of Christianity was weak, but observed the law of tapu applying with considerable rigour to Māori and to European traders alike.<sup>66</sup> (See chapter 2 for a discussion of tapu.)

### 3.3.1.3 *Early attempts at land transactions*

In addition to the local efforts of missionaries to acquire land from Māori to establish missions, missionaries also became drawn into the early efforts of incoming settlers to acquire land. In October and November 1839, the New Zealand Company purported to enter into a deed of sale with Te Rauparaha and other Ngāti Toa rangatira concerning 20 million acres of land between Mōkau and the Hurunui River in the South Island.<sup>67</sup>

In order to protect the land from the New Zealand Company, the Wesleyan missionary William White attempted to purchase all the land between the Mōkau and Whanganui Rivers. He did so in a deed signed on 28 January 1840 at Kāwhia. Among the signatories were the Ngāti Maniapoto rangatira Haupōkia Te Pakarū and Te Rangituatea, as well as Kiwi Te Roto (Ngāti Mahuta), and Muriwhenua and Wiremu Nera Te Awaitaia (who were both of Ngāti Mahanga). All but Te Rangituatea went on to sign the Treaty. Those who signed White's deed received £30 worth of goods out of a total intended payment of £1,000. However, White did not return to make further payments on the deed.<sup>68</sup>

The New Zealand Company then attempted to follow up on its original deed by entering into another with Taranaki Māori on 15 February 1840, this time for land between the Mōhakatino and Haurangi Rivers.<sup>69</sup> Although these attempts at purchase initially came to nothing, they started a process whereby the Crown sought to acquire land in Taranaki, which in turn became a lingering point of contention in the relationship between the peoples of Te Rohe Pōtāe and the Crown after 1840.

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64. Ernst Dieffenbach, *Travels in New Zealand with Contributions to the Geography, Geology, Botany, and Natural History of that Country*, 2 vols (London: John Murray, 1843), vol 1, p 169 (doc A23, pp 37–38).

65. Document A28 (Thomas), p 29.

66. Document A23, pp 20, 36, 43–44.

67. Document A23, p 93.

68. Document A23, pp 94–95.

69. Document A23, pp 95–96.

### 3.3.2 Britain's intentions and the first Treaty signings

In other parts of New Zealand, contact between Māori and Europeans had been going on for much longer, and ran much deeper. In Te Tai Tokerau, European trading and whaling settlements were established at Kororāreka and Hokianga, and missionary settlements elsewhere. Trade had been occurring since the late eighteenth century and had become a source of considerable mana for northern rangatira, as well as an important means of acquiring resources, including muskets and gunpowder. Relationships of a diplomatic nature also emerged. Several rangatira had visited Sydney, where they were treated as visiting dignitaries, and Hongi Hika had visited London, where he met King George IV. Of the 2,000 Europeans living in New Zealand in 1840, about half lived in the north.<sup>70</sup>

#### 3.3.2.1 Background to the Treaty signing

The events leading to the signing of the Treaty at Waitangi on 6 February 1840 have been considered most recently in *He Whakaputanga me te Tiriti: The Declaration and the Treaty*, the Tribunal's Stage 1 report on the Te Paparahi o Te Raki inquiry. We rely on the account provided in that report as an authoritative statement about the circumstances which gave rise to the Treaty, including the signings in the north. It is not necessary to describe those events in detail here, but it is helpful to briefly recap some of the key elements.

During the 1830s, official relations between northern Māori and Britain were dominated by two key themes: mutual benefit, and protection. In general, northern Māori regarded their relationship with settlers and missionaries as mutually beneficial, and welcomed opportunities for trade and the acquisition of knowledge, ideas, and technology (including writing). There were also occasions in which they sought protection from foreign threat, or assistance in negotiating their international relationships.

In 1831, a group of northern rangatira appealed to Britain for protection against France, following concerns that it intended to colonise their lands. In that petition, they also asked Britain to impose order on disorderly or violent Europeans. They had the demographic and martial power to do so themselves, but did not want to upset their relationships with traders and missionaries, or with Britain more generally.<sup>71</sup>

In 1835, in response to another perceived threat from France, a group of 35 northern rangatira signed He Whakaputanga o te Rangatiratanga o Nu Tirene (also known as the Declaration of Independence of New Zealand), declaring their tino rangatiratanga ('independence' in the English version) and their Kingitanga and mana i te whenua ('sovereign power and authority'), and asserting that no authority other than them could have lawmaking powers.<sup>72</sup>

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70. Document A23, pp 46–48; Waitangi Tribunal, *He Whakaputanga me te Tiriti: The Declaration and the Treaty* (Wellington: Legislation Direct, 2014), pp 238–239.

71. Document A23, p 48; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 108–137.

72. Document A23, pp 51–56; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 160–171.



Britain recognised the sovereignty of hapū and iwi, and for much of the 1830s was reluctant to intervene in these islands beyond what was necessary to secure peaceful trading relationships. Three factors combined to cause a change of heart, and to push Britain in 1839 to commit to annexation. These were: the attempts by the New Zealand Company to establish settler colonies in New Zealand, with or without the Government's approval; further rumours of French ambitions in New Zealand; and grim, exaggerated reports of Māori warfare, land loss, and depopulation from the British Resident James Busby. Together, these led British officials towards the view that some form of British authority was needed in New Zealand, to control settlers and settlement, and thereby to protect Māori.<sup>73</sup>

New Zealand was hotly debated among British officials during the last years of the 1830s, and several options were considered, including the establishment of a British protectorate over the country, and the establishment of British authority in some parts of the country only. Britain's hand was effectively forced when the New Zealand Company ship *Tory* set sail for Wellington, with the intention of establishing a colony there.<sup>74</sup> In response, Henry Labouchere (under-secretary of the Colonial Office) announced that 'the Government had come to the determination of taking steps which would probably lead to the establishment of a colony in that country.'<sup>75</sup> The naval officer William Hobson was therefore despatched to New Zealand with instructions to secure Māori consent for a British declaration of sovereignty over any parts of New Zealand that they were willing to place under the Crown's dominion.<sup>76</sup>

### 3.3.2.2 *Normanby's instructions*

Hobson's instructions from the secretary of state for the colonies, Lord Normanby, acknowledged New Zealand 'as a sovereign and independent state', at least so far as that was possible for a tribal people without an overarching nationwide civil government. Normanby wrote:

I have already stated that we acknowledge New Zealand as a sovereign and independent state, so far at least as it is possible to make that acknowledgment in favour of a people composed of numerous, dispersed, and petty tribes, who possess few political relations to one each other, and are incompetent to act, or even deliberate, in concert. But the admission of their rights, though inevitably qualified by this consideration, is binding on the faith of the British Crown.<sup>77</sup>

The Crown could therefore assert sovereignty only with 'the free and informed consent' of the Māori people 'expressed according to their established usages.'<sup>78</sup>

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73. Document A23, pp 59–63; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 183–187, 317.

74. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 295–315.

75. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, p 315.

76. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 312–325; see also doc A23, pp 61–63.

77. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, p 317; see also doc A23, p 61.

78. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, p 317.

According to Normanby, Britain had been forced to act because extensive settlement had become inevitable. Without the controlling influence of British government, the coming influx of settlers would have disastrous effects on the Māori population. A surrender of sovereignty was the best means of preventing Māori depopulation and preserving Māori land.<sup>79</sup>

In this, Normanby's views were coloured by reports from Busby and others in northern New Zealand. While Māori were being asked to surrender sovereignty, Normanby wrote, this was scarcely a sacrifice, as the influence of settlers had rendered their sovereignty 'precarious' and 'little more than nominal'. Acquiring the benefits of British authority and protection 'would far more than compensate for the sacrifice by the natives, of a national independence, which they are no longer able to maintain.'<sup>80</sup> The Te Paparahi o Te Raki Tribunal found that this was a profoundly inaccurate picture of the Bay of Islands and Hokianga.<sup>81</sup> In the context of this inquiry, we find similarly that Busby's reports bore no relation to the situation on the ground in Te Rohe Pōtae, where European contact had taken place to a far lesser degree than in the north, and Māori authority was under no threat whatsoever.

Normanby acknowledged that Māori might be suspicious of Britain's motives, and were likely to be unfamiliar with the Treaty's English technical terms, and therefore unable to comprehend its exact meaning and effect under British law. He instructed Hobson to emphasise the harm that would come to them if they did not sign – in particular, that Britain would be unable to protect them against the actions of British settlers with no laws of their own. Britain's principal motive, Normanby made clear, was not to obtain sovereignty for its own sake, but rather for the sake of controlling settlers and settlement, and the Treaty was to be clearly explained in these plain terms.<sup>82</sup>

Similarly, although sovereignty (in British eyes) necessarily implied a supreme lawmaking and governing authority, Britain had no immediate intention of asserting its authority over Māori territories. On the contrary, Normanby instructed Hobson to secure Māori possession of their lands and defend them 'in the observance of their own customs,' except to the extent necessary to put an end to what Normanby described as 'savage practices,' such as cannibalism. With sufficient exposure to mission schools, he believed, Māori would adopt British ways of their own accord, and need not be pushed.<sup>83</sup>

Normanby's letter of instruction described the terms on which Hobson was to seek a treaty with Māori, but it also proposed measures that would govern the sale of Māori land to Europeans. He gave specific instructions that Māori interests in their lands should be protected, noting that 'All dealings with the aborigines for their lands must be conducted on the same principles of sincerity, justice,

79. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 316–318.

80. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, p 317.

81. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, chapter 5, in particular pp 282–284.

82. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 316–318.

83. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, p 320.

and good faith. He continued that Māori ‘must not be permitted to enter into any contracts in which they might be the ignorant and unintentional authors of injuries to themselves.’<sup>84</sup> He also ordered Hobson to enforce a right of Crown pre-emption, under which only the Crown could extinguish Māori customary title to their lands. Private individuals would not be allowed to buy land directly from Māori, and all land titles would derive from the Crown. Normanby noted that a ‘Legislative Commission’ would be appointed to inquire into the large ‘purchases’ that had already occurred and that future purchases would be conducted through a protector of Aborigines.<sup>85</sup> This was the origin of the Land Claims Commission, which examined several pre-Treaty transactions in Te Rohe Pōtae, discussed in chapter 4.

After questions from Hobson, Normanby clarified three points. First, Hobson was granted discretion to claim the South Island by discovery rather than by cession. Secondly, with respect to ending what Normanby referred to as ‘savage practices’, Hobson was instructed to use persuasion wherever possible, but was authorised to use force if absolutely necessary. Thirdly, Hobson was told he would have to raise his own militia if he saw the need, since Britain would not be providing one.<sup>86</sup>

In summary, Hobson’s instructions presented the Treaty as a means by which Britain could acquire sovereign authority over New Zealand, in order that it achieve its stated goals of controlling settlers and protecting Māori. It was intended to pave the way for mutually beneficial settlement. Hobson was to do what he could to persuade Māori to adopt British values and ways, but was otherwise – with very limited exceptions – to defend Māori rights to live according to their own customs.

### **3.3.2.3 The Treaty’s texts and the signings in the north**

The Treaty, as presented to Māori, contained a preamble which (in either language) referred to the Crown’s desire for Māori to recognise its authority so it could establish institutions of government and thereby secure to Māori peace, good order, rights, and property, while avoiding the harm that would arise from uncontrolled settlement.<sup>87</sup>

In general terms, the Treaty’s three articles can also be seen in this light: article 1 granting the Crown the right to govern, which it sought in order to control settlement; article 2 guaranteeing existing Māori rights while also enabling settlement by providing for sales of land to the Crown; and article 3 securing to Māori the rights and privileges already enjoyed by British subjects.

The first signings of the Treaty occurred in Te Tai Tokerau: at Waitangi on 6 February 1840; at Waimate on 9 and 10 February; at Mangungu on 12 February;

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84. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, p 319.

85. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, p 319.

86. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 321–322.

87. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, p 349.

and at the Bay of Islands on 17 February.<sup>88</sup> During the Waitangi and Mangungu debates, Hobson explained the Treaty as one in which Britain would acquire authority to control settlement, and presented it as a necessary measure to protect Māori from the impacts of settlement by allowing the Crown to ‘restrain’ British subjects where necessary.<sup>89</sup>

At Waitangi, several rangatira said they would not sign if the Crown was ‘up’ and they were ‘down’, but would accept Hobson as governor if he and the rangatira were equals. On that basis, he could be a ‘father’ or ‘peacemaker’, protecting them and their lands from other foreign powers and from ‘rum-sellers’ and other unruly settlers.<sup>90</sup>

#### 3.3.2.4 *The differences between texts*

As is now well understood, the English and Māori texts differed in three key respects. The first two concerned the relative powers retained by Māori and acquired by the Crown, and the third concerned the sale of land.

First, in article 1 of the English text, Māori purportedly ceded to the Crown ‘absolutely and without reservation all the rights and powers of Sovereignty’ in their territories. Sovereignty, in the English legal tradition, refers to the supreme power within any territory to govern and make law. The Crown defined it as ‘paramount civil authority’, encompassing a right to govern and an ‘unfettered’ right to make laws applying to all people and territories within New Zealand.<sup>91</sup> Claimants, similarly, defined sovereignty as ‘the supreme, absolute power by which any State is governed’, and said it encompassed political organisation, territorial control, and independence.<sup>92</sup>

In the Māori text, Māori granted the Crown ‘te kawanatanga katoa o o ratou wenua’. ‘Kāwanatanga’ is usually translated as government or governorship. As the Tribunal explained in its Te Paparahi o Te Raki stage one report, kāwanatanga was a newly coined word, made by combining the transliteration ‘kāwana’ (for ‘governor’) with the suffix ‘tanga’, to form an abstract noun. Witnesses in that tribunal explained how Northland Māori were familiar with the term ‘kāwana’ through their leaders having travelled to New South Wales and met governors there. Some would also have been familiar with the term ‘kāwanatanga’ from Māori translations of the Bible, where it was used to describe the powers accorded a provincial governor, as distinct from those of a sovereign. Te Rohe Pōtae leaders, in contrast, had not experienced any direct contact with New South Wales governors, and were considerably less likely to have been familiar with the term from the Bible, since mission stations had opened much more recently and had not yet been established south of Kāwhia and the Pūniu.

What the term did not convey, in the view of that Tribunal (and many others),

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88. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 369–385.

89. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 353–389.

90. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 357–367.

91. Submission 3.4.312, paras 57–60.

92. Statement 1.5.17, paras 2–5.

was the idea of supreme authority inherent in the English term ‘sovereignty’, which was what the Crown in fact sought.<sup>93</sup> That Tribunal noted that in He Whakaputanga, the 1835 declaration of independence, ‘sovereign power and authority was translated as ‘ko te Kingitanga ko te mana i te wenua’, whereas kāwanatanga was used for ‘any functions of government’, implying an administrative authority, not a supreme unconditioned power.<sup>94</sup> Scholars have debated whether another term, such as mana, should have been used to explain the power that the Crown sought, without reaching consensus. Some have argued that kāwanatanga was an appropriate choice, even if it did not convey all of the connotations of sovereignty, because it explained the practical power that the Crown sought, which was to establish a government.<sup>95</sup>

The second significant difference between the two texts occurred in article 2. In the English text, Māori were guaranteed full, exclusive, and undisturbed possession of their ‘Lands and Estates Forests and Fisheries and other properties which they may collectively or individually possess’. By contrast, in article 2 of the Māori text, Māori were guaranteed ‘te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa’ (which the Orakei Tribunal explained as conveying ‘full authority over their lands, homes, and things important to them’, and the Motunui–Waitara Tribunal explained as the ‘highest chieftainship’ or ‘the sovereignty of their lands’).<sup>96</sup> The preamble in Māori also indicated the Crown’s intention to protect Māori in their exercise of rangatiratanga as well as their whenua (‘o ratou rangatiratanga, me to ratou wenua’); this was translated in the English text as the protection of ‘just Rights and Property’.

The use of ‘tino rangatiratanga’ reflected that Māori would retain the highest form of political authority relevant to them. He Whakaputanga had used ‘Rangatiratanga’ as a translation for ‘Independence’, and ‘Wenua Rangatira’ as a translation for ‘independent State’. The same term used in the Treaty could therefore be read as a guarantee of independent statehood. He Whakaputanga also vested sovereignty (‘ko te Kingitanga ko te mana i te wenua’) in ‘nga tino rangatira’. Whereas kāwanatanga was used in the Bible to represent the powers of a provincial governor, rangatiratanga had been used for ‘kingdom’ (as in ‘the kingdom of God’).<sup>97</sup>

The third point on which the texts differed concerned land transactions, which were covered in the rest of article 2. In the of the English text granted the Crown an ‘exclusive right of Preemption’ over such lands as Māori were willing to part with. In the Māori text, pre-emption was translated as ‘hokonga’, generally understood

93. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 349–350.

94. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, 2nd ed (Wellington: Brooker and Friend, 1991), p 188; Waitangi Tribunal, *Report of the Waitangi Tribunal on the Motunui–Waitara Claim*, 2nd ed (Wellington: Government Printing Office, 1989), p 51.

95. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 413–415, 460–464, 513–514.

96. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, p 188; Waitangi Tribunal, *Report of the Waitangi Tribunal on the Motunui–Waitara Claim*, p 51.

97. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 350, 514.

to refer to buying, selling, or trading, without necessarily conveying any exclusive right.<sup>98</sup>

The Tribunal agreed with Claudia Orange and other historians who had concluded that the differences in the texts meant that much depended on how the Treaty was explained verbally to rangatira who were deciding whether to sign.<sup>99</sup>

The official text of the Treaty as set out in schedule 1 to the Treaty of Waitangi Act 1975 is reproduced in the sidebar below.

### Te Tiriti o Waitangi

Ko Wikitoria, te Kuini o Ingarani, i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga, me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga Tangata maori o Nu Tirani-kia wakaetia e nga Rangatira maori te Kawanatanga o te Kuini ki nga wahikatoa o te Wenua nei me nga Motu-na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei.

Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kaua ai nga kino e puta mai ki te tangata Maori ki te Pakeha e noho ture kore ana.

Na, kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aianei, amua atu ki te Kuini e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.

#### *Ko te Tuatahi*

Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu-te Kawanatanga katoa o o ratou wenua.

#### *Ko te Tuarua*

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu-ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua-ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

98. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 350–351.

99. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 427, 464, 513–514.

*Ko te Tuatoru*

Hei wakaritenga mai hoki tenei mo te wakaetanga ki te Kawanatanga o te Kuini-Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

(Signed) WILLIAM HOBSON, Consul and Lieutenant-Governor.

Na ko matou ko nga Rangatira o te Wakaminenga o nga hapu o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga o enei kupu, ka tangohia ka wakaetia katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu.

Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri i te tau kotahi mano, e waru rau e wa te kau o to tatou Ariki. Ko nga Rangatira o te wakaminenga.

### The Treaty of Waitangi

From the Treaty of Waitangi Act 1975

HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands – Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

*Article the First*

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual

Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.

*Article the Second*

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

*Article the Third*

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

W HOBSON Lieutenant Governor

### 3.3.3 The signings at the Waikato Heads and Kāwhia

After the initial signing on 6 February 1840, the Waitangi Treaty sheet was taken to other locations in Northland (Waimate, Mangungu, and Kaitāia) and to Auckland, where it was signed on 4 March. Soon afterwards, several copies were made and circulated throughout the country.

One of those copies was sent to a former British army officer, Captain William Symonds, at Manukau, with instructions to obtain signatures. Symonds immediately called a meeting of local rangatira there, but none signed. This was apparently due to the arguments made by the Ngāpuhi rangatira Rewa, who had reluctantly signed the Treaty at Waitangi and soon afterwards changed his mind and became a vigorous opponent.<sup>100</sup>

At a subsequent meeting on 20 March, also at Manukau, three Ngāti Whātua rangatira signed. Many Waikato rangatira also attended, including Te Wherowhero, who had signed He Whakaputanga, the 1835 declaration of independence of

100. Document A23, pp 63–65; Claudia Orange, *The Treaty of Waitangi* (Wellington: Allen & Unwin and Port Nicholson Press, 1987), pp 68–69; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, p375.



northern rangatira.<sup>101</sup> None of these Waikato rangatira signed the Treaty, though according to Claudia Orange some promised to do so later. Symonds left no record of how he had explained the Treaty's content at either of these meetings.<sup>102</sup>

### 3.3.3.1 *The signings at the Waikato Heads*

Meanwhile, an English-language copy of the Treaty was sent to the CMS missionary Robert Maunsell at Maraetai, his mission station at Waikato Heads. Its arrival, sometime during March, coincided with a large gathering of some 1,500 Māori at an annual mission meeting. Maunsell presented the Treaty, and obtained signatures from 32 Waikato and Ngāti Maniapoto rangatira.<sup>103</sup> Maunsell claimed that they represented 'the leading men' of Waikato, 'excepting perhaps two'.<sup>104</sup> Among those who signed at this stage was the Ngāti Maniapoto rangatira Te Ngohi Kāwhia, the father of Rewi Maniapoto.

This copy – referred to today as the Waikato–Manukau sheet – was the only English-language copy of the Treaty that was signed. Maunsell was also sent a copy of the Māori text, one of 200 printed on 17 February at Paihia. According to Orange, it 'seems likely' that it was sent with the English Waikato–Manukau sheet to assist him in explaining the Treaty's terms.<sup>105</sup> Maunsell returned the signed English-language copy to Hobson on 14 April 1840.<sup>106</sup> He also obtained a further five undated signatures from Waikato rangatira on the printed Māori copy. It is possible that he obtained these signatures after the English sheet had been returned, but we cannot be sure.<sup>107</sup>

Orange noted that Maunsell was well respected and influential among Waikato Māori, as the large number attending the mission meeting suggests.<sup>108</sup> He was also a distinguished linguist and scholar of te reo Māori who published a book on Māori grammar in 1842, and subsequently published several translations of the Old Testament from Hebrew into Māori.<sup>109</sup> It is unclear how Maunsell explained the Treaty.

We do not know whether Maunsell had the printed Māori copy at the signing hui and, if he did, whether he used it. In his evidence to this inquiry, historian Vincent O'Malley suggested that if he did have it to hand, Maunsell 'may in fact have read out' the Māori text, 'which would obviously have made a rather more profound impression on Māori understandings of the agreement than a document

101. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 167, 212.

102. Document A23, pp 64–65; Orange, *The Treaty of Waitangi*, pp 68–69.

103. Document A23, pp 65–66, 69–70; Orange, *The Treaty of Waitangi*, pp 69–70.

104. Document A23, pp 65–66.

105. Claudia Orange, *An Illustrated History of the Treaty of Waitangi* (Wellington: Bridget Williams Books, 2004), p 301.

106. Document A23, pp 65–66.

107. Orange, *An Illustrated History of the Treaty of Waitangi*, p 301.

108. Orange, *The Treaty of Waitangi*, p 69.

109. Judith Morrell Nathan, 'Robert Maunsell', in 1769–1869, vol 1 of *The Dictionary of New Zealand Biography*, ed William H Oliver (Wellington: Allen & Unwin and the Department of Internal Affairs, 1990), p 286. Also see Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 463–464.

printed in a language which few if any of the assembled chiefs were likely to be fluent in, much less be able to read'. He cautioned, however, that this 'must be a matter of some speculation'.<sup>110</sup>

More significantly, Dr O'Malley argued that, even if Maunsell had not read the Māori text, the verbal explanations given in Māori 'were likely to have been of more importance to Māori when weighing up whether to sign than the words on the document itself'.<sup>111</sup> Indeed, in the circumstances, it would have been futile for him to have read out the English text. With or without the Māori text at hand, Maunsell would have explained the document in terms that the rangatira would have been familiar with.

When he returned the signed Waikato–Manukau sheet to Hobson in mid-April 1840, Maunsell gave no direct explanation of how he had explained its terms. He did, however, emphasise that missionaries had used their position to obtain signatures on behalf of the Crown 'in obtaining an acknowledgement of the sovereign power of the Queen on the part of the natives', and now had to trust in the Crown's 'lenity and honour' that no action would ever be taken that prejudiced Māori.<sup>112</sup> In referring to 'the sovereign power of the Queen', Maunsell is likely, consistent with the English legal tradition, to have been focusing on the wording of the signed document in English rather than his verbal explanation of its terms, on which basis rangatira would have signed. Twenty years later, in 1860, Maunsell recalled that those who signed did so on the understanding that 'they retained the rights over their lands, but that the Queen had power to make laws'.<sup>113</sup>

The only other record of how Maunsell explained the Treaty is from the Ngāti Mahanga rangatira Wiremu Nera Te Awaitaia, who signed this copy of the Treaty. Te Awaitaia told Governor FitzRoy in 1844 that it had been suggested to them that they 'consent to [the Queen's] sovereignty, as nothing but kindness proceeded from her government', and that any other nation 'would forcibly compel us to give up possession of the country to them'.<sup>114</sup>

Dr O'Malley noted that we only have FitzRoy's account of this exchange in English, and therefore do not know what word Te Awaitaia used for 'sovereignty'. He concluded from this evidence that Maunsell's explanation of the Treaty emphasised its protective nature, particularly in regards to lands and other resources.<sup>115</sup>

Dr O'Malley also recorded that, in the same exchange, Te Awaitaia told FitzRoy that he was 'anxious that our lands should be secured to us, that a check should be put upon English urging us to sell those lands that we cannot part with'. When Māori did freely sell, 'we wish that the feeling of kindness should be mutual; when we dispose freely of our lands, let the English dispose freely of their property'.<sup>116</sup> While this was not a direct explanation of the Treaty transaction, it nonetheless

110. Document A23, p 65.

111. Document A23, p 65.

112. Document A23, pp 65–66.

113. 'Report of the Waikato Committee: Minutes of Evidence', 11 October 1860 (doc A23, p 66).

114. FitzRoy to Stanley, 25 May 1844 (doc A23, pp 66–67).

115. Document A23, pp 66–67.

116. Document A23, p 81.

implied that Te Awaitaia understood the Treaty as having granted the governor authority to control settlers – and, more specifically, to control them in a manner that protected Māori interests.

Symonds obtained the signatures of a further seven Waikato rangatira on the same English-language sheet at Manukau on 26 April 1840.<sup>117</sup> No translator was present, and it is unclear how Symonds explained the transaction. Te Wherowhero was again in attendance and again refused to sign. Symonds gave several possible explanations for this, including the influence of the Catholic Bishop Pompallier, Te Wherowhero's 'pride', and the lack of ceremony attached to the occasion.<sup>118</sup>

In total, 39 rangatira signed the Waikato–Manukau (English-language) copy of the Treaty. Table 3.1 shows the signatories, as they are recorded in Dame Claudia Orange's *Illustrated History of the Treaty of Waitangi*.

### 3.3.3.2 The signings at Kāwhia

Before returning to Manukau to obtain further signatures, Symonds travelled to the Waikato Heads to check on Maunsell's progress. Symonds had intended to seek further signatures as far south as Taranaki, but found that Maunsell had done much of his work for him. '[W]ith the exception of very few', Symonds claimed, Maunsell had obtained the signatures from 'all the leading men of the country as far as Mokau.'<sup>119</sup>

The exceptions, he said, were those who 'belonged to the neighbourhood of Aotea and Kawhia.'<sup>120</sup> Rather than continuing himself, Symonds sent the Māori-language sheet upon which he had obtained the three Ngāti Whātua signatories at Manukau to the Wesleyan mission at Kāwhia. He asked the missionaries there to obtain signatures from the missing rangatira and from others as far south as possible in Ngāti Maniapoto country. Today this is known as the Manukau–Kāwhia sheet.<sup>121</sup>

From April through to September 1840, the Kāwhia-based Wesleyan missionaries John Whiteley and John Wallis obtained the signatures of 10 rangatira on the Manukau–Kāwhia sheet. One of those was from a visiting Ngāpuhi rangatira; the others were from Waikato or Te Rohe Pōtae, and included several leading Ngāti Maniapoto rangatira.<sup>122</sup> According to Orange:

How agreement was obtained is not known, but Symonds directed Whiteley to explain 'perfectly' the 'nature of the cession of rights' and the missionary later believed that he had done this to the best of his ability. A last signing, on 3 September, made Maori agreement to the treaty almost unanimous on the west coast down to Mokau.<sup>123</sup>

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117. Orange, *The Treaty of Waitangi*, p 73.

118. Document A23, p 68; Orange, *The Treaty of Waitangi*, p 70.

119. Symonds to colonial secretary, 12 May 1840 (doc A23, p 67).

120. Document A23, p 67.

121. Document A23, pp 63–65; Orange, *The Treaty of Waitangi*, pp 68–71.

122. Document A23, pp 71–74; Orange, *The Treaty of Waitangi*, pp 68–70.

123. Orange, *The Treaty of Waitangi*, p 70.

No	Signed as	Probable name	Tribe	Hapū
<i>Signed in late March or early April 1840, at Waikato Heads, witnessed by Robert Maunsell and Benjamin Ashwell, dated 11 April 1840</i>				
1	Paengahuru	Paengahuru	Waikato	Ngāti Tipa
2	Kiwi Ngarau	Kiwi Ngarau	Waikato	Ngāti Tahinga
3	Te Paki	(Hone Wetere) Te Paki	Waikato	Te Ngaungau
4	Ngapaka	Ngapaka	Waikato	Ngāti Tipa
5	Kukutai	(Waata?) Kukutai	Waikato	Ngāti Tipa
6	Te Ngoki	Te Ngoki?/Te Ngohi?	Ngāti Maniapoto	from Kāwhia
7	Muriwhenua	Muriwhenua	Ngāti Hauā	from Aotea
8	Te Pakaru	Te Pakarū	Ngāti Maniapoto	from Kāwhia
9	Waraki	Te Waraki	Ngāti Maniapoto	from Kāwhia
10	Kiwi (Te Roto)	Kiwi Te Roto	Waikato	Ngāti Mahuta (Kāwhia)
11	Te Paerata	Te Paerata	Waikato	Ngāti Pou
12	Te Katipa	Te Katipa	Waikato	Ngāti Pou
13	Maikuku	Maikuku	Waikato	Ngāti Te Ata
14	Aperahama Ngakainga	Aperahama Ngakainga	Waikato	Ngāti Te Ata
15	Hoana Riutoto	Hoana Riutoto	Waikato	Ngāti Mahuta
16	Te Wairakau	Te Wairakau	Waikato	Ngāti Te Ata
17	Hako	Hako	Waikato?	Ngāti Te Wehi (Aotea)
18	Wiremu Te Awaitaia	Wiremu Nera Te Awaitaia	Waikato	Ngāti Māhanga (Whāingaroa)
19	Tuneu Ngawaka	Tuneu Ngawaka	Waikato	Ngāti Tahinga?
20	Kemura Wareroa	Kemura Whareroa	Waikato	Ngāti Tahinga
21	Pohepohe	Pohepohe	Ngāti Hauā	from Matamata

Table 3.1: The Waikato–Manukau sheet

Sources: Claudia Orange, *Illustrated History of the Treaty of Waitangi* (Wellington: Bridget Williams Books, 2004), pp 298–300; doc A23, pp 69–71.

A total of 13 rangatira signed the Manukau–Kāwhia (Māori-language) copy of Te Tiriti – the three Ngāti Whātua chiefs who had signed at Manukau and the 10 who had signed at Kāwhia. The signatories, as recorded in Claudia Orange's *Illustrated History of the Treaty of Waitangi*, are shown in table 3.3.

### 3.3.4 Who among the signatories were from Te Rohe Pōtae?

So far as we can determine from claimant accounts and historical sources, at least 24 of the 55 signatories of the Manukau–Kāwhia, Waikato–Manukau, and printed sheets were of hapū and iwi of this district. Of those, it appears that at least seven

No	Signed as	Probable name	Tribe	Hapū
22	Pokawa Rawhirawhi	Pokawa Rawhirawhi	Ngāti Hauā	from Matamata
23	Te Puata	Te Puata	Waikato	Ngāti Ruru at Ōtāwhao
24	Te Mokorau	Te Mokorau	Waikato	Ngāti Ruru (Ōtāwhao)
25	Pungarehu	Pungarehu	Waikato	Ngāti Apakura (Parawera)
26	Pokotukia	Pokotukia/Pohotukia?	Ngāi Te Rangi	from Tauranga?
27	Tekeha	Te Keha?	Waikato	Ngāti Naho (Te Horo)
28	Te Warepu	Te Wharepu	Waikato	Ngāti Hine (Taupiri)
29	Te Kanawa	Te Kanawa	Waikato	Ngāti Hine (Taupiri) <sup>1</sup>
30	Te Whata	Te Whata	Waikato	Ngāti Tipa (Whāingarao)
31	Ngawaka (Te Ao)	Ngawaka Te Ao	Waikato	Ngāti Whauroa (Putataka)
32	Peehi	Peehi	Waikato	Ngāti Ruru (Ōtāwhao)
<i>Signed on 26 April 1840, at Manukau Harbour, witnessed by WC Symonds</i>				
33	Wiremu Ngawaro	Wiremu Ngawaro	Waikato	Ngāti Te Ata
34	Hone Kingi	Hone Kingi	Waikato	Ngāti Te Ata
35	Ko te ta Wha	Te Tawa/Tawha?	Waikato	Ngāti Te Ata
36	Tamati	Tamati	Waikato?	
37	Rabata Waiti	Rapata Waiti	Waikato?	
38	Te Awarahi	Te Awarahi	Waikato	Ngāti Te Ata
39	Rehurehu	Rehurehu	Waikato?	

1. This was Te Kanawa Te Ikatu of Ngāti Mahuta (not to be confused with Tangitehau Tana Te Kanawa of Ngāti Maniapoto). The Ngāti Hikairo claimant Frank Thorne gave his full name as Te Kanawa Te Ika-ā-Tūkeria and recorded his hapū affiliation as Ngāti Paretaikō. Mr Thorne said Te Ikatu was also affiliated with Ngāti Hikairo. The Ngāti Apakura researchers Moepātu Borell and Robert Joseph recorded him as also having Ngāti Apakura affiliations. He seems to have signed twice (see table 3): doc A144 (Stirling), p7; doc A98 (Thorne), p226; doc A97 (Borell and Joseph), p146.

were Ngāti Maniapoto leaders: Te Ngohi Kāwhia, Te Waraki, Tāriki, Haupōkia Te Pakarū, another chief named Te Pakarū (who was likely the son of Haupōkia<sup>124</sup>), Taonui Hikaka, and Ngāmotu. The 1904 Kawenata (accord) of Ngāti Maniapoto also named Manga (Rewi Maniapoto) as signing.<sup>125</sup> However, he does not appear on any of the Treaty sheets.<sup>126</sup> Claudia Orange named Hone Waitere Te Aotearoa,

124. Document A97, p148.

125. Document A110, p474.

126. Document A110, pp474–475; doc H9(b), p[8].

No	Signed as	Probable name	Tribe	Hapū
<i>Signed in the Waikato, date unknown, witnessed by Richard Maunsell</i>				
1	Te Uira	Te Uira	Waikato	Ngāti Pou
2	Ngahu	Ngahu	Waikato	Ngāti Pou
3	Rahiri	Rahiri	Waikato	Ngāti Mariu?
4	Te Noke	Te Noke	Waikato	Ngāti Te Wehi
5	Te Wera	Te Wera	Waikato	Ngāti Mariu?

Table 3.2: The printed sheet

Source: Orange, *An Illustrated History of the Treaty of Waitangi*, p 301.

who signed the Manukau–Kāwhia sheet, as a Ngāti Maniapoto rangatira; however, Ngāti Te Wehi researcher Aroha de Silva named him as a Ngāti Te Wehi rangatira, as did the Ngāti Te Wehi claimant Marge Apiti. Other evidence also supports this.<sup>127</sup>

Of the signatories from the coastal harbour areas, there were three Ngāti Mahuta rangatira from Kāwhia (Te Kanawa Te Ikatu, Kiwi Te Roto, and Hoana Riutoto), three Ngāti Te Wehi rangatira from Aotea (Hone Waitere, Hako, and Te Noke), one Ngāti Hauā rangatira from Aotea (Muriwhenua), one Ngāti Māhanga rangatira from Whāingaroa (Te Awaitaia), three Ngāti Tahinga rangatira from Whāingaroa (Kiwi Ngārau, Tūnui Ngāwaka, and Kāmura Whareroa), and one Ngāti Tipa rangatira from Whāingaroa (Te Whata). The Te Matenga who signed may have been of Ngāti Hikairo. Of the signatories from further inland, there were two Ngāti Apakura rangatira from Ōtāwhao and Rangiaowhia (Te Waru and Pungarehu), and three Ngāti Ruru rangatira of Ōtāwhao (Te Mokorau, Te Puata, and Peehi). We have produced brief biographies of these rangatira in chapter 2.

Dr O'Malley argued that Ngāti Maniapoto 'were quite poorly represented', while it was 'not apparent that any Ngāti Raukawa signed' at all. This, in his view, reflected the fact that copies of the Treaty were not brought to inland locations such as Maungatautari (Ngāti Raukawa) and Hangatiki (Ngāti Maniapoto).<sup>128</sup> Researcher Paul Thomas echoed this view in his evidence on the Mōkau region: he had found nothing to suggest that the key Mōkau chiefs had signed the Treaty.<sup>129</sup> Counsel also submitted that there is no record that rangatira from the following

127. Document A104(i) (de Silva), pp 112–113; doc N45 (Apiti), para 4. New Zealand History Online names him as a rangatira of Ngāti Te Wehi and Ngāti Paiaka from Aotea: 'Hōne Waitere Te Aoturoa', Ministry for Culture and Heritage, <https://nzhistory.govt.nz/politics/treaty/signatory/2-10>, updated 20 June 2016. The claimant John Kaati named Waitere as signing for Ngāti Maniapoto but may have relied on Orange. Whereas Waitere signed as Te Aotearoa, he is more often known by the name Te Aotūroa.

128. Document A23, p 74.

129. Document A28, p 50.

No	Signed as	Probable name	Tribe	Hapū
<i>Signed on 20 March 1840, at Manukau Harbour, witnessed by WC Symonds and James Hamlin</i>				
1	Te Kawau	(Apihai) Te Kawau	Ngāti Whātua	Te Taou, Nga Oho
2	Te Tinana	(Ihikiera?) Te Tinana	Ngāti Whātua	Te Taou
3	Te Reweti	Te Reweti (Tāmaki)	Ngāti Whātua	Te Taou
<i>Signed on 28 April 1840, at Kāwhia, witnessed by James Wallis</i>				
4	Rawiri	Rawiri	Ngāpuhi? <sup>1</sup>	
<i>Signed on 21 May 1840 (at Kāwhia?), witnessed by John Whiteley</i>				
5	Te Kanawa	Te Kanawa	Waikato	Ngāti Mahuta <sup>1</sup>
6	Tāriki	Tāriki	Waikato? Ngāti Maniapoto?	From Patupatu Pā
7	Haupokia	Haupōkia (Te Pakarū)	Ngāti Maniapoto?	
<i>Signed on 25 May 1840, witnessed by John Whiteley</i>				
8	Te Waru	(Hori] Te Waru (Haunui)	Waikato	Ngāti Te Apakura
<i>Signed on 15 June 1840, witnessed by John Whiteley</i>				
9	Taunui	Te Taonui	Waikato? Ngāti Maniapoto?	From Patupatu Pā
10	Hone Waitere, Te Aotearoa		Ngāti Maniapoto?	From Aotea?
11	Te Matenga, Te Wahapu Te Matenga			From Te Wahapu? <sup>2</sup>
<i>Signed on 27 August 1840, at Kāwhia</i>				
12	Ngamotu	(Wiremu Hopihana?) Ngamotu	Ngāti Maniapoto?	
<i>Signed on 3 September 1840 [at Kāwhia?]</i>				
13	Warekaua	Wharekaua/ Wharekawa?	Waikato	From Whakatiwai?

1. Te Kanawa appears to have signed twice: see table 3.1.

2. The Ngāti Hikairo claimant Frank Thorne said this may have been Te Matenga of Ngāti Hikairo: doc A98 (Thorne), p 214.

Table 3.3: The Manukau–Kāwhia sheet

Source: Orange, *An Illustrated History of the Treaty of Waitangi*, p 296; doc A23, pp 69–71.

hapū signed the Treaty: Ngāti Rae Rae, Te Ihingārangi, Ngāti Pahere and Ngāti Ingoa.<sup>130</sup> We consider these views below.

The rangatira appear to have signed with an ‘x’ or a tohu, suggesting they had not yet learned to write. This would emphasise that those who signed either sheet,

130. Submission 3.4.252, pp 24–26.

including the English-language Waikato–Manukau sheet, would have relied on the oral te reo Māori explanation of the Treaty’s terms.

#### 3.3.4.1 *Ngāti Maniapoto*

While it appears only eight Ngāti Maniapoto rangatira signed the Treaty, we do not accept that they only represented coastal interests. A number of the most notable rangatira of the period signed the Treaty. They included Te Ngohi Kāwhia and Te Waraki, who had considerable influence in the northern parts of the district, from southern Kāwhia across to the Pūniu, including interests in Ōtāwhao and other lands north of the Pūniu. In addition, the Treaty was signed by Tāriki and Taonui, both of whom had major pā at Te Kūiti but were recognised as having rights throughout much of the centre of the district and the Mōkau River valley. It does appear to be the case that none of the key coastal Mōkau rangatira such as Takerei Waitara signed. Nor did Te Rangituatēa, who had signed William White’s land purchase deed in January 1840. Haupōkia Te Pakarū – who signed at Kāwhia – was of Ngāti Hari and Ngāti Urunumia, whose interests extended into the Tūhūa district in the south, as well as in northern parts of the district.<sup>131</sup>

The Ngāti Maniapoto researcher Dr Robert Joseph told us that Ngāti Maniapoto were ‘well represented by a number of highly competent and intelligent rangatira . . . in the signing and endorsing of the Treaty of Waitangi in 1840’.<sup>132</sup> He referred to the 1904 Kawenata,<sup>133</sup> which recorded that Ngāti Maniapoto leaders entered into the Treaty relationship because they believed it would bring benefit to their people (we will consider this in more detail in section 3.4.3.2.4).<sup>134</sup>

During the Ngā Kōrero Tuku Iho hui, Kāwhia Murahi said that rangatira such as Te Ngohi Kāwhia signed in the hope of accessing new goods and advancing opportunities for trade, but also on the understanding that ‘the Crown had bound itself to meeting certain obligations which included the protection of mana rangatira’.<sup>135</sup> Tom Roa also told us that a ‘number of our rangatira signed Te Tiriti with an expectation that such an agreement guaranteed our mana rangatiratanga, our autonomous authority over our land, our taonga’.<sup>136</sup>

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131. Transcript 4.1.4, p145 (Tame Tūwhangai, Ngā Kōrero Tuku Iho hui, Ngāpūwaihaha Marae, 26 April 2010).

132. Document A110, p 475.

133. Document A110, p 474.

134. Document S19(a), pp 38, 40.

135. Document A110, pp 472–474.

136. Document 14 (Roa), para 19(a).



### 3.3.4.2 *Ngāti Raukawa*

The evidence in this inquiry suggests that no rangatira from Ngāti Raukawa from this district signed the Treaty.<sup>137</sup> Dr O'Malley could not identify any Raukawa signatories from this district,<sup>138</sup> and claimants and traditional historians made no mention of any Raukawa signatories.<sup>139</sup> Some of the signatories were closely related to Ngāti Raukawa, including Ngāti Maniapoto leaders such as Te Ngohi Kāwhia (the father of Rewi Maniapoto), and signatories from Ngāti Ruru.<sup>140</sup> In addition, according to Claudia Orange, several of the southern Ngāti Raukawa rangatira signed at Ōtaki and Kapiti.<sup>141</sup> But there do not appear to be any Raukawa rangatira from this district who signed the Treaty.

### 3.3.4.3 *Ngāti Hikairo*

Frank Thorne told us that there is a 'strong and staunch' tradition that Ngāti Hikairo did not sign the Treaty of Waitangi in Kāwhia or elsewhere.<sup>142</sup> This was despite the fact that Ngāti Hikairo were present in Kāwhia in 1840.<sup>143</sup> Mr Thorne noted that Te Kanawa Te Ika-ā-Tūkeria (also known as Te Ikatu) of Ngāti Paretaikō, who signed the Treaty at Kāwhia on 21 May 1840, had Ngāti Hikairo connections, though Orange recorded him as signing for Ngāti Mahuta.<sup>144</sup> Mr Thorne also noted that Te Matenga, who was among the signatories at Kāwhia, may have been Te Matenga of Ngāti Hikairo.<sup>145</sup>

### 3.3.4.4 *Ngāti Apakura*

Orange named Pungarehu of Ngāti Apakura as signing the Waikato–Manukau sheet in late March or early April 1840, and Te Waru as signing the Waikato–Manukau sheet on 25 May 1840. According to the Ngāti Apakura traditional researchers Moepātu Borell and Robert Joseph, Pungarehu lived at and had mana over Rangiaowhia and Ōtāwhao. They also identified Te Kanawa Te Ikatu as being

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137. The Waikato–Manukau sheet records a Te Paerata of Ngāti Pou as signing in late March or early May 1840. This appears to be a different rangatira from the Ngāti Koherā and Ngāti Raukawa leader Te Paerata, who was originally known as Hoariri and, according to traditions, did not become known as Te Paerata until after the formation of the Kingitanga in the 1850s. Hoariri died at Ōrākau and was the father of the 1880s Ngāti Raukawa and Ngāti Tūwharetoa leader Hitiri Te Paerata: doc K25 (Te Hiko), paras 1.3, 2.8–2.9; doc I12 (Te Hiko), paras 1.10–1.12; doc B2 (Joseph), para 8.

138. Document A23, p 74.

139. For claimants, see docs K25, I13 (Manaia) and P10 (Te Hiko and Hodge). For traditional histories, see docs A83 (Te Hiko) and A86 (Hutton).

140. Document B2, p 1.

141. Orange, *An Illustrated History of the Treaty of Waitangi*, p 312.

142. Document A98, p 224.

143. Document A98, p 225.

144. Document A98, pp 224–226.

145. Document A98, p 214.

descended from Apakura, and noted that the three Ngāti Ruru signatories (Te Mokoroa, Te Pūata, and Peehi) held mana at Ōtāwhao.<sup>146</sup>

#### 3.3.4.5 *Waikato-affiliated groups*

The Treaty was signed by a number of rangatira from hapū of the coastal and nearby inland areas, from Kāwhia north to Whāingaroa. These signatories included rangatira of Ngāti Mahuta from Kāwhia, Ngāti Te Wehi and Ngāti Hauā from Aotea, Ngāti Māhanga, Ngāti Tahinga, and Ngāti Tipa from Whāingaroa, and Ngāti Ruru rangatira of Ōtāwhao. Many of these hapū had close affiliations with Waikato.

Their signatures contrast with the decision of Te Wherowhero not to sign the Treaty, in spite of several attempts to persuade him. Te Wherowhero lived for some time at or near Ōtāwhao at the invitation of his father-in-law Peehi Tūkōrehu. There is no clear explanation for his refusal, though (as noted earlier) he had signed He Whakaputanga, the 1835 declaration of independence, only a few months earlier. Claimant Gordon Lennox told us Te Wherowhero saw that declaration as the basis for his relationship with the Crown.<sup>147</sup> Several of Te Wherowhero's close associates did sign the Treaty, including Kiwi Te Roto and Te Kanawa Te Ikatu.

#### 3.3.4.6 *Ngāti Tūwharetoa*

Iwikau Te Heuheu and another Ngāti Tūwharetoa rangatira, Te Koroiko or Te Korohiko, signed the Treaty at Waitangi on 6 February 1840,<sup>148</sup> even though, as the Central North Island Tribunal noted, 'their hapu and iwi did not consider themselves committed by this action.'<sup>149</sup> Indeed, Iwikau's older brother and Ngāti Tūwharetoa ariki Mananui Te Heuheu publicly rejected the Treaty and requested the whole of the Te Arawa waka do the same when it was presented at Ohinemutu in 1840, stating, according to Tūwharetoa oral history:

I will never agree to the authority [mana] of that woman and her people intruding on our islands, I am a chief of these islands, this is my response, stand up! And leave! Go!

Te Arawa listen! This is my word for the waka of Te Arawa, do not agree for we will be lost as slaves to that woman.<sup>150</sup>

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146. Document A97, pp 52, 146. Some sources refer to Pokotukia (or Pohotukia), who signed the English-language Waikato–Manakau sheet at Waikato Heads, as a Ngāti Apakura rangatira. Other sources refer to him as possibly being of Ngāi Te Rangī from Tauranga. None of the claimants referred to him: doc A23 p 70; doc A97 p 145; doc A110, p 469.

147. Document K22, p 19.

148. Orange, *An Illustrated History of the Treaty of Waitangi*, p 290; see also doc A35 (Ward), p 13.

149. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 1, p 194.

150. Document J22 (Otimi and Chase), para 16.

We agree with the Central North Island Tribunal, who accepted that, led by Mananui and endorsed by their tribes, Ngāti Tūwharetoa and others deliberately rejected the Treaty in 1840.<sup>151</sup>

#### **3.3.4.7 Northern Whanganui groups**

Nine Whanganui rangatira signed the Treaty at Pākaitore on 23 May 1840. According to the Whanganui Land Tribunal, most of these rangatira were from the lower reaches of the river, well outside this inquiry district. Two of the signatories, Te Peehi Tūroa and his son Pakoro, had extensive interests inland at Mangonui o te Ao, but those interests do not seem to have extended into this district.<sup>152</sup> Among the senior northern Whanganui rangatira with connections to this district who did not sign were Te Mamaku and Te Oro of Ngāti Hāua; Matuaahu Te Wharerangi of Ngāti Hikairo ki Tongariro and Ngāti Tamakana; and Te Riaki of Ngāti Rangi, along with ‘many other northern and eastern rangatira’<sup>153</sup>

Among those groups who were not represented were Ngāti Hāua. Counsel for Ngāti Hāua did not address the status of the group in respect of the Treaty, except to state that Ngāti Hāua ‘have long asserted their tino rangatiratanga’<sup>154</sup> In his evidence to the Whanganui Land Tribunal, the late rangatira Sir Archie Tairoa maintained that Ngāti Hāua’s engagement with the Crown should have rightfully been based on a Treaty relationship, irrespective of whether they signed the Treaty:

At no time in our engagement with the Crown has there been a relationship based on the terms or the spirit of Te Tiriti. There is no partnership and sometimes barely even a relationship. Where there has been a relationship we have been relegated to the role of rebels, Hauhau, petitioners, submitters and objectors rather than Tiriti partners.<sup>155</sup>

### **3.3.5 Conclusions about the Treaty signings**

The Treaty was brought to the edges of Te Rohe Pōtāe in the months following the initial signing at Waitangi. Although the Treaty does not appear to have been subject to the same amount of debate as in the north, Māori of the district had the opportunity to consider the Treaty in at least two locations: first at the Waikato Heads and then at Kāwhia, where a Māori-language text of the Treaty was left for some months. The process was not ideal – the Crown did not itself present or explain the Treaty in this district, nor did it seek to bring the Treaty sheets to

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151. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 195.

152. Waitangi Tribunal, *He Whiritāunoka: The Whanganui Land Report*, 3 vols (Wellington: Legislation Direct, 2015), vol 1, pp 79–80, 130–131. Te Peehi’s Te Patutokotoko hapū grouping is closely associated with Ngāti Hekeāwai, which has interests in Tūhua lands in the south of the district: doc R25 (Rupe), para 11. For a brief overview of the connections between Ngāti Hekeāwai and Te Patutokotoko, and their rohe, see doc A108 (Patete), pp 263–267.

153. Waitangi Tribunal, *He Whiritāunoka*, vol 1, p 132.

154. Submission 3.4.211, para 33.

155. Document A47, p 3.

the interior of the district so as to ensure all rangatira had the chance to consider whether or not to sign.

However, it is also clear that a significant number of rangatira from this district availed themselves of opportunities to sign the Treaty. Among Ngāti Maniapoto, some key rangatira were either on the spot (such as Te Ngohi, at the Waikato Heads) or took opportunities to sign while in Kāwhia (such as Taonui), marking their agreement to the new arrangement. Rangatira from a range of Waikato-affiliated hapū in the coastal areas and inland to Ōtāwhao and Rangiaowhia also signed. The very limited evidence that is available suggests that those who signed did so on the basis of explanations given to them that the Crown's role would be protective in nature, and that their existing authority would not alter as regards their own affairs. Maunsell said he explained the Treaty as meaning that Māori retained rights over their lands, while the Queen had power to make laws,<sup>156</sup> but this does not tell us how the parties understood the rights that Māori would retain, nor does it tell us where and how the Queen's laws would interact with the rights that Māori had retained. And the Ngāti Māhanga rangatira Te Awaitaia said he consented based on missionary advice that Britain would be 'kind' to Māori, whereas another nation might invade and force Māori to give up their country.<sup>157</sup>

By contrast, there appears to have been no signatories from Raukawa rangatira, nor were rangatira from northern Whanganui among the signatories here or elsewhere. It is unclear whether they were aware of the Treaty and had the opportunity to sign. Ngāti Hikairo and Ngāti Tūwharetoa, however, had the opportunity but chose not to sign (in the case of Tūwharetoa, two rangatira did sign – an act that was subsequently repudiated by the tribe). Both groups maintain their tradition of having refused to sign the Treaty.

We now turn to our attention to the Treaty's meaning and effect, and to the Treaty principles against which we will assess claims in this inquiry.

### 3.4 THE TREATY'S MEANING AND EFFECT

Our task in this chapter is to establish the Treaty's meaning and effect so as to be able to apply it to the claims before us. The Waitangi Tribunal's task in this respect is set out under section 5(2) of the Treaty of Waitangi Act 1975. The section explains that, in carrying out its functions, the Tribunal has exclusive authority to determine the meaning and effect of the Treaty, and to decide issues raised by the differences between the texts. It is from the powers conferred upon the Tribunal in this section that the Tribunal derives the principles of the Treaty to apply in assessing claims.

In essence, while the Treaty's texts are stable and known, the Treaty of Waitangi Act 1975 requires us to make our own determination for the purposes of assessing the particular claims before us. It is for us to determine how the Treaty and its principles apply.

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156. Document A23, p 66.

157. Document A23, pp 66–67.

### 3.4.1 How should the Treaty be interpreted?

#### 3.4.1.1 Approaches to Treaty interpretation

Two possible approaches have been available to the Tribunal in carrying out this task: one which derives from a legal tradition of interpreting treaties and one in which western law and tikanga are placed side by side. Here we explain these approaches and how they have been applied by other Tribunals, before describing our approach.

#### 3.4.1.2 The legal approach to interpreting treaties

The standard legal approach to treaties of cession requires four elements. These are:

1. international personality or statehood;
2. intention to act under international law;
3. agreement; and
4. intention to create legal and not merely moral obligations.<sup>158</sup>

While the debate on these matters turns on international law, the manner in which such treaties are interpreted in practice should be found in that treaty's text. This approach was discussed by the Waitangi Tribunal in the Orakei report.<sup>159</sup> Reviewing Lord McNair's *The Law of Treaties*, that Tribunal noted that a treaty needs interpretation only if the text is in some way contested or ambiguous. In such cases, 'the primary duty of a tribunal charged with applying or interpreting a treaty' is to 'give effect to the expressed intentions of the parties, that is, their intention as expressed in the words used by them in the light of the surrounding circumstances.'<sup>160</sup> McNair also stressed the need 'to bear in mind . . . the overall aim and purpose of the Treaty'.<sup>161</sup>

For bilingual treaties, such as the Treaty of Waitangi, the Orakei Tribunal noted that there is an increased likelihood that ambiguities in meaning will arise. Under such circumstances, neither text is regarded as superior and it is permissible to interpret one text by reference to the other.<sup>162</sup> The Tribunal endorsed McNair's view that the treaty in question should be interpreted to give effect to the parties' expressed intentions, by interpreting the words while considering the surrounding circumstances, including the treaty's overall purposes and aims.<sup>163</sup>

In addition, the Orakei Tribunal determined that, when considering the differences between the two versions of the Treaty, considerable weight should be given to the Māori text since that was assented to by the majority of signatories.<sup>164</sup> Moreover, that Tribunal considered that this was consistent with the *contra proferentem* rule, which (in the Tribunal's words) provides that, 'in the event of ambigu-

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158. Philip Joseph, *Constitutional and Administrative Law in New Zealand*, 4th ed (Wellington: Thomson Reuters, 2014), p 59.

159. Waitangi Tribunal, *Report on the Orakei Claim*, p 180.

160. Waitangi Tribunal, *Report on the Orakei Claim*, p 180.

161. Waitangi Tribunal, *Report on the Orakei Claim*, p 180.

162. Waitangi Tribunal, *Report on the Orakei Claim*, p 180.

163. Waitangi Tribunal, *Report on the Orakei Claim*, p 180.

164. Waitangi Tribunal, *Report on the Orakei Claim*, p 180.

ity, a provision should be construed against the party which drafted or proposed that provision.<sup>165</sup> Performance of treaties is, in addition, ‘subject to an overriding obligation of mutual good faith and that obligation also applies to the interpretation of treaties.’<sup>166</sup>

The Tribunal went on to note the rule for the interpretation of treaties made between Native American or Indian peoples and the United States of America laid down by that country’s Supreme Court.<sup>167</sup> That rule indicates that what matters is not the technical meaning of the Treaty’s words, but ‘the sense which they would naturally be understood by Indians.’<sup>168</sup> In the court’s reasoning, this was because such treaties were drafted by officials who were ‘skilled in diplomacy, masters of a written language, understanding the modes and forms of creating the various technical estates known to their law, and assisted by an interpreter employed by themselves’, and who were drafting the treaty in their own language. The Indians, on the other hand, ‘have no written language, and are wholly unfamiliar with all forms of legal expression, and whose only knowledge of the terms in which the Treaty is framed is that imported to them by the interpreter employed by the United States.’<sup>169</sup> As the Tribunal also noted, most of the treaties in the United States are only in English.<sup>170</sup>

The Orakei Tribunal observed that these circumstances were in many ways applicable to the Treaty of Waitangi. Only some of the rangatira who signed could read in Māori, and few if any could read English.<sup>171</sup> Their understanding therefore relied on the Māori text and on any verbal explanations given in Māori.

The Orakei Tribunal then referred to the decision of the Ontario Court of Appeal in Canada in *R v Taylor and Williams* where a similar approach to the interpretation of treaties with native people was adopted.<sup>172</sup> In that case the court stated:<sup>173</sup>

The principles to be applied to the interpretation of Indian treaties have been much canvassed over the years. In approaching the terms of a treaty quite apart from the other considerations already noted, the honour of the Crown is always involved and no appearance of ‘sharp dealing’ should be sanctioned. Further if there is any ambiguity in the words or phrases used not only should the words be interpreted as against the framers and drafters of such treaties, but such language should not be interpreted or construed to the prejudice of the Indians if another construction is reasonably possible . . . finally if there is evidence by conduct or otherwise as to how the parties

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165. Waitangi Tribunal, *Report on the Orakei Claim*, p 180.

166. Waitangi Tribunal, *Report on the Orakei Claim*, pp 180–181.

167. Waitangi Tribunal, *Report on the Orakei Claim*, p 181.

168. *Jones v Meehan* (1899) 175 US 1 (Waitangi Tribunal, *Report on the Orakei Claim*, p 181).

169. Waitangi Tribunal, *Report on the Orakei Claim*, p 181, quoting *Jones v Meehan* (1899) 175 US 1.

170. Waitangi Tribunal, *Report on the Orakei Claim*, p 181.

171. Waitangi Tribunal, *Report on the Orakei Claim*, p 181.

172. Waitangi Tribunal, *Report on the Orakei Claim*, p 181.

173. *R v Taylor and Williams* (1981) 62 CCC (2d) 227 at 235 (Waitangi Tribunal, *Report on the Orakei Claim*, p 181).

understood the terms of the treaty, then such understanding and practice is of assistance in giving content to the term or terms.

These approaches to treaty interpretation align with how the Treaty can be understood and interpreted by reference not only to the English version but also to the Māori text. The circumstances in which rangatira signed the Treaty and their actions that followed aid our interpretation of its terms.

#### 3.4.1.2.1 A TIKANGA APPROACH TO INTERPRETING TREATIES

One limitation of the above approach to treaty interpretation is that it begins in a western legal tradition, rather than setting law and tikanga side by side. Through that lens, there is the potential for Māori sources and understandings of law and authority to be read down as ‘customary’ concepts that are legitimate only to the extent that western law acknowledges and provides for them.

Another way of understanding the meaning and effect of the Treaty is to begin by looking at the world in which the parties lived as a way of informing the interpretation of the Treaty and its texts. By this approach, the Treaty can be seen as a meeting point between two peoples, each with their own culture, language, technology, systems of law and government, and their own specific motivations for entering a Treaty relationship. To understand the Treaty by this approach, it is first necessary to understand the systems of law and authority that underpinned Māori and British societies at that time. The Crown brought with it ideas of statehood and sovereignty, its institutions of government and law, and its tradition of managing relationships using written agreements. It also brought with it a practice of treaty making that sought written consent to specific actions that were to be taken from the point the treaty was entered into.

Māori were orientated according to the exercise of mana, through hapū and iwi and under the leadership of rangatira, and through the practice of tikanga; and they managed relationships through oral exchange. The written word was foreign to most of the rangatira who signed the Treaty, and written English even more so. Māori, including those of Te Rohe Pōtae, also had their own tradition of treaty making (known as hohou rongo or tatau pounamu), having long negotiated with other Māori groups over territory and resource use, military alliances, peace, intermarriage, and other common aspects of pre-European life. They regarded such agreements as tapu, and would enter agreements only if they were consistent with tikanga and with the mana of their people (which, in the case of Ngāti Maniapoto, meant mana whatu āhuru).<sup>174</sup> As noted in preceding chapters, the term refers to their strength and peace that arose from their unity. Ngāti Maniapoto in particular were guided by a process of treaty-making tradition associated with ‘te kī tapu’ – the sacred word of the rangatira. Claimant Tom Roa told us that ‘it was because of the rangatira’s mana that his word was sacrosanct. And so he, his family, his people were committed by his word.’<sup>175</sup>

174. Document A117 (Jackson), pp17–19.

175. Document H9(c) (Roa), para 7.

The meaning that could be derived from the Treaty following this approach depends on the whole transaction, oral as well as written, and from the broader historical context. It is not simply a matter of interpreting words, and looking at motivations and understandings where ambiguities arise; but of seeking to understand those motivations first in order to determine what kind of relationship each party was seeking, and whether there was common ground. Although they have different conceptual origins, the tikanga and standard legal approaches bring us to a very similar point: either approach requires us to determine, for rangatira who signed the Treaty, their 'natural understanding' of what was being offered to them and what they therefore consented to.

#### 3.4.1.2.2 THE APPROACH OF OTHER TRIBUNALS

In practice, the Waitangi Tribunal has taken both paths towards determining the Treaty's meaning and effect. This is partly due to the differences between the two texts, and partly also because of the importance of placing Māori sources of law and authority alongside those of British law. Where analysis has begun with the historical and cultural context it has inevitably led to closer discussion of the specific terms, and where it has begun with the specific terms it has inevitably broadened out to encompass the historical and cultural context.

For these reasons, all Tribunals have been concerned with how Māori understood the Treaty, and what they agreed to based on the proposals that were put to them. Within that context, Tribunals have given considerable weight to the Māori text. They have also considered the surrounding discussions, in acknowledgement of the fact that Māori understanding of the Treaty depended entirely on how it was presented in te reo.<sup>176</sup> We consider that approach to be equally applicable to Te Rohe Pōtae.

We turn now to consider what was retained or released by Rohe Pōtae Māori when they signed the Treaty.

#### 3.4.1.2.3 OUR APPROACH

Our approach is to place a tikanga understanding of treaties alongside the standard legal approach to their interpretation. This ensures that any gloss that Māori sources of law and authority might add to our identification of Treaty principles, as they apply to the claims before us, are considered. It also requires us to consider how Te Rohe Pōtae Māori might have understood the Treaty arrangement, had they been asked to give their view of the situation. In doing so, we seek to resolve the key differences between the Treaty's two texts, in order to arrive at the principles of the Treaty that we apply to the claims in our inquiry. We are guided by the conclusions of previous Tribunals so far as they inform our analysis.

We apply this approach to the three key issues before us which we identified above, namely:

- ▶ What rights were guaranteed to Māori through the Treaty?

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176. Waitangi Tribunal, *Report on the Orakei Claim*, p 180; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, p 527.



- What rights did the Crown acquire through the Treaty?
- What was the relationship between Crown and Māori authority?

### 3.4.1.3 *Limitations on the evidence*

In setting out to determine what Māori signatories freely consented to, we must consider how they understood the offer that was presented to them. As described above, we have very limited evidence about how the Treaty was explained in this district. Specifically, we have very brief accounts from Maunsell and Te Awaiaia, which were discussed in section 3.3.3.1.

While this evidence is limited, we know more about the broader context and the parties' motivations, which we discussed in section 3.3.3.1. We also know a considerable amount about how the Treaty was explained to Māori in other parts of the country, and – as we will see – this is consistent with the brief accounts given by Maunsell and Te Awaiaia. Maunsell seems to have regarded the Treaty as a significant transaction, in which missionaries as well as Māori were being asked to place their trust in the Crown's honour. That, and the large attendance at his residence, would tend to suggest that he would have fully explained the Treaty's terms and that they would have been debated. While we have no evidence about the Treaty being explained or debated at Kāwhia, we again cannot see that Māori would have entered into a significant transaction with the Crown without first discussing the terms. Such an approach would scarcely be consistent with Māori forms of communal decision-making. The fact that Treaty signings occurred over several months in Kāwhia, and that some of the rangatira who signed at Waikato Heads later returned to Kāwhia or Aotea, would tend to suggest there was ample opportunity for debate. As well as considering the context and the debates, we also have evidence about how Māori subsequently interpreted the Treaty and their rights and obligations under it, and how they acted in the period immediately after the signings. This evidence, which we will discuss in section 3.4.3.2, sheds considerable light on how Māori in this district understood the agreement they had entered.

Notwithstanding the limited evidence about the signings themselves, therefore, we are able to draw conclusions about what the Treaty signatories freely consented to, which in turn allows us to derive Treaty principles.

### 3.4.1.4 *Does it make a difference that the Waikato–Manukau sheet was signed in English?*

The Treaty of Waitangi Act 1975 grants the Tribunal exclusive authority to determine the Treaty's meaning and effect 'as embodied in the 2 texts', and to 'decide issues raised by the differences between them'.<sup>177</sup> For most Treaty signings around New Zealand, rangatira signed a te reo Māori translation of the English original, and the material differences between those two texts required Tribunals to determine the relative weight that must be given to each, while giving due consideration to the broader context. But, for the Waikato–Manukau signing, rangatira signed the English text which granted the Crown "all rights and powers of

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177. Treaty of Waitangi Act 1975, s5.

sovereignty' over the signatories' territories. This was the sheet signed by three Ngāti Maniapoto rangatira (Te Ngohi Kāwhia, Te Pakarū, and Te Waraki), and by several of the coastal Waikato rangatira (Te Kanawa Te Ikatu, Kiwi Te Roto, Hoana Riutoto, Muriwhenua, Te Awaitaia, Kiwi Ngārau, Tūnui Ngāwaka, Kāmuru Whareroa, Te Whata, Pungarehu) and the Ngāti Ruru signatories (Te Mokoroa, Te Puata, and Peehi). Does this materially alter the arrangement that was put to these signatories, and therefore what they consented to? In particular, does it mean that the rangatira who signed this sheet were offered – and consented to – the Treaty's English language terms, and were therefore not offered the guarantee of tino rangatiratanga?

We note that the Crown did not make any submission that this was the case. Rather, the Crown accepted that for all of this district's signatories the Treaty provided 'solemn guarantees to Māori by the Crown of continuing Māori rights and property; including rangatiratanga.'<sup>178</sup> It is not clear why Crown counsel omitted 'tino'; nonetheless, it is an acknowledgement that the Crown guaranteed all of this district's signatories the rights set out in the Māori text.

As discussed in section 3.3.3, a Māori-language copy of the Treaty was sent to Maunsell at some stage. Claudia Orange's view was that this was likely one of the 200 copies printed at the Paihia mission in February 1840, and was probably forwarded to assist Maunsell with his explanations of the Treaty's terms. Maunsell himself was among the Church Missionary Society's most expert scholars of Māori. We accept O'Malley's view that the Treaty was probably explained in Māori, and in terms that were similar to those used elsewhere in locations where the Māori text was signed. Indeed, if it was not explained in Māori then it is not clear what Māori signatories consented to, if anything, since, so far as we know, none of the signatories was fluent in English. On this basis, we share the Crown's view that the Treaty offered Māori signatories a guarantee of tino rangatiratanga, irrespective of which version was signed.

It is also important to note that many of this district's signatories signed the Māori language Manukau–Kāwhia sheet. Among Ngāti Maniapoto, these included the southern Kāwhia rangatira Ngamotu, and the signatories with mana over central and southern areas of the district (Tāriki, Taonui, and Haupōkia Te Pakarū). Others to sign this sheet were the Ngāti Apakura rangatira Te Waru and the Ngāti Te Wehi rangatira Hone Waitere. Te Noke of Ngāti Te Wehi signed the printed te reo sheet. For these signatories, there is no question that the text and explanations in Māori would have determined their understanding of what they were consenting to.

#### **3.4.1.5 The Treaty's application to non-signatories**

Counsel for some claimants submitted that many rangatira from this district did not sign the Treaty, either because they dissented or because they were never

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178. Submission 3.4.312, p 11; see also p 15; transcript 4.1.24(a), pp 35–36, 38, 46 (Crown counsel, hearing week 17, James Cook Hotel Grand Chancellor, Wellington, 11 February 2015).

offered the opportunity. They submitted that those who did not sign could not be bound by the Treaty.<sup>179</sup>

Earlier (see section 3.3.5), we explained how Ngāti Maniapoto have a tradition whereby they were signatories to the Treaty. Other Waikato-affiliated groups were in a similar position. Not all rangatira signed. Others were not given the opportunity or refused to do so, including Raukawa, Ngāti Hikairo, and Ngāti Tūwharetoa.

Other Tribunals have considered the Treaty's application in territories where Māori either refused to sign or were not offered the opportunity, or alternatively where they signed but without the Crown making any meaningful attempt to convey the Treaty's significance or terms. Those Tribunals have consistently concluded that the Crown acquired Treaty obligations to all hapū and iwi by virtue of its acquisition of kāwanatanga. However, they have differed over the extent to which the Treaty imposed obligations on non-signatories or those who signed without having the terms explained.<sup>180</sup>

In the Rekohu inquiry, the Tribunal found that the Crown's acquisition of sovereignty bound the Crown to a unilateral declaration of Treaty rights:

There appear to have been significant North Island rangatira who did not sign, and no signatories for the greater part of the South Island when sovereignty over that area was proclaimed, and yet the Treaty must be taken to have applied in all places when sovereignty was assumed.<sup>181</sup>

In 2008, the Central North Island Tribunal concurred that the 'Crown's guarantees are binding on it as a unilateral declaration and promise of intent', but also concluded that the Treaty was equally binding on Māori, irrespective of whether they signed or not. Some later gave their formal affirmation to the Treaty, and others did not, 'but all have a partnership with the Crown. Whether a formal act of cession took place or not, all iwi are in the same position.'<sup>182</sup>

But in the Te Urewera inquiry, the Tribunal concluded that Tūhoe did not owe reciprocal Treaty duties because the Treaty was not offered to them. Te Urewera peoples 'knew nothing of the Treaty': 'It could not, in any real sense, take effect to bind them to its terms.'<sup>183</sup> This conclusion, the Tribunal felt, was open to it because of the nature of the Waitangi Tribunal's jurisdiction, and the extent to which it depended on the existence of the Crown's sovereignty:

179. Submission 3.4.252, pp17–18.

180. Waitangi Tribunal, *Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands* (Wellington: Legislation Direct, 2001), pp 30–31; Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 206–207; Waitangi Tribunal, *Te Urewera*, 8 vols (Wellington: Legislation Direct, 2018), vol 1, p 152; Waitangi Tribunal, *He Whiritauanoka*, vol 1, p 151; see also submission 3.4.312, pp 4–5; submission 3.4.252, pp18–20.

181. Waitangi Tribunal, *Rekohu*, p 30.

182. Waitangi Tribunal, *He Maunga Rongo*, vol 1 pp 206–207.

183. Waitangi Tribunal, *Te Urewera*, vol 1, p 141.

In our view, if we were to ignore the reality behind the May 1840 proclamations, we would be unable to exercise responsibly our statutory jurisdiction. The Treaty of Waitangi Act makes plain that our task is to apply Treaty principles, not legal principles. It is well established that the Tribunal can find lawful Crown conduct to be inconsistent with Treaty principle. That outcome would not be possible if the Tribunal was unable to examine Crown acts or omissions simply because they were lawful.

Moreover, the Treaty of Waitangi Act states that, in performing its tasks, the Waitangi Tribunal has exclusive authority to determine ‘the meaning and effect of the Treaty as embodied in the 2 texts and to decide issues raised by the differences between them’ (s5(2)). Nothing in that wording compels the Tribunal to adopt the law’s view of the Treaty’s ‘effect’. Indeed, the contrary outcome is suggested by the fact that the Tribunal has exclusive authority to determine the Treaty’s meaning and effect, and by the silence of section 5(2) on what matters the Tribunal should look to when deciding issues raised by the difference between the two texts of the Treaty. In our view, when the ‘effect’ of the Treaty for non-signatories is in issue, the actual circumstances of their dealings with the Crown are of paramount importance, not the law’s gloss on those circumstances.<sup>184</sup>

That Tribunal concluded that while ‘the Crown undertook Treaty obligations to all Māori, the meaning and effect of the Treaty for Māori varied according to whether or not their rangatira had signed it.’<sup>185</sup>

We agree with other Tribunals that the Crown acquired obligations to all hapū and iwi in the district irrespective of whether they had signed the Treaty. To that extent, our conclusions about the Treaty’s meaning and effect will apply to all hapū and iwi in the district. But we must also consider what reciprocal obligations the district’s iwi and hapū acquired through the Treaty, and the extent to which their tino rangatiratanga was modified by the Crown’s acquisition of new rights and powers through the Treaty. We will consider those questions below in respect of both signatories and non-signatories.

### **3.4.2 What rights were guaranteed to Māori through the Treaty?**

We begin by considering the nature and extent of the rights that were guaranteed to Māori through the Treaty. It was, after all, the Crown that offered the Treaty to Māori at a time when Māori authority was acknowledged over Aotearoa–New Zealand, including in Te Rohe Pōtae. The Treaty is, therefore, best understood by first ascertaining the extent to which the parties intended that authority to continue.

#### **3.4.2.1 The guarantees of undisturbed possession and tino rangatiratanga**

In the English text, article 2 guaranteed Māori ‘full, exclusive, and undisturbed possession of their lands, estates, forests and fisheries and other properties’ for so long as they wished to retain them. This, Normanby’s instructions suggested, was

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184. Waitangi Tribunal, *Te Urewera*, vol 1, p 146.

185. Waitangi Tribunal, *Te Urewera*, vol 1, p 146.

principally intended as a property right, under which Māori communities would be guaranteed possession of their lands, and the Crown would not attempt to acquire those lands except with free, informed consent. But the promise of ‘undisturbed’ possession also suggested that Māori communities would be left, at least for the time being, to manage themselves according to their own customs. This, too, was stated in Normanby’s instructions, and was consistent with the principal purpose for seeking sovereignty, which was to control settlers and settlement.<sup>186</sup> In taking this approach, the Crown nonetheless intended that Māori would ultimately be brought under British law, but it saw no need to immediately force the issue, believing that exposure to missionaries and mission schools would lead inevitably to assimilation.<sup>187</sup>

In the Māori text, the rights guaranteed to Māori were taken a considerable step further. In article 2, Māori were guaranteed ‘te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa.’<sup>188</sup> The preamble also explained that through the Treaty the Crown was anxious to protect both rangatiratanga *and* land (‘o ratou rangatiratanga, me to ratou wenua’). This was different, and much greater, than the promise to protect ‘just Rights and Property’ in the English text. ‘Te tino rangatiratanga’ represented the mana embodied in rangatira.<sup>189</sup> It was a guarantee of enduring possession of and relationships with land and resources, and of the authority necessary to maintain those relationships as iwi and hapū saw fit<sup>190</sup> – that is, in accordance with their own knowledge and ways of seeing (mātauranga) and ways of understanding what was right and proper (tikanga).<sup>191</sup>

In chapter 2 we explained how all relationships among people, and between people and the environment, were understood through the lens of whakapapa, and were managed through ongoing dialogue between people and atua. Whanaungatanga (kinship among all things) formed the basis of a system of law and ethics (tikanga) and provided the source of all authority to act in the physical world (mana). A people’s mana depended on the successful maintenance of relationships among people (both internally and externally) and with land and environmental taonga.

Rangatira embodied that mana, and bore primary responsibility for managing and maintaining relationships in accordance with tikanga. Their duties included political leadership, guiding community decision-making, mediation, economic

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186. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, p 320.

187. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, p 320.

188. Waitangi Tribunal, *Report on the Orakei Claim*, pp 188–189; Waitangi Tribunal, *Report on the Motunui–Waitara Claim*, p 51; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 346–347, 349–351.

189. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim* (Wellington: Waitangi Tribunal, 1985), p 67; Waitangi Tribunal, *Report on the Motunui–Waitara Claim*, p 51; see also Waitangi Tribunal, *Report on the Orakei Claim*, p 186.

190. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* (Wellington: Department of Justice, 1988), p 181.

191. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuatahi* (Wellington: Legislation Direct, 2011), pp 22–23.

and environmental management, military leadership, and diplomacy. They embodied the mana of their people, and their positions depended on their ongoing success at advancing their people's interests. They were, in effect, accountable to their community.

#### 3.4.2.1.1 THE VIEWS OF OTHER TRIBUNALS

Other Tribunals have translated tino rangatiratanga as 'full authority', 'full chieftainship', and 'highest chieftainship'.<sup>192</sup> They have described it as encompassing a right of hapū or tribal self-determination, autonomy, self-government,<sup>193</sup> self-regulation,<sup>194</sup> absolute authority,<sup>195</sup> and 'full tribal authority and control'<sup>196</sup> in relation to land, people, and taonga.<sup>197</sup> The Manukau Tribunal described tino rangatiratanga as inseparable from mana, and the Te Motunui–Waitara and Orakei Tribunals noted that rangatiratanga and mana were inextricably linked.<sup>198</sup> In the view of the Motunui–Waitara Tribunal, tino rangatiratanga 'could be taken to mean . . . the sovereignty of their lands'.<sup>199</sup>

The Muriwhenua Fishing Tribunal referred to three core elements of tino rangatiratanga. The first is authority or control, without which the other two components would be meaningless. The second is that authority must be exercised in ways that recognise its spiritual source, and the spiritual source of the taonga concerned, in which the main reason for exercising authority is to maintain the tribal base for future generations. The third element is that tino rangatiratanga applies not only to taonga but to people within the kinship group, including their access to resources.<sup>200</sup> The Orakei Tribunal found that the authority embodied in the concept of rangatiratanga is not only the authority of a chief but also the authority of his or her people.<sup>201</sup>

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192. Waitangi Tribunal, *Report on the Manukau Claim*, p 67; Waitangi Tribunal, *Report on the Motunui–Waitara Claim*, p 51; Waitangi Tribunal, *The Te Roroa Report 1992* (Wellington: Brooker & Friend, 1992), p 26; Waitangi Tribunal, *Report on the Muriwhenua Fishing Claim*, pp 173–174; Waitangi Tribunal, *Report on the Orakei Claim*, pp 208–209; Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 174.

193. Waitangi Tribunal, *Ngai Tahu Sea Fisheries Report* (Wellington: Brooker & Friend, 1992), p 269; Waitangi Tribunal, *Preliminary Report on the Te Arawa Representative Geothermal Resource Claims* (Wellington: Brooker & Friend, 1993), p 31; Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: Legislation Direct, 1996), pp 19–20.

194. Waitangi Tribunal, *Ngawha Geothermal Resource Report* (Wellington: Legislation Direct, 1993), p 136.

195. Waitangi Tribunal, *Te Urewera*, vol 1, p 134.

196. Waitangi Tribunal, *Ngai Tahu Sea Fisheries Report*, pp 269–270.

197. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 174; Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims* (Wellington: Legislation Direct, 2008), p 4; Waitangi Tribunal, *Te Kāhui Maunga: The National Park District Inquiry*, 3 vols (Wellington: Legislation Direct, 2013), vol 1, p 16.

198. Waitangi Tribunal, *Report on the Manukau Claim*, p 67; Waitangi Tribunal, *Report on the Motunui–Waitara Claim*, p 51; see also Waitangi Tribunal, *Report on the Orakei Claim*, p 186.

199. Waitangi Tribunal, *Report on the Motunui–Waitara Claim*, p 51.

200. Waitangi Tribunal, *Report on the Muriwhenua Fishing Claim*, p 181.

201. Waitangi Tribunal, *Report on the Orakei Claim*, pp 132–133.

Furthermore, the Tribunal in *Ko Aotearoa Tēnei* found that tino rangatiratanga is a guarantee to Māori of their right ‘to make and enforce laws and customs in relation to their taonga.’<sup>202</sup> The Tūranga Tribunal described it as a guarantee of tribal autonomy, which referred to ‘the ability of tribal communities to govern themselves . . . to determine their own internal political, economic, and social rights and objectives, and to act collectively in accordance with those determinants.’<sup>203</sup> The Central North Island Tribunal described the guarantee of tino rangatiratanga as ‘full authority over their own affairs’ including ‘self-government by appropriate and agreed institutions’, and carrying with it a ‘right to be consulted and give consent to Crown policies and laws affecting the things of fundamental importance to them’. Such guarantees ‘could only be overridden in exceptional circumstances.’<sup>204</sup>

The Tribunal in its Te Paparahi o Te Raki stage one report gave exhaustive consideration to the translation of the Treaty’s key terms, and concluded that the translators ‘must have known that tino rangatiratanga conveyed more than what was set out in the English text.’<sup>205</sup> In other words, the translators conveyed the ‘full, exclusive, and undisturbed possession’ that the Crown intended to offer, but went a step further, using a term that also conveyed the highest form of authority among Māori. In so doing, the translators ‘shifted the meaning’ of the English text, and did so ‘because they understood what it would take to convince Māori to sign.’<sup>206</sup>

### 3.4.2.1.2 THE CLAIMANTS’ VIEWS OF TINO RANGATIRATANGA

Counsel for some of the claimants submitted that this district’s signatories would have understood the guarantee of ‘tino rangatiratanga’ as a guarantee of mana motuhake – of independence, authority, and nationhood in accordance with tikanga.<sup>207</sup> Counsel noted that in He Whakaputanga – the 1835 declaration of independence of northern rangatira, later signed by Te Wherowhero – all sovereignty and independence was vested in ‘tino rangatira’ (‘hereditary chiefs’ in the English text), creating ‘a clear, powerful and unequivocal declaration of legal and political self-determination and independence’. On that basis, they submitted, any guarantee of tino rangatiratanga was the equivalent of a guarantee of sovereignty.<sup>208</sup> Counsel for several of the claimants referred to an 1843 letter to Governor FitzRoy written by or on behalf of Te Wherowhero, in which he said Māori had signed on

202. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims concerning New Zealand Law and Policy Affecting Māori Culture and Identity — Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 1, p 8.

203. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, p 113.

204. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 191.

205. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 514–515.

206. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 514–515.

207. Submission 3.4.252, pp 14–16.

208. Submission 3.4.252, pp 16–17.

the understanding that ‘the Treaty was to preserve their chieftainship’ (see section 3.4.2.2.3).<sup>209</sup>

When, after war and a period of further independence, Te Rohe Pōtae Māori came to set out what they sought in return for the opening of their district for the main trunk railway, they put their demands in terms of their tino rangatiratanga. This was expressed in a petition of 1883 (on behalf of over 400 Te Rohe Pōtae Māori), where it was stated that the Crown had enacted successive laws which denied rights guaranteed to them under the Treaty. According to the petitioners, article 2 ‘fully guaranteed’ (‘i tino whakapumautia’) to them their ‘absolute chiefly authority’ (‘te tino rangatiratanga’), as well as confirming their absolute and undisturbed possession of their lands (‘me te kore ano hoki e whakaraurau ta matou matou noho i runga i o matou whenua’).<sup>210</sup> The expression of rights in the petition reflected not just article 2 (which guaranteed the exercise of tino rangatiratanga in relation to lands, waters, fisheries and other taonga), but also the preamble, which expressed the Crown’s desire to protect rangatiratanga as well as whenua (which had only been rendered in English as ‘just Rights and property’).

Dr Jackson gave evidence for the claimants and he spoke about Māori understandings of the Treaty. In his view tino rangatiratanga was synonymous with mana. Mana, he said, was an ‘absolute’ power to define rights and interests; to protect, use, and make decisions about people, territory, and resources; and to negotiate with other groups. Because mana derived from whakapapa and ultimately from atua, it could be exercised only in accordance with tikanga or Māori law; it was held by and for the people, being a taonga (treasure) handed down through generations; and it entailed an obligation to promote the people’s well-being through mediation of relationships.<sup>211</sup>

In his view, rangatira neither could nor would willingly transfer mana to the Crown. Indeed, mana was ‘absolutely inalienable’:

No matter how powerful rangatira might presume to be, they never possessed the authority nor had the right to give away or subordinate the mana of the collective because to do so would have been to give away the whakapapa and the responsibilities bequeathed by the tipuna. The fact that there is no word in Te Reo Maori for ‘cede’ is not a linguistic shortcoming but an indication that to even contemplate giving away mana would have been legally impossible, politically and constitutionally untenable, and culturally incomprehensible.<sup>212</sup>

Dr Jackson further elaborated:

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209. Submission 3.4.157(a), p 32; submission 3.4.252, p 32; see also doc A23, p 79.

210. ‘Petition of the Maniapoto, Raukawa, Tuwharetoa, and Whanganui Tribes’, 26 June 1883, AJHR, 1883, J-01, pp 1–4.

211. Document A117, pp 11–13.

212. Document A117, pp 13–14.



People do not voluntarily give up their independence. . . . there is no history of, say, France voluntarily ceding or giving up its sovereignty to England. That is not a human political reality. Yet . . . one of the presumptions made about indigenous peoples, is that we would do that. So Britain would never expect France to do that, but there was a presumption that we would, and that is what I call, almost a magical suspension of disbelief.<sup>213</sup>

Even if mana *could* be ceded, the circumstances gave no cause for rangatira to do so. Māori vastly outnumbered Europeans in 1840, and were controlling the terms of their engagement in order to take advantage of potential benefits and control risks. It was, he said, ‘simply not a human reality, let alone a Māori one, that the presence of a tiny minority would bring about a surrender of long held and deeply cherished concepts of power.’<sup>214</sup>

In Dr Jackson’s view, the available evidence supported the conclusion that rangatira were seeking to preserve and enhance their mana by making an agreement with the Crown. Rangatira understood that relationship as granting the Crown a limited power, *kāwanatanga*, to ensure that settlers did not impinge on the mana of hapū and iwi. The Treaty was therefore ‘a re-affirmation of mana,’ along with a ‘a tikanga-based expectation that the British Crown would meet its obligations by helping to keep order among Pakeha while acknowledging the kawa and mana of the existing polities.’<sup>215</sup>

### 3.4.2.1.3 THE CROWN’S VIEWS OF TINO RANGATIRATANGA

The Crown, in its closing submissions on constitutional issues, did not directly explain its understanding of tino rangatiratanga. Rather, its submissions focused on the process by which the Crown, in its own view, acquired sovereignty over all territories and peoples in New Zealand. In that context, it referred to tino rangatiratanga in order to define it as a lesser power. Specifically, it submitted that it understood the Treaty ‘to represent Māori agreement to the transfer of sovereignty, and solemn guarantees to Māori by the Crown of continuing Māori rights and property; including rangatiratanga.’<sup>216</sup> It also submitted that it ‘simply did not understand that its guarantee to Māori of tino rangatiratanga resulted in the sharing of *sovereignty*’ (emphasis in original).<sup>217</sup>

During the hearings, Crown counsel was questioned about the guarantee of tino rangatiratanga. Counsel said that rangatiratanga remained ‘present and constant’ throughout the signing of the Treaty and afterwards, and that the Crown’s recognition of tino rangatiratanga occurred through the Treaty.<sup>218</sup> Counsel said that the

213. Transcript 4.1.8, pp 1154–1155 (Moana Jackson, hearing week 2, Waitomo Cultural and Arts Centre, 14 December 2012).

214. Document A117, pp 19–21.

215. Document A117, pp 22–23.

216. Submission 3.4.312, p 11.

217. Submission 3.4.312, p 15.

218. Transcript 4.1.24(a), pp 35–36 (Crown counsel, hearing week 17, James Cook Hotel Grand Chancellor, Wellington, 11 February 2015).

relationship between Māori and the Crown ‘was not [a] state to state relationship, but acknowledged (in response to a question from the Tribunal) that it could fairly be characterised as a rangatira to rangatira relationship.’<sup>219</sup>

Although the Crown regarded Māori as having consented through the Treaty to its acquisition of sovereignty, this did not necessarily mean that the Crown was able to exercise its authority – the practical exercise of that authority had to be ‘worked out with Māori either nationally or in particular areas’. The exact steps the Crown would take to determine how its authority might be exercised ‘will depend on the circumstances and are many and varied but will include . . . consultation or becoming fully informed about the Māori position, discussion, consideration of the Māori interests, [and] balancing that interest against other interests that exist’. The promise of tino rangatiratanga was ‘one of the obligations’ that the Crown was obliged to ‘adhere to’ as part of this process of determining how it might exercise its authority.<sup>220</sup> While these submissions do not clearly define the Crown’s understanding of tino rangatiratanga, they do appear to suggest that it was a right that the Crown could balance alongside other interests.

Under further questioning, Crown counsel described tino rangatiratanga as ‘something less than sovereignty’, and as ‘an authority exercised by Māori, by rangatira over Māori communities’ which the Crown ‘undertook to respect and preserve but . . . doesn’t equate to the same powers that sovereignty does that exists in the Crown’. Tino rangatiratanga ‘doesn’t have or comprise of the power to govern over the country as a whole, whereas the sovereignty and the Crown does entail that.’<sup>221</sup> Counsel also said:

Rangatiratanga is peculiarly a Māori phenomenon in that it is imbued with the Māori view of the world and Māori tikanga, that no one else shares. So it’s unique in that sense, but perhaps one can draw parallels with the Crown discussing matters with significant community leaders or business leaders.<sup>222</sup>

Judge Ambler put it to Crown counsel that tino rangatiratanga ‘didn’t depend on the Crown agreeing to it’. Māori had tino rangatiratanga prior to the Treaty ‘and the Treaty provided for that to continue’. Crown counsel agreed that tino rangatiratanga continued ‘subject to the Crown’s right to govern.’<sup>223</sup> Asked if the Crown’s right to govern was in turn fettered by tino rangatiratanga, counsel said tino rangatiratanga was ‘not an absolute fetter’ and ‘not a legal fetter’ on the Crown’s

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219. Transcript 4.1.24(a), p35 (Crown counsel, hearing week 17, James Cook Hotel Grand Chancellor, Wellington, 11 February 2015).

220. Transcript 4.1.24(a), pp 37–38 (Crown counsel, hearing week 17, James Cook Hotel Grand Chancellor, Wellington, 11 February 2015).

221. Transcript 4.1.24(a), pp 46–47 (Crown counsel, hearing week 17, James Cook Hotel Grand Chancellor, Wellington, 11 February 2015).

222. Transcript 4.1.24(a), pp 48–49 (Crown counsel, hearing week 17, James Cook Hotel Grand Chancellor, Wellington, 11 February 2015).

223. Transcript 4.1.24(a), p 50 (Presiding officer and Crown counsel, hearing week 17, James Cook Hotel Grand Chancellor, Wellington, 11 February 2015).

authority. It was ‘an important fact or principle that is to be considered when the Crown is exercising its authority in a way that affects Māori’. Although it was not a legal fetter, it ‘engages the honour of the Crown’ and meant there were certain acts the Crown could carry out without breaching Treaty principles.<sup>224</sup>

#### 3.4.2.1.4 OUR VIEW OF THE GUARANTEE OF TINO RANGATIRATANGA

Before the Treaty was signed in this district, Māori exercised tino rangatiratanga. The term denoted the authority rangatira exercised on behalf of their communities, and in service of their well-being. Tino rangatiratanga encompassed authority in a wide range of spheres – including political, social, economic, diplomatic, and military. As other Tribunals have noted, tino rangatiratanga cannot be separated from mana.

In the Māori text of the Treaty, article 2 guaranteed Māori signatories ‘te tino rangatiratanga o o ratou wenua o ratou kainga o ratou taonga katoa’ – indicating that Māori were to retain their existing authority with respect to lands, homes, and all other valued things. The English text of the Treaty referred to ‘full, exclusive, and undisturbed possession’ of lands, estates, forests and fisheries. Unlike the text in te reo, this said nothing about the exercise of authority. Nonetheless, it was a significant guarantee of possession, and also of non-interference. As discussed above, the Crown’s intention, as set out in Normanby’s instructions, was that it would not initially interfere with Māori communities (except in limited circumstances), but would instead defend their right to live according to their customs until such time as they chose to assimilate. The Crown’s expectation was that they would do so, and would therefore come under Crown authority.

However, the text did not make this clear, and instead, in the preamble, suggested that the Crown’s focus was on controlling settlers and protecting Māori from the harmful effects of settlement. Where such anomalies exist we must consider what the rangatira understood they consented to. Inevitably, this leads us back to their own understanding of what it would have meant to have the Crown guarantee their tino rangatiratanga.

We have no doubt that Māori understood it to be a guarantee of their authority, autonomy, and independence.<sup>225</sup> This encompassed their rights to maintain control of, use, and develop their lands, villages and other taonga. It also included rights to determine their own social, political, and institutional structures.

The Treaty also granted the Crown a significant new power – kāwanatanga. As we will discuss in section 3.4.3, kāwanatanga allowed the Crown to govern and make laws for particular purposes. To that extent, the ultimate sovereign authority that Māori communities held was modified by the Treaty to become a right to self-determination and autonomy or self-government existing alongside the Crown’s

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224. Transcript 4.1.24(a), pp 50–51 (Crown counsel, hearing week 17, James Cook Hotel Grand Chancellor, Wellington, 11 February 2015).

225. Waitangi Tribunal, *The Taranaki Report*, p 5.

right to make law and govern.<sup>226</sup> While different in nature from the Crown's kāwanatanga, tino rangatiratanga must have been understood as an equivalent power.

It followed that there would need to be further discussions between Māori and the Crown about how these two forms of power would intersect and co-exist. For, as the Taranaki Tribunal found, the Treaty envisaged two spheres of authority (the Crown and Māori), where their respective authorities would inevitably overlap.<sup>227</sup> We will consider the precise nature of the relationship between kāwanatanga and tino rangatiratanga and what was needed for there to be co-existence in section 3.4.4.

### 3.4.2.2 *Tino rangatiratanga and the exercise of tikanga*

We turn now to consider how the exercise of rangatiratanga was to be implemented under the Treaty. In doing so we refer to the arguments made by the parties regarding tikanga.

Claimants said that tikanga is relevant to the Treaty for three reasons. First, some argued that tikanga is an essential part of Māori culture and is therefore a taonga for the purposes of article 2.<sup>228</sup> Secondly, some referred to Hobson's verbal assurance at Waitangi that he would protect all religions including 'te ritenga Maori hoki' (translated at the time as 'Maori custom').<sup>229</sup> Thirdly, some argued that the exercise of tino rangatiratanga cannot be separated from the exercise of tikanga, since tikanga is the system of law and values that underpins political authority and decision-making.<sup>230</sup>

The claimants argued that article 2 of the Treaty obliged the Crown to protect tikanga in all walks of life. They further argued that tikanga should not be dismissed as 'lore' or 'custom', but needed to be recognised as a system of law.<sup>231</sup> As such, the Crown was obliged to recognise tikanga. Accordingly, they argued, the Crown's right of kāwanatanga did not allow it to impose British or settler laws on Māori without their consent.<sup>232</sup> They also submitted that the Crown had a Treaty obligation to recognise tikanga as a basis for Māori political authority and decision-making 'at all levels', and to ensure that tikanga was incorporated into the way New Zealand was governed.<sup>233</sup>

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226. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 172; Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 1, p 113; Waitangi Tribunal, *Te Whanau o Waipareira Report* (Wellington: Legislation Direct, 1998), p 26.

227. Waitangi Tribunal, *The Taranaki Report*, p 19.

228. Submission 3.4.124, pp 119–120; submission 3.4.130(b), pp 34–35.

229. Submission 3.4.124, p 120; see also Waitangi Tribunal, *He Whakaputanga me te Tiriti*, p 372; Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, p 257.

230. Submission 3.4.130(b), paras 165–166, 168; submission 3.4.124, paras 90, 103, 105, 109, 112, 138, 183, 186, 195, 239, 253, 262, 347.

231. Transcript 4.1.11, pp [20]–[21] (Counsel for Wai 1309 claimants, hearing week five, Te Hingārangi marae, 6 May 2013); submission 3.4.130(b), p 35.

232. Submission 3.4.130(b), p 35.

233. Submission 3.4.130(b), pp 35, 41, 42.

We note that the Crown acknowledged the importance of tikanga to the claimants, and its pervasive influence on Māori life prior to the Treaty. The Crown submitted that tino rangatiratanga was ‘imbued with the Māori view of the world and Māori tikanga.’<sup>234</sup> The Crown submitted that tikanga (as a body of law or values) was not guaranteed by the Treaty. Nor was it a taonga.<sup>235</sup> It contended that, as the Crown had limited influence over tikanga, any protective obligations it had could only go so far.<sup>236</sup> Furthermore, the Crown argued it was obliged to balance the protection of tikanga alongside ‘other relevant interests.’<sup>237</sup>

In assessing these submissions, we consider that tikanga underpinned how ‘tino rangatiratanga’ was exercised as it was relevant to their land tenure, the environment, social and political relationships, and generally to the Māori way of life in Te Rohe Pōtae. Tikanga mediated relationships between people and taonga, and was therefore an integral aspect of tino rangatiratanga. In respect of any interests or taonga, a community’s authority (mana or tino rangatiratanga) depended on its exercise of the relevant tikanga. Because the guarantee of rangatiratanga was a promise of protection for Māori autonomy, the Crown was therefore obliged to respect Māori tikanga as a system of law, policy, and practice.<sup>238</sup>

Consistent with these findings, other Tribunals have described article 2 as including the protection of rights to manage taonga in accordance with customs and cultural preferences, including any modern adaptation of those preferences.<sup>239</sup> The Foreshore and Seabed Tribunal found, and we agree, that the article 2 guarantee of tino rangatiratanga was inherently a guarantee of the right to exercise tikanga: ‘The exercise of mana by rangatira was underpinned and sustained by adherence to tikanga. The chief whose thoughts and actions lacked that essential and recognisable quality of being ‘tika’ would not be sustained in his leadership.’

The Crown’s guarantee of tino rangatiratanga was meaningless, the Tribunal found, unless also accompanied by the tikanga ‘that sustain and regulate the rangatira and his relationship to the people, and the land.’<sup>240</sup>

We see that conclusion as entirely applicable to the claims in this inquiry. We acknowledge that the question of whether tikanga is a taonga is a matter for the claimants to decide. But it is clear that the guarantee of tino rangatiratanga encompasses the exercise of tikanga. Thus Rohe Pōtae Māori had the right to exercise their tino rangatiratanga in accordance with their own systems of law and custom.

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234. Transcript 4.1.24(a), pp 48–49 (Crown counsel, hearing week 17, James Cook Hotel Grand Chancellor, Wellington, 11 February 2015).

235. Submission 3.4.285, pp 7–8.

236. Submission 3.4.285, pp 2–3, 8.

237. Submission 3.4.285, pp 3, 7–8.

238. Waitangi Tribunal, *The Taranaki Report*, p 5; Waitangi Tribunal, *Ko Aotearoa Tēnei, Te Taumata Tuatahi*, p 23; Waitangi Tribunal, *Ko Aotearoa Tēnei, Te Taumata Tuarua*, vol 2, pp 237, 300.

239. Waitangi Tribunal, *The Ngai Tahu Report 1991*, 3 vols (Wellington: Brooker and Friend Ltd, 1991), vol 3, pp 726, 731; Waitangi Tribunal, *Report on the Motunui–Waitara Claim*, p 53.

240. Waitangi Tribunal, *Report on the Crown’s Foreshore and Seabed Policy* (Wellington: Legislation Direct, 2004), p 3.

**3.4.2.3 Royal protection and the rights of British subjects**

Finally, we consider the guarantees made to Māori under article 3. These guarantees potentially supplemented the rights that were guaranteed to Māori under article 2.

In the English text, the Treaty extended Royal protection to Māori and granted them ‘all the Rights and Privileges of British Subjects’. This was translated into te reo Māori as the Queen offering to ‘tiaki’ all Māori, and ‘tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarangi’. This is often translated as granting to Māori the same rights as British subjects.<sup>241</sup> It is, therefore, a guarantee of equal treatment in law and policy. The Crown could not discriminate against Māori, or treat settlers more favourably, or more generally prioritise settler interests over those of Māori.<sup>242</sup> The Central North Island Tribunal found that one specific application of this principle was to grant a right to representative government (as the settlers had), either through full and fair representation in the national assembly, or through equivalent Māori institutions, or both.<sup>243</sup>

Another effect of article 3 is that it grants Māori options. Whereas article 2 guaranteed the right of tino rangatiratanga to Māori communities, article 3 also granted members of those communities the right to participate fully and on an equal basis in the emerging settler society.<sup>244</sup>

**3.4.2.4 Our conclusions on the rights guaranteed to Māori through the Treaty**

Our conclusion is that the Treaty guaranteed to Māori their tino rangatiratanga. This was a guarantee that Māori would be able to continue to exercise full authority over lands, homes, and all matters of importance to them. This, at a minimum, was the right to self-determination and autonomy or self-government in respect of their lands, forests, fisheries, and other taonga for so long as they wished to retain them. That authority or self-government included the right to work through their own institutions of governance, and apply their own tikanga or system of custom and laws. Through article 3, Māori were also granted the same rights as British subjects, including the right to representative government. However, the right of tino rangatiratanga was not exactly the same as it had been prior to the Treaty. It was necessarily qualified by the Crown’s new right of kāwanatanga, which included power to make laws and to govern subject to Māori Treaty rights.

Many of the claimants told us that their tūpuna signed the Treaty because of the perceived benefits to their people’s well-being, and therefore to their mana. We agree with them as this district’s leaders had seen the benefits arising from contact with traders and missionaries, most particularly through access to new sources of food, goods, and technology. They vastly outnumbered Pākehā, who had hitherto

241. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, p 351.

242. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 428; Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Preliminary Report on Customary Rights in the Northern South Island* (Wellington: Legislation Direct, 2007), p 6; Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, vol 1, p 27.

243. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 177, 206, 405.

244. Waitangi Tribunal, *Ngai Tahu Sea Fisheries Report*, p 274; Waitangi Tribunal, *Foreshore and Seabed Policy*, p 133–134.

posed no challenge or threat, though (claimants said) such threats remained possible should settlement commence without control. When the opportunity arose to form an alliance with the world's largest power – which might open up opportunities for deeper and greater trading relationships, and which offered a promise that their existing independence, authority, and territorial relationships would be protected from any future threat – they took it.<sup>245</sup> Why would they not? For, as Verna Tuteao of Ngāti Mahuta put it: ‘The negotiation of agreements for the advancement of hapū wellbeing was . . . one of the principal functions of any rangatira.’<sup>246</sup>

### 3.4.3 What rights did the Crown acquire through the Treaty?

We now turn to consider the nature and extent of the rights that the Crown acquired through the Treaty.

The Crown intended the Treaty as a vehicle by which Māori would consent to its acquisition of sovereignty over New Zealand.<sup>247</sup>

Māori consent to the cession of sovereignty, based on the free and frank explanation of the Treaty's terms and broader purposes, was exactly what Hobson was tasked with obtaining. As Lord Normanby's instructions made clear, prior to the Treaty all sovereignty in New Zealand belonged with Māori hapū and iwi, and the Crown could not assert its own authority except with the ‘free and informed consent’ of the Māori leaders ‘expressed according to their established usages.’<sup>248</sup>

The Crown's intention was also reflected in the English text, which provided that the signatories would cede ‘absolutely and without reservation all the rights and powers of Sovereignty’ that had previously belonged to them. Wherever rangatira signed the Treaty, the Crown's representatives regarded this as an act of cession. From Britain's point of view, that consent was a critical first step towards formal acquisition of sovereignty in accordance with *jus gentium*, or the law of nations (see earlier discussion in section 3.2.2.2).<sup>249</sup>

On 21 May 1840, Governor Hobson proclaimed British sovereignty over the whole country, the North Island by cession and the South Island (for reasons described earlier) by discovery.<sup>250</sup> At that time, the Manukau–Kāwhia sheet was still in Kāwhia, where the missionary John Whiteley was gathering signatures. Only four rangatira had signed the sheet, and none from this district. Te Kanawa, Tāriki, and Haupōkia Te Pakarū signed on 21 May, and another six rangatira signed after that date.<sup>251</sup> Hobson did have possession of the Waitangi sheet and the Waikato–Manukau sheet, which had been signed by several rangatira from this district (see table 1).<sup>252</sup> The British Government later accepted Hobson's proclama-

245. Document s52, pp 9–10; doc B1, pp 5–6; doc J5, p 17; doc A110, pp 472–473; see also submission 3.4.124, p 133.

246. Document J20, pp 5–6.

247. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 312–325; see also doc A23, pp 61–63.

248. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 316–318; see also doc A23, pp 61–63.

249. Submission 3.4.312, pp 1, 7–15.

250. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 386–387.

251. Document A23, pp 69–71.

252. Orange, *The Treaty of Waitangi*, p 85.

tions as valid, and from then on has regarded the Crown's sovereignty as an established legal fact.<sup>253</sup>

The Crown's view in this inquiry was that Māori signatories consented to the Crown establishing a government 'that would have authority over all people and . . . all land in New Zealand', although the detail of how that authority would be exercised, especially in relation to Māori, was left for future debate and discussion.<sup>254</sup> On this basis, the Crown submitted that it acquired sovereignty in 1840 'honourably, fairly, reasonably and in good faith'.<sup>255</sup> The Crown defined sovereignty as 'the highest authority to govern',<sup>256</sup> or 'the paramount civil authority', extending over all of New Zealand's people and territories,<sup>257</sup> and as encompassing (through the imperial Queen-in-Parliament at that time) 'the absolute and unfettered capacity to make any law'.<sup>258</sup> This was 'full sovereignty',<sup>259</sup> to which any residual Māori authority was subordinate.<sup>260</sup> Counsel elaborated that 'British authorities associated British sovereignty with the power to constitute a 'civil government' whose members and subjects owed paramount allegiance to the Queen'.<sup>261</sup>

The claimants, however, thought quite differently. They submitted that signatories would not have understood the 'kāwanatanga' ceded in article 1 to mean sovereignty. Rather, they would have understood 'kāwanatanga' to mean 'a limited form of government' which allowed the Crown 'to govern settlers according to British law', but did not interfere with the sovereignty of Māori iwi and hapū.<sup>262</sup> If the Crown had a self-imposed condition of acquiring Māori consent to Crown sovereignty, they said, then the Crown failed to meet its own benchmark.<sup>263</sup>

### 3.4.3.1 *The text of article 1: sovereignty and kāwanatanga*

The concept of sovereignty has its origins in the supreme power exercised by the British sovereigns.<sup>264</sup> Over time, the bulk of that power was delegated to the branches of government, which exercised power in the sovereign's name, and by 1840 sovereignty had come to be associated not only with the monarch but with Parliament and executive government.<sup>265</sup> The difference between the exercise of

253. Orange, *The Treaty of Waitangi*, p 85; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, p 389.

254. Submission 3.4.312, pp 1, 13.

255. Submission 3.4.312, p 11.

256. Transcript 4.1.24(a), p 45.

257. Submission 3.4.312, pp 1, 12–13.

258. Submission 3.4.312, pp 12–13. Similarly, in the Te Paparahi o Te Raki inquiry, the Crown defined sovereignty as 'civil government', especially government by legislation, and argued that the Crown's acquisition of sovereignty meant the Crown in Parliament had unfettered lawmaking powers: Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 9–10, 42–45, 462, 484.

259. Submission 3.4.312, p 13.

260. Transcript 4.1.24(a), pp 37–38, 48–50 (Crown counsel, hearing week 17, James Cook Hotel Grand Chancellor, Wellington, 11 February 2015).

261. Submission 3.4.312, pp 12–13.

262. Submission 3.4.252, pp 14, 33, 116.

263. Submission 3.4.127, p 6.

264. Philip Joseph, *Constitutional and Administrative Law in New Zealand*, 4th ed (Wellington: Thomson Reuters, 2014), pp 516–518.

265. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 9–10, 42–45, 462, 484.



sovereign authority through civil, national institutions and tribal groups exercising customary law was why Lord Normanby acknowledged Māori sovereignty, while also qualifying it as being dispersed among the tribes.<sup>266</sup>

As we have seen, ‘sovereignty’ was not a term that had any direct equivalent in te reo Māori. Explaining the term would have been a challenge for officials and missionaries. The Tribunal in *Te Paparahi o Te Raki* noted that in He Whakaputanga the phrase ‘ko te Kingitanga ko te mana i te wenua’ was used as a translation for ‘all sovereign power and authority’, ‘Rangatiratanga’ was used for ‘Independence’, and ‘Wenua Rangatira’ for ‘independent State’.<sup>267</sup> That document therefore recognised mana and rangatiratanga as the highest forms of authority in the Māori world. Mana refers to an authority handed down from atua to act on their behalf in the physical world, and rangatiratanga refers to the social, political, economic, diplomatic, and military leadership that were all responsibilities of rangatira acting in consultation with their community.

By comparison, neither mana nor rangatiratanga were used to convey what the Crown meant by ‘sovereignty’ in the Treaty. Instead, signatories were asked to agree to convey to the Queen ‘kawanatanga’. As other Tribunals have noted, the word ‘kawanatanga’ derives from ‘kawana’, a transliteration of the English word ‘governor’, and is typically translated as ‘government’ or ‘governorship’,<sup>268</sup> and associated (in Māori translations of the Bible) with provincial governors.<sup>269</sup>

Although it conveyed that a governor would be present, who would exercise some form of authority on behalf of the Crown, the term ‘kawanatanga’ was not explicit about the nature of the Crown’s authority or how it might operate. Nothing in the Māori text conveyed any idea that the Crown would be granted powers to make and enforce laws in respect of Māori whenever and however it chose, nor that Māori systems of law and authority would be superseded or replaced. The Crown was granted a right to exercise an authority, but in respect of what or who exactly remained unclear from the text.

After canvassing the extensive debate about whether ‘kawanatanga’ was an appropriate translation for ‘sovereignty’, or whether some other term should have been used, the Tribunal in its *Te Paparahi o Te Raki* Stage 1 inquiry concluded that ‘a straightforward explanation of sovereignty could not have avoided the use of “mana”’:

As we have set out, the assertion of mana in he Whakaputanga expressed the highest level of authority within the signatories’ territories. This declaration of mana, together with the accompanying declarations of rangatiratanga and kingitanga, collectively amounted to an assertion of the authority to make and enforce law. This is the essence of sovereignty.<sup>270</sup>

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266. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 312–325; see also doc A23, pp 61–63.

267. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 346–351.

268. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 349–350, 393, 413–415.

269. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 349–350.

270. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, p 514.

If the nature of the power the Crown was seeking was not clear from article 1, what *was* clear from the Treaty's preamble was that the Crown sought sovereignty for specific purposes: to control settlers and settlement, and thereby to protect Māori from harm that might otherwise come to them.<sup>271</sup>

### 3.4.3.2 *How Te Rohe Pōtae Māori understood 'kāwanatanga'*

Given the differences between the two texts, much depends on how the Treaty's key terms were explained. While we cannot know exactly how the terms were explained in this district, the limited evidence we do have (from Maunsell and Te Awaitaia) suggests that 'kāwanatanga' was explained in terms that reflected the preamble – that is, as a power that would control settlement and thereby protect Māori.

Maunsell's 1860 recollection was that he had explained to Māori that the Treaty meant they would retain their lands, while the Crown acquired a right to make laws. He also told them that the Crown would act honourably towards Māori and not harm their interests.<sup>272</sup> It is not known what, if anything, he said about the application of British law and authority to Māori communities. Assuming that he explained the article two guarantee of tino rangatiratanga, the rangatira would have understood Maunsell's assurance about lands to also include a guarantee of political autonomy consistent with their rights and obligations as rangatira. This, therefore, would have implied a limit on the extent to which the Crown's lawmaking and governing powers could apply to them.

Te Awaitaia's 1844 account was that he had signed the Treaty on missionary advice, after they explained that Britain intended them 'nothing but kindness', whereas another country might take their lands by force.<sup>273</sup> This suggests that Te Awaitaia understood kāwanatanga to include a power that would be used to protect Māori – and presumably also settlers – from foreign interference. It also suggests that Te Awaitaia saw foreign interference as a genuine threat to Māori independence. In the same exchange, Te Awaitaia sought assistance from the governor to control settlers, and in particular their land hunger. This suggested that Te Awaitaia understood the governor's role to include control of settlers (in particular their land hunger), and also understood the Treaty as one that was intended to bring mutual benefit. Altogether, Te Awaitaia's comments suggest that he understood kāwanatanga as a power that was intended to protect Māori interests, particularly when those interests were threatened by either foreign powers or settlers. Although Māori had vastly outnumbered settlers in Te Rohe Pōtae in 1840, it is likely that rangatira had been aware that these potential challenges might arise, as they already had in districts such as the Bay of Islands.

271. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 524–525; Waitangi Tribunal, *Muriwhenua Land Report* (Wellington: GP Publications, 1997), p 114.

272. Document A94, p 186; submission 3.4.252, pp 41–43; see also transcript 4.1.7, p 111 (John Kaati, hearing week 1, Te Tokanganui-a-noho marae, 6 November 2012).

273. FitzRoy to Stanley, 25 May 1844 (doc A23, pp 66–67).

As well as being consistent with the Treaty's purposes as set out in the preamble, Te Awaitaia's understanding was also consistent with Normanby's instructions about the purposes for which the Crown sought sovereignty. Furthermore, it was consistent with how the Treaty was explained at other locations. At Waitangi, Hobson explained that the Crown sought power to 'restrain the Queen's subjects' and thereby to protect Māori and 'do good' for them. He explained the Treaty as granting the Crown permission to exercise this power, but 'did not spell out the full implications of British sovereignty'.<sup>274</sup> Claudia Orange wrote that this protective element was 'emphasised at all treaty meetings', and included protection against foreign threat.<sup>275</sup> The Tribunal in *Te Paparahi o Te Raki* concluded that rangatira in that district 'understood kāwanatanga primarily as the power to control settlers and thereby keep the peace and protect Māori interests'.<sup>276</sup>

That Tribunal also concluded that rangatira expected to retain their independence and authority as rangatira, and furthermore expected that they would be the governor's equal.<sup>277</sup> This conclusion was based in part on speeches at Waitangi, during which rangatira said they would not sign if the governor was 'up' and they were 'down'.<sup>278</sup> That Tribunal also noted Māori understanding of kāwanatanga would owe much to their experience of kāwana (governors). Among rangatira in this district, two Ngāti Maniapoto signatories (Haupōkia Te Pakarū and Te Waru) had visited Sydney in 1830 to establish trading relationships. Unlike Ngāpuhi rangatira who travelled to Sydney during the early 1800s, there is no record of Haupōkia and Te Waru meeting the colony's governor.<sup>279</sup>

While we have no further evidence about how 'kāwanatanga' was explained to Te Rohe Pōtae signatories, there is some evidence – albeit fairly limited – about how they later described the Treaty transaction, and how they acted in accordance with their understanding of what had been agreed. That evidence suggests that kāwanatanga meant for them: (i) that the Crown could appoint a Governor who would exercise a new form of authority which was described in te reo Māori as kāwanatanga; (ii) that this new power included a power to make laws, provided that where those laws affected Māori they were protective of Māori rights and were enacted with Māori consent; (iii) that Māori would retain their independence and their mana, including their right to govern themselves according to their own tikanga (that is, their own system of laws, practices, and values); (iv) that the Crown would use its authority to protect Māori authority or chieftainship; (v) that the Crown would use its authority to control settlers (including their land hunger) and protect Māori from harmful effects of settlement; (vi) that Māori had a right to be consulted on any laws the Crown made with respect to matters of importance

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274. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 515, 517.

275. Orange, *The Treaty of Waitangi*, pp 86–87.

276. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, p 523.

277. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, p 523.

278. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 520, 524.

279. Document A26, pp 10–14; doc A19, pp 21–22; see also Hazel Petrie, *Chiefs of Industry: Māori Tribal Enterprise in Early Colonial New Zealand* (Auckland: Auckland University Press, 2013), pp 47–48.

to them, and to determine for themselves whether those laws were beneficial; and (vii) that the relationship would bring benefit to Māori. Conversely, they did not understand kāwanatanga to mean that they had compromised their autonomy or their right to continue to exercise their own authority and laws. The following events subsequent to the signing of the Treaty aid our analysis.

#### **3.4.3.2.1 MĀORI WANTED LAWS THAT WOULD PROTECT THEIR AUTONOMY AND INTERESTS**

Shortly after the Treaty signings, from December 1840 to January 1841, the chief protector of Aborigines, George Clarke, travelled through the Waikato district and the northern parts of Te Rohe Pōtae. At Ōtāwhao, Clarke noted that Māori there had 'heard that his Excellency Sir George Gipps was legislating for them, and asked why were not his regulations translated into native, that they might read and judge for themselves'. Clarke noted that the chiefs asked:

Were the English the only people interested in the laws he was making? Was the country his otherwise than by theft? I had said that they were misled by designing men; 'Let us see, let us see whether it is so or not', they replied, 'we are now a reading people; render Government acts and designs into native fairly, and then we will think for ourselves for the future.'<sup>280</sup>

At Puketea, Clarke commented that people he had met were by and large

jealous of their liberty, as well as of their lands; they see them intimately connected, and they are carefully watching and comparing every public act, deducing from thence positive conclusions as to the line of conduct that will be pursued towards themselves.<sup>281</sup>

Clarke's observations suggest a willingness among those communities, which included both Waikato groups and Ngāti Maniapoto, to accept that the Crown might make laws that affected them, along with an expectation that they should be consulted and empowered to determine for themselves whether the laws were beneficial to their interests.

#### **3.4.3.2.2 THE CROWN HAD A RESPONSIBILITY TO PRESERVE CHIEFTAINSHIP**

In 1843, when Governor FitzRoy arrived in New Zealand, Te Wherowhero and four other Waikato rangatira wrote to him setting out their understanding of the Treaty:

When Governor Hobson first arrived, some said that he only came to take our lands; but we said, wait quietly, by his actions we shall prove him. Then the Chiefs agreed at Waitangi to the treaty of the Queen; they fully assented to her proposal,

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280. Document A23, p77.

281. Document A23, p77.

because that Treaty was to preserve their chieftainship. But when the Europeans arrived in great numbers, we began to be alarmed, because we saw many of their proceedings were directly contrary to the Queen's agreement, some were coveting our lands, some stole our pigs, some reviled and swore at us; and had not the late Governor constantly befriended us, we should long since have been dead with grief.<sup>282</sup>

The letter suggests that Te Wherowhero and others who signed the letter understood the Treaty's purpose as being to preserve the chieftainship of Māori, and kāwanatanga as involving the intervention of a governor to protect Māori from settlers.

### 3.4.3.2.3 THE MĀORI WORLD WOULD CONTINUE TO BE GOVERNED BY TIKANGA

Early engagements between the Crown and Māori in the Mōkau region demonstrated that Māori were wary about how the Crown might exercise its authority, and also demonstrated the extent to which Māori still regarded themselves as having the right to manage their affairs according to their own mana and tikanga. In 1845, Taonui Hikaka, the Ngāti Rōrā rangatira who signed the Kāwhia–Manukau sheet, was described as having placed a tapu on the Mōkau River for the purposes of transporting pigs, which soon became a complete ban on travel through the region without permission.<sup>283</sup> When the artist George Angas visited the region the previous year, he described Taonui as 'scrupulously attached to the religion of the Tohunga', and that he had 'nowhere seen the law of tapu more rigidly adhered to' than amongst Māori whom he encountered at Mōkau.<sup>284</sup> This was not to say that Taonui was averse to European settlement: he allowed his daughter, Rangitūatahi, to be married to the French trader, Louis Hetet, who helped introduce cattle, goats, and sheep to the region.<sup>285</sup> Taonui was, however, wary of the potential effects of European settlement. Some years later he was quoted as saying that 'although a few Europeans might be advantageous and useful, a great many may be dangerous.'<sup>286</sup>

Taonui placed the tapu because of a series of incidents that had arisen with Taranaki people, who had recently begun to return to the region after the conflicts with the Waikato–Maniapoto alliance in the early 1830s (see chapter 2, section 2.5.2.8). In 1842, Waikato and Maniapoto decided to release their captives, and other Taranaki groups soon began to return to their homelands – a process which Waikato and Maniapoto hoped to influence through a combination of settlement and intermarriage.<sup>287</sup> At the same time, the Crown initiated efforts to purchase Waikato and Maniapoto interests in Taranaki lands, which sparked resistance among Ngāti Maniapoto. In 1844, the protector of Aborigines, Thomas Forsaith, quoted a group of Kāwhia and Ngāti Maniapoto chiefs asserting their interests in

282. Document A23, p 79.

283. Document A28, p 37.

284. Document A23, p 42.

285. Document A28, p 35.

286. Document A28, p 48.

287. Document A23, pp 97, 103, 105.

Taranaki: 'We have a power to enforce our claim if we choose, but our inclination is for peace, not war.'<sup>288</sup>

Taonui, who had himself maintained a presence at Tongaporutu, was first cursed by a Taranaki chief after he had attempted to take up land there; then, another Taranaki group appeared to be responsible for disrupting a trading arrangement Taonui was hoping to secure.<sup>289</sup> Taonui considered that Europeans and Crown officials were as much responsible for these actions as Taranaki Māori. In response to the situation, McLean tried to arrange for Taranaki Māori to pay Taonui as recompense for these actions. At the same time, the official Henry Hansen Turton wrote letters to Taonui and his son, Te Kuri, objecting to the prohibition on travel.<sup>290</sup>

Takerei Waitara, a local Mōkau rangatira, was concerned about the ongoing effects the prohibition might have on trade in the region. In 1846, McLean visited Mōkau in an attempt to lift the tapu, and sought out Takerei's agreement to assist in the matter. Taonui's son, Te Kuri, became angered at McLean's efforts, and (according to the local missionary, Cort H Schnackenberg) had 'a whole catalogue of offences from the pakeha', particularly McLean and Turton.<sup>291</sup> As a result, Te Kuri prevented Crown messengers from crossing into Mōkau. When Schnackenberg told Te Kuri that 'he exposed himself to the anger of the Government', Te Kuri was said to have replied:

There is your Governor (pointing to Auckland) he is the chief of the europeans [*sic*] and their places, but he has no right here; our Governor is inland (meaning his father) who will not allow his tapu to be trodden underfoot by any person!<sup>292</sup>

In a sense, the river had been set aside, the enforcement of the tapu reminding the Crown that Māori law remained in place and would continue to be enforced.

In May 1846, the missionary Schnackenberg advised the Government against any rash action.<sup>293</sup> He said: 'I am aware that eventually the natives must & will be stopped from such unlawful intemperance with travellers as their ignorance cannot always remain an excuse for undeserved annoyance.'<sup>294</sup> Schnackenberg added:

[Mōkau Māori] know nothing about the Queen's sovereignty . . . and are of opinion that they are quite strong enough not only to drive all the settlers from the island, supposing they wished to be rid of them, but also to defend themselves against any force that could be sent from England. The natives of this place however are not all disposed to quarrel with the Europeans, on the contrary they are very wishful to receive

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288. Document A23, p 102.

289. Document A28, pp 35, 37.

290. Document A28, pp 37–38.

291. Document A28, pp 53–54.

292. Document A28, p 54.

293. Document A28, pp 37–38.

294. Document A28, p 38.

a body of settlers to whom they would sell a tract of land, but they never dream that in such an event they would lose their chieftainship in the river.<sup>295</sup>

In July 1846, some 1,200 to 1,500 Māori from throughout the district (including the interior and Kāwhia) met at a great hui. It began with a ceremonial re-enactment of war, but the discussion that followed emphasised the extent to which all were determined to be at peace. They remained concerned about the return of Taranaki people to the region, but agreed that the tapu should be lifted.<sup>296</sup> For a period, trade in the district flourished, though concerns about the Crown's role in the region persisted. These are matters we explore further in chapter 5.

Taonui's management of these events suggested that he regarded the Treaty as having had no effect on his authority over the Mōkau River and its environs. Rather, he and the governor exercised authority over distinct spheres of influence. Within this sphere, Taonui saw his law as applying to Europeans and Māori alike. Also significant is the determination of Te Rohe Pōtae Māori that they would manage any peacemaking with Taranaki by themselves – the governor was not seen as necessary to this process, and Europeans who sought to get involved were seen as interfering. This is not to say that Taonui saw no role for Europeans; he clearly welcomed some degree of settlement, but he clearly saw this as a matter that should occur at a pace that he would determine.

#### 3.4.3.2.4 MĀORI SOUGHT ONGOING PROTECTIONS FOR THEIR RIGHTS AND MANA

After the Taranaki and Waikato wars and the period of enduring independence that followed, Te Rohe Pōtae Māori began to negotiate with the Government with the aim of establishing a lasting peace, securing the return of lands that had been confiscated after the war, and securing Crown agreement for laws that would protect Māori rights. During and after these negotiations, Ngāti Maniapoto and other Te Rohe Pōtae leaders described the Crown's role under the Treaty as one that was protective of Māori rights and interests.

In the 1883 petition (discussed in detail in chapter 8), the petitioners (from Ngāti Maniapoto, Raukawa, Ngāti Tūwharetoa, and Whanganui) described how the Crown had enacted laws that had breached their rights as guaranteed by 'te Tiriti o Waitangi, i tino whakapumautia ai te tino rangatiratanga, me te kore ano hoki e whakararurua ta matou matou noho i runga i o matou whenua.'<sup>297</sup> This was translated as 'the Treaty of Waitangi, which confirmed to us the exclusive and undisturbed possession of our lands.'<sup>298</sup> However, a more literal translation was that their full chieftainship ('te tino rangatiratanga') had been fully guaranteed to them ('i tino whakapumautia'), and that there would be absolutely no disturbance

295. Document A23, p 84.

296. Document A28, pp 38–39.

297. 'Petition of the Maniapoto, Raukawa, Tuwharetoa, and Whanganui Tribes', 26 June 1883, AJHR, 1883, J–01, p 2.

298. 'Petition of the Maniapoto, Raukawa, Tuwharetoa, and Whanganui Tribes', p 1.

to their possession of their lands. In essence, this was a restatement of the rights guaranteed under article two in the te reo Māori text.

The 1904 Kawenata, a statement of kotahitanga (unification) on behalf of Ngāti Maniapoto hapū entitled 'Ko Te Kawenata o Ngāti Maniapoto me ona Hapu Maha', referred to the Crown's offer of protection in the following terms:

I te wa o te tau 1840. Ka mahia o nga rangatira o te motu ko Te Tiriti o Waitangi, Ka uru nga rangatira o Ngati Maniapoto ki tena kotahitanga o nga rangatira o te motu, ki te whakatu i tena tikanga nui, i runga i te mahara tera o puta mai he ora i runga i taua tikanga. Ka uru nei a Ngati Maniapoto ki te tukunga i te mana o te motu o me te iwi Maori ki raro i te maru o Kuini Wikitoria.

I roto i taua Tiriti ka whakapumautia hoki e te Kuini Wikitoria ana kupu tiaki atawhai i nga Maori o tenei motu. Me te kupu, kia mau tonu ki te iwi Maori o ratou whenua, paru moana, turanga ika, rakau ahere manu, me era atu taonga o te Maori.<sup>299</sup>

Dan Te Kanawa translated this as:

In 1840 the leaders throughout the land formulated the Treaty of Waitangi. Leaders of Ngāti Maniapoto entered into that union of the leaders of Maoridom in that significant event believing it would be beneficial (for them and their people). Maniapoto entered into the allowing of the mana over the land and the Maori people being put under the protection of Queen Victoria.

In that Treaty, Queen Victoria confirmed her gracious protection of the Maori of this land. And promised that the Maori people would retain their lands, seabeds, fisheries, forestries and other treasures.<sup>300</sup>

Te Kawenata was signed after the Crown had asserted practical authority in Te Rohe Pōtae, and reflected Māori understanding of the relative authority of themselves and the Queen at that time. Nonetheless, it clearly expresses an understanding of kāwanatanga as a protective power, both in respect of mana and in possession of lands and resources. As expressed in the Kawenata, it is possible to imagine how both the Queen's authority and mana Māori could co-exist, while also having Māori mana placed 'under' the Queen's protection.

#### 3.4.3.2.5 OUR CONCLUSIONS ON MĀORI UNDERSTANDINGS OF KĀWANATANGA

Although the evidence is limited, from the above we conclude that Māori in Te Rohe Pōtae understood kāwanatanga to mean that the Crown would appoint a governor and would enact laws, which would protect their authority or chieftainship, protect them from foreign threats to their authority, and protect them from harmful effects of settlement (including settlers' lawlessness and land hunger). They also understood that their relationship with the Crown would bring them benefit. To this extent, they understood that they had surrendered some aspects

299. Document A110, p 474; see also doc H9(b), p 8.

300. Document S19(a), p 40.



of their pre-Treaty authority to the Crown – in particular, henceforth they would no longer control settlers and settlement in those areas ceded to the Crown. But, subject to this condition, they did not regard kāwanatanga as interfering with their mana or independence, including their right to exercise their authority and live according to their own systems of law. On the contrary, they seem to have believed they had a right to consider the Crown's laws and to make their own decisions about whether those laws would be beneficial to them. Kāwanatanga, as they saw it, was a power to govern and make laws, but it was a power that particularly applied to settlers, settlement, and international relations, and – to the extent that it might apply to Māori – was to be used for the protection of Māori interests, and in a manner that was consistent with Māori views about what was beneficial to them. It was therefore not the supreme and unfettered power that the Crown believed it to be; rather, it was a power that was conditioned or qualified by the rights reserved to Māori.

### 3.4-3.3 *Sovereignty: its acquisition and its form*

Much of the Crown's view on the rights it acquired through the Treaty stems from its understanding of the broader process by which sovereignty was acquired, including the Treaty's place in that process. Counsel for the Crown considered that it acquired sovereignty through a series of jurisdictional steps which included obtaining consent (through the Treaty) for its assertion of sovereignty, Governor Hobson's proclamations of sovereignty in May 1840, and the publication of those proclamations in the London *Gazette* in October 1840. Under the Crown's 'own laws and practices', once those steps had been completed, British sovereignty was an incontrovertible fact.<sup>301</sup> Counsel submitted that its acquisition of sovereignty through these steps 'was done honourably, fairly, reasonably and in good faith and in accordance with the rules of *jus gentium* [the law of nations] that the Crown itself accepted and applied'. The Crown 'therefore acquired sovereignty in a manner that can be said to be consistent with the principles of the Treaty'.<sup>302</sup>

Although the Crown regarded sovereignty as 'paramount civil authority' over all peoples and territories, and as encompassing 'the absolute and unfettered capacity to make any law', it did not regard its sovereignty as precluding local Māori authority or customary law remaining in place.<sup>303</sup> The Crown also distinguished between *de jure* sovereignty (sovereignty under the law) and *de facto* sovereignty (the practical exercise of sovereignty), acknowledging that *de facto* sovereignty remained with Te Rohe Pōtāe Māori until at least the mid-1880s. The delay in asserting *de facto* sovereignty, the Crown said, 'was not legally inconsistent with the full legal sovereignty obtained in 1840', and reflected the political realities of the time. In the Crown's view, it was 'not legally obliged to seek further consent

301. Submission 3.4.312, p 1.

302. Submission 3.4.312, p 11.

303. Submission 3.4.312, pp 1, 12–13.

of the Rohe Pōtae Māori to the exercise of Crown authority in the district after 1840.<sup>304</sup>

#### 3.4.3.3.1 DR MCHUGH'S OPINION IN THE TE PAPARAHI O TE RAKI INQUIRY

The Crown's submissions relied on the opinion given by Dr McHugh in the Stage 1 Te Paparahi o Te Raki inquiry.<sup>305</sup> That opinion was specifically concerned with how the Treaty was understood in English law and *jus gentium*, the law of nations.

According to Dr McHugh, Britain's official policy towards New Zealand was principally aimed at controlling British and other settlers or visitors. Prior to 1839, the Crown attempted to achieve this control by recognising and working with Māori authority; from 1839, it was determined that control of settlers required the establishment of Crown sovereignty over part or all of the country.<sup>306</sup> The British Government regarded itself as being bound by its own laws, and by the law of nations or *jus gentium*, and therefore took the approach that it could not establish sovereignty without Māori consent.<sup>307</sup> This, in McHugh's view, was 'a self-imposed rule' that 'could not be enforced against the Crown either by other states or much less by its own courts' – but was nonetheless a step the Crown believed was legally required.<sup>308</sup>

Nevertheless, according to Dr McHugh, '[i]t is clear that officially [in Britain] the Treaty was regarded as a valid instrument of cession, through which rangatira consented to transfer their sovereignty to the Crown.<sup>309</sup> Having obtained signatures at Waitangi, Waimate, and Hokianga, Hobson arranged for copies of the Treaty to be taken to other parts of the country for signing. In October, Hobson forwarded copies of the Treaty with 512 signatures to London, where the Colonial Office received it with 'approval and commendation.' This, according to Dr McHugh, 'was the process by which Maori agreement to British sovereignty over New Zealand was obtained, at least from the perspective of British officials. The process 'could hardly be described as highly organised', and was interrupted by the stroke Hobson suffered in March 1840.<sup>310</sup>

By sending missionaries and others to obtain signatures, McHugh said, Hobson showed his intention to acquire sovereignty over the country as a whole, and furthermore demonstrated the seriousness and sincerity of the Crown's intention to obtain Māori consent.<sup>311</sup> Hobson's proclamations on 21 May 1840 were 'premature' (given that Hobson was by that time aware of signings only in Northland

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304. Submission 3.4.312, pp 11–12.

305. Submission 3.4.312, pp 9–11

306. Wai 1040 ROI, doc A21(a) (McHugh), pp 1–11.

307. Wai 1040 ROI, doc A21(a), pp 3–4, 9–11, 14.

308. Wai 1040 ROI, doc A21 (McHugh), pp 94–95; see also pp 72–73.

309. Wai 1040 ROI, doc A21(a), p 14.

310. Wai 1040 ROI, doc A21(a), p 12.

311. Wai 1040 ROI, doc A21(a), p 12.

and Waikato–Manukau<sup>312</sup>), and reflected the pressure on Hobson to respond to the New Zealand Company’s attempts at self-government.<sup>313</sup> McHugh argued:

Technically, in terms of British constitutional law, the issue of the Proclamations amounted to the ‘moment’ of British sovereignty, at least for the purposes of British and colonial courts. Strictly, it amounted to the formal and authoritative announcement by the Crown that the prerequisite it had set itself before such annexation could occur – Maori consent – had in its estimation been satisfied and that the Crown could now exert sovereign authority over all the inhabitants of the New Zealand islands.<sup>314</sup>

For practical purposes, however, the May proclamations ‘were aimed jurisdictionally at the European settlers’, especially those in Port Nicholson. They were not intended to assert practical authority over Māori: there was ‘no supposition that such a ceremonial announcement meant that Maori would immediately defer to the Crown and switch to English law’. Rather, from the Crown’s viewpoint, authority over Māori continued to depend on their consent to the Treaty; the process of gathering signatures therefore continued after the proclamations were issued.<sup>315</sup>

The acquisition of British sovereignty, in Dr McHugh’s view, was therefore ‘a process rather than a singular “event”’. Signings of the Treaty by rangatira, Hobson’s proclamations and their official acceptance and publication in Britain, the November 1840 Royal Charter establishing New Zealand as a colony separate from New South Wales, and the establishment of the machinery of government were all ‘jurisdictional steps’ which extended British sovereignty over British subjects and over Māori. These steps ‘baked into the sovereignty as a whole.’<sup>316</sup>

### 3.4.3.2 THE LEGAL OPINION OF DR ALEX FRAME

The claimants pointed to the opinion of Dr Alex Frame, who discussed the process by which sovereignty was asserted and the form that sovereignty took. Dr Frame made a series of arguments about how any powers that arise from a treaty coming into force must be based on that treaty:

What the Crown acquired from the Treaty of Waitangi and its subsequent Proclamations was a sovereignty qualified and limited by the Treaty itself. In particular, the law-making power acquired by the Crown is limited by the terms of the Treaty.<sup>317</sup>

He advanced five reasons for this conclusion:

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312. Orange, *The Treaty of Waitangi*, p 85.

313. Wai 1040 ROI, doc A21(a), pp 12–13.

314. Wai 1040 ROI, doc A21(a), p 13.

315. Wai 1040 ROI, doc A21(a), pp 13–14; Wai 1040 ROI, doc A21, pp 71–72.

316. Wai 1040 ROI, doc A21(a), pp 15–16.

317. Document A116 (Frame), p 6.

- ▶ First, '[p]owers based on a Treaty must, as a matter of elementary logic, be consistent with the Treaty'. The treaty 'cannot be relied on for what it confers but discounted as to its limitations'.<sup>318</sup>
- ▶ Secondly, 'the most fundamental rule of international law is . . . treaties must be complied with'. This, he said, was accepted under *jus gentium* and explicitly provided for under article 26 of the Vienna Convention on the Law of Treaties of 1969 (which came into force in 1980), to which New Zealand is a signatory.<sup>319</sup> The Vienna Convention, Dr Frame said, provided that every treaty was binding on its parties and must be performed in good faith.
- ▶ Thirdly, domestic law cannot be used as an excuse for non-compliance (as it is in New Zealand). This is provided for under article 27 of the Vienna Convention.<sup>320</sup>
- ▶ Fourthly, the Crown 'is an essential part of the law-making capacity of Parliament', and Parliament's lawmaking powers are therefore constrained by the Treaty.<sup>321</sup>
- ▶ Fifthly, Dr Frame referred to the Privy Council's 1941 decision (*Te Heuheu Tukino v Aotea District Maori Land Board*)<sup>322</sup> that the Treaty was not legally binding unless incorporated into New Zealand statutes. That decision, Dr Frame said, 'is not supported by the authorities on which it purports to rely, and in so far as it treats Parliament as free to enact laws contravening the Treaty of Waitangi, is now open to restatement and/or revision by the Supreme Court'.<sup>323</sup>

Dr Frame also discussed the nature and form of sovereignty itself. He said that most New Zealand lawyers understood sovereignty as 'the exclusive right and power to make or unmake any law whatsoever in a particular territory'. Sovereignty could not be limited, even by a court, if the sovereign exercised his or her power 'in sufficiently clear language'. This view of sovereignty 'came from a line of legal theory which contended that "law" was all and only about the ability of a ruler to apply force and compulsion to the ruled'. That theory proposed that sovereignty was (a) essential in every state; (b) indivisible; and (c) unlimited and illimitable.<sup>324</sup>

The esteemed New Zealand jurist Sir John Salmond (1862–1924), Frame said, argued that only the first of these propositions was valid. Sovereignty could be divided, and indeed it was in the constitution of Britain itself, which reserved law-making powers to the Crown-in-Parliament but retained executive powers to the

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318. Document A116, p 6.

319. Document A116, p 6.

320. Document A116, p 6.

321. Document A116, p 6.

322. *Te Heuheu Tukino v Aotea District Maori Land Board* [1939] NZLR 107 (SC and CA) [1941] NZLR 590 and [1941] AC 308 (PC); doc A116, pp 6–7, 10–11; see also Alex Frame, 'Hoani Te Heuheu's Case in London 1940–41: An Explosive Story', *New Zealand Universities Law Review*, vol 22, no 1 (2006), pp 148–180.

323. Document A116, pp 6–7, 10–11.

324. Document A116, pp 3–4.

Crown alone. Similar division of sovereignty was evident in other democracies. Salmond also pointed out that sovereignty could be limited. Most modern constitutions imposed limits on the legislature's lawmaking powers.

Salmond furthermore distinguished between 'external sovereignty' and 'internal sovereignty'. External sovereignty over a territory excluded other states from exercising any authority over that territory. Internal sovereignty over a territory was authority to govern its inhabitants. The two forms of sovereignty could be exercised together, but did not have to be. Whereas external sovereignty was essential, internal sovereignty may or may not exist, and did not preclude the existence of distinct local governments with their own internal sovereignty.<sup>325</sup>

### 3.4.3.3 OUR VIEWS ON THE PROCESS BY WHICH THE CROWN SOUGHT TO ACQUIRE SOVEREIGNTY

The Crown's position about the process by which it acquired sovereignty in New Zealand is based on an assessment of how sovereignty was acquired under English law and the Law of Nations, based on the beliefs of British officials about what was legally required and whether the relevant tests were met. It refers to Māori consent as judged through British eyes and for British purposes, and says little about how Māori understood the Treaty or what they freely and intelligently consented to in accordance with their own tikanga.

It is clear that the Crown did not wait for the process of collecting signatures to decide that consent had been achieved, and indeed dispensation had already been granted to Hobson to judge when consent was reached. Hobson proclaimed sovereignty over the entire North Island when he was in possession only of the Northland and Waikato–Manukau copies of the Treaty;<sup>326</sup> he did not know whether Māori had signed the Treaty in other parts of the country, let alone what their understandings might be. Britain's principal representative in New Zealand therefore relied on an assumption that Māori would consent, as much as on a belief that they had.

As discussed in sections 3.4.3.1 and 3.4.3.2, even among those who had signed from this district, there is no evidence that they considered they were granting to the Crown such an extensive source of unfettered power. Rather, they conceived of the Treaty as offering the Crown a limited power to govern and make laws – one that applied to settlers and settlement, and to protection from foreign threats, which was qualified by the rights reserved to Māori and involved an obligation to protect those rights. The Crown officials and missionaries involved knew or should have known that Māori did not consent to the Crown exercising the unfettered power it sought through the Treaty. They believed they had retained their full chieftainship, and therefore (as described in the Taranaki and Central North Island Tribunals, among others) their autonomy or self-government. The Crown's authority, they believed, was qualified by their own, and by the Crown's obligations to acknowledge their rights and protect them from harm.

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325. Document A116, pp 4–5.

326. Orange, *The Treaty of Waitangi*, p 85.

Before we address the meaning of *kāwanatanga* further, we turn now to reflect on what other Tribunals have said about the Crown's assertion of sovereignty.

#### **3.4.3.4 *The views of other Tribunals***

Up until recently, the Waitangi Tribunal's determination in many reports was that the Crown had acquired sovereignty through the Treaty, but that sovereignty was qualified by the requirement to give effect to *tino rangatiratanga*. This, in essence, was the Treaty exchange. To elaborate, the position developed in those reports was that, through the Treaty, the Crown acquired a power to govern and make laws, and that those powers extended throughout the whole country; that the Crown's authority was qualified by the Treaty guarantee of *tino rangatiratanga*; and that *kāwanatanga* was a right to govern that was considerably less than the supreme and unfettered governing and lawmaking power that the Crown had sought, and believed it had acquired. Even though these Tribunals saw the Crown's sovereignty as qualified, they nonetheless assumed that sovereignty referred to an overarching power to make and enforce law, which included a right and prerogative for the Crown to decide policies of its choosing.

The Orakei Tribunal was among the first to develop this position in detail. In considering the texts of the Treaty, that Tribunal concluded that the term *kāwanatanga* was likely to have been understood as 'the right to make laws for peace and good order, and to protect the *mana Maori*'. This right was 'subject to the protection of Māori interests,' and was 'less than the sovereignty ceded in the English text' since it did not convey the 'English cultural assumptions' implicit in sovereignty, such as 'the unfettered authority of Parliament or the principles of common law administered by the Queen's Judges in the Queen's name'. Notwithstanding this conclusion about the texts of the Treaty, the Tribunal concluded that the cession of sovereignty was 'implicit from surrounding circumstances,' particularly in the debates between Hobson and the *rangatira* at Waitangi.<sup>327</sup> This led the Orakei Tribunal to the conclusion that, through the Treaty, the Crown acquired the right of sovereignty, subject to the guarantee of *tino rangatiratanga*. Thus, the Crown acquired an overarching power to make and enforce law, so long as those powers were exercised in a manner that was consistent with *tino rangatiratanga*.

Over time, Tribunals have described the Treaty's guarantee of *tino rangatiratanga* as a guarantee of tribal autonomy which was nonetheless consistent with the Crown's sovereignty. The Taranaki Tribunal described 'aboriginal autonomy' as 'the right of indigenes to constitutional status as first peoples, and their rights to manage their own policies, resources, and affairs (within rules necessary for the operation of the State) and to enjoy cooperation and dialogue with the Government'. The Tribunal noted that autonomy rests on two presumptions: that it is the inherent right of all peoples in their 'native countries'; and that in colonised countries 'sovereignty, in the sense of absolute power, cannot be vested in

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327. Waitangi Tribunal, *Report on the Orakei Claim*, pp 189, 208.

only one of the parties'. To this extent the Tribunal noted how 'sovereignty was constrained in New Zealand by the need to respect Maori authority'.<sup>328</sup>

Expanding on this position, the Tūranga Tribunal found that 'tribal autonomy was the only basis for a quality Treaty relationship' and that it was 'axiomatic that the sovereignty or kawanatanga of the Crown was and remains subject to the guarantee to protect tino rangatiratanga or, in English, tribal autonomy'. Tribal autonomy, in this sense, was the 'ability of tribal communities to govern themselves as they had for centuries'. The exercise of this authority did not mean that Māori rejected a role for the Crown at the national level. 'Clearly, the alacrity with which Maori leaders engaged with the Government showed that they desired to negotiate and foster a relationship with the colonial State'.<sup>329</sup> The Crown's duty, therefore, was to protect Māori autonomy, not to actively conspire to defeat it.

The Central North Island Tribunal elaborated further by concluding that the Treaty provided for distinct Māori and Crown spheres of influence within a single state. Although the responsibility for establishing and running that state rested with the Crown, the Treaty provided for 'two authorities, two systems of law, and two overlapping spheres of population and interest'.<sup>330</sup> Where these spheres of influence overlapped, this was to be managed through dialogue and negotiation, in a spirit of partnership, with Māori respecting the Crown's right of kāwanatanga, and the Crown respecting Māori autonomy and authority over the full range of their affairs, and acknowledging that it could enact laws affecting matters of fundamental importance to Māori only with their consent.<sup>331</sup> The Tribunal's main conclusion was that:

The Treaty guaranteed all Central North Island tribes their autonomy and the right of self-government by representative institutions responsible to their communities. Even so, the tino rangatiratanga of all tribes is affected by their partnership with the kawanatanga, and is not exactly the same as it was before 1840. Both Treaty partners owe each other a duty of good faith and cooperation, dialogue and negotiation of agreement on key issues. Where those issues are fundamental to Maori and their rights as guaranteed by the Treaty, and on the principles of good governance, the Crown must govern by consent. There may be times, however, when the authority of kawanatanga must prevail. The appropriate agreements and compromises between Crown and Maori spheres of authority must be decided in partnership.<sup>332</sup>

The Central North Island Tribunal noted that these standards were reasonably practicable. Reviewing events that took place after 1840 in that district, the Tribunal concluded that the 'political relationship between nineteenth-century governments and Central North Island tribes sometimes came close to achieving

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328. Waitangi Tribunal, *The Taranaki Report*, p 20.

329. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 1, p 113.

330. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 166.

331. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 191.

332. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 207.

these Treaty standards.<sup>333</sup> The Tribunal placed particular emphasis on the joint consideration of proposals to provide for Māori self-government in partnership with the Crown.

In *Ko Aotearoa Tēnei*, its report on contemporary claims about Māori culture and identity, the Tribunal applied a similar approach. It concluded that, through the Treaty, the Crown acquired kāwanatanga, which was ‘the right to enact laws and make policies’, while ‘iwi and hapū retained tino rangatiratanga over their lands, settlements, and “taonga katoa”’. In this way, the Tribunal said, ‘the Treaty provided a place for each culture in the life of this country’. The Crown’s powers, the Tribunal noted, were ‘not absolute’. They were, and remain, ‘qualified by the promises solemnly made to Māori in the Treaty, the nation’s pre-eminent constitutional document’.<sup>334</sup>

In its Stage 1 report, the Te Paparahi o Te Raki Tribunal undertook a detailed assessment of the circumstances by which the Treaty was brought to the north. The Tribunal looked at what Māori understood kāwanatanga to mean based on their own knowledge and experience and by reference to what the rangatira at Waitangi were told. It noted that Northland Māori might have had some idea of what a kāwana or governor was, based on their knowledge of the Bible and from their visits to Sydney. In both contexts, a kāwana was a colonial administrator, not a sovereign. The Tribunal also considered kāwanatanga through the lens of Māori systems of leadership. Hobson was seen as a rangatira for Pākehā, similar to Busby but with greater powers, and therefore able to relieve rangatira of the burden of maintaining order and controlling settlers.<sup>335</sup>

The Tribunal found that although ‘kāwanatanga’ conveyed the idea that some form of government would be established, it did not convey the idea of that government as possessing supreme, overarching power to which Māori would be subject.<sup>336</sup> Therefore, the Tribunal found, the Crown did not acquire ultimate power, and Te Raki Māori did not cede their sovereignty, which the Tribunal defined as their power to make and enforce law over their own people and territories. Rather, they agreed ‘to share power and authority with Britain’, under an arrangement in which they and the governor would be equals, the governor having ‘power to control settlers and thereby keep the peace and protect Māori interests’, including power to investigate land transactions involving settlers, and to protect New Zealand from foreign powers, while rangatira retained their independence and authority. Where the Māori and settler populations intermingled, the Tribunal found, ‘questions of relative authority remained to be negotiated over time on a case-by-case basis’. In drawing these conclusions, the Tribunal pointed out that it was expressing no view about the sovereignty that the Crown quite clearly exercises today.<sup>337</sup>

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333. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 207.

334. Waitangi Tribunal, *Ko Aotearoa Tēnei, Te Taumata Tuarua*, vol 1, pp 14–15.

335. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 349–350, 524–525.

336. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 512–514.

337. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 523, 524, 526–527, 529.



**3.4.3.5 Our conclusions on the Crown's right of kāwanatanga**

Through the Treaty, the Crown sought consent from rangatira for an assertion – in accordance with English law and *jus gentium* – of Crown sovereignty over their territories. This intention was reflected in article 1 of the English text. The Crown defined sovereignty as a paramount civil authority, encompassing an unfettered right to make law, and a right to govern over all peoples and territories in New Zealand. The text in te reo Māori granted the Crown 'kāwanatanga', which has been translated as government or governorship.<sup>338</sup> The term 'kāwanatanga' suggested that the Crown would exercise some form of governing authority, but it did not convey the full meaning of the term sovereignty as the Crown understood it – a supreme governing and lawmaking power which would apply to all peoples and territories in the territories covered by the Treaty. Indeed, the term kāwanatanga offered little information about the nature of the power that Britain sought, except that it involved the presence of a governor, and seemed (from the preamble) to be aimed at controlling settlers and settlement in order to protect Māori.

Control of settlers and settlement was, indeed, the immediate purpose for which the Crown sought to acquire sovereignty. Initially, at least, it intended to leave Māori in possession of their lands, and to defend them in the exercise of their customs. Ultimately, however, it expected to also apply its laws and authority to Māori communities and territories, and it believed the acquisition of sovereignty would give it a legal right to do so at a time of its choosing. But nothing in either text made clear that this was the Crown's intention.

How, then, did the signatories understand kāwanatanga? There is very limited evidence of what was discussed at the Treaty signings in this district. Maunsell said he told signatories that the Crown sought a power to make law that did not interfere with Māori possession of land. This says little about the nature or effect of the laws that would be made, and, again, falls considerably short of conveying all that the term 'sovereignty' does. Te Awaitaia's recollection of his signing suggests that Māori were told that the power of kāwanatanga would be used to protect Māori from adverse impacts of settlement, including settler land hunger, and also to protect New Zealand from foreign interference. The subsequent actions of Te Rohe Pōtae Māori indicate that they did not regard the Treaty as interfering with their autonomy and authority, including their right to continue to exercise their own tikanga. The evidence, limited as it is, suggests that they regarded kāwanatanga as involving the establishment of a power – through the office of a governor – which would be used to protect and preserve Māori interests and chieftainship.

This is consistent with the findings of many previous Tribunals about the nature of kāwanatanga – that it involved a power to make and enforce laws which applied to the whole of New Zealand, but was qualified by the guarantee of tino rangatira, and was therefore considerably less than the supreme and unfettered governing and lawmaking power that the Crown had sought and believed it had acquired.

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338. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 349–350, 392–394.

Even if the kāwanatanga acquired by the Crown was less than the supreme governing and lawmaking power that the Crown sought, this does not mean that there was no meeting of minds. As we have explained, the Crown sought sovereignty for particular purposes: initially, at least, its intention was to control settlers and settlement, and to protect from foreign threat, and thereby to protect Māori from any adverse effects of settlement or contact with the wider world, thereby allowing both Treaty partners to benefit from their relationship. Hobson was instructed to explain those purposes to Māori, and the evidence, limited as it is, suggests that this is how the Treaty was explained in this district, just as it was in other districts for which there are records. In our view, Māori consented to the Crown exercising a governing and lawmaking power that could be used for these purposes. This was a significant power. It allowed the Crown broad powers over settlers and settlement, and over New Zealand's international relationships, and did not exclude the possibility of the Crown governing over and making laws for Māori so long as its policies and laws were consistent with tino rangatiratanga and had the free, informed consent of the affected communities. The Crown – based on Hobson's proclamations, which relied solely on the English text of the Treaty – believed that it had acquired a supreme, unfettered governing and lawmaking authority, but this was not the proposal it put to Māori.

As the Tribunal found in *Te Paparahi o Te Raki*, the meeting of minds could be found in what signatories consented to based on what was put to them. In this district, as in others, there is no evidence of the Crown clearly explaining to signatories that it sought a supreme, unfettered power over all people and territories; rather, the evidence is that it explained that it wanted a governing power that could be used to control settlers and protect from foreign threat, thereby protecting Māori and bringing mutual benefit. In a context in which Te Rohe Pōtae leaders were willing to engage with Europeans for all of the benefits that brought, but were also aware of the potential challenges that could occur, this was an attractive arrangement, and one that Te Rohe Pōtae signatories consented to.

As noted above, the *Te Paparahi o Te Raki* Tribunal (and others) found that the details of the relationship between kāwanatanga and tino rangatiratanga remained to be worked out after the Treaty. Although the Crown argued that it had legitimately acquired sovereignty in 1840, it too acknowledged that the detail of how kāwanatanga would be exercised was a matter 'for future debate and discussion', particularly in respect of 'institutional structures and relationships'.<sup>339</sup>

With respect to Dr McHugh's theories, we note that he was describing the Crown's acquisition of sovereignty in accordance with its own system of law. That is, he described the legal tests which the Crown believed it had to meet before it asserted sovereignty, the basis on which it came to a view that those tests had been met, and the process by which it thereby proclaimed its sovereignty in a manner that was consistent with its own laws. However, the theories of constitutionalism promoted by Dr McHugh must be seen in context. He was explaining how Britain understood the Treaty's meaning and effect in 1840; he was not pretending to

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339. Submission 3.4.312, p1.

explain what Māori intended or consented to at that time. As described in section 3.4.1, our task, in determining the Treaty's meaning and effect, is to consider and resolve any ambiguities in the two texts of the Treaty in a manner consistent with our jurisdiction. As described above, Māori signatories understood kāwanatanga as a power to govern and make law that was qualified by their own rights of tino rangatiratanga.

As noted in section 3.4.3.3, Hobson proclaimed British sovereignty in May, before he had seen any of the signed Treaty sheets other than those from Waitangi and Waikato–Manukau.<sup>340</sup> His proclamations were therefore issued on the basis of an assumption that Māori in this district and others consented to the Treaty's terms. The Crown subsequently recognised those proclamations by publishing them in the *Gazette*. From that time onwards, the Crown regarded its sovereignty as an incontrovertible fact, and therefore regarded itself as having an unfettered legal right to govern and make law for all people and territories in New Zealand. This did not necessarily mean it would immediately exert practical authority over Māori communities and territories; as Normanby's instructions made clear, its immediate concern was with control of settlers and settlement, and it was prepared, for a time, to leave Māori to live according to their own customs. But British officials nonetheless fully expected that the Crown would ultimately extend its practical authority over all people and territories in New Zealand.

This had not been explained to Māori, in the Māori text, although it was in the English text. Furthermore (and so far as we can determine), there appears to have been no detailed explanation given in the verbal explanations. We will see in later chapters how the Crown's attempts to establish practical authority in Te Rohe Pōtāe would play out. Though the Crown did not regard itself as being legally required to seek Māori consent for any assertion of its practical authority, it nonetheless acknowledged that its establishment of any 'new forms of government' was a matter that was subject to Treaty principles. We will return to these points in section 3.4.4.

Dr Frame suggested that the Crown might be compelled to accept the Treaty as legally binding in terms of current international law, thereby making Treaty obligations enforceable in domestic law. The Crown did not refute this suggestion. Nor did the Crown seek to challenge in any meaningful way Dr Frame's argument that the relevant leading case of *Te Heuheu Tukino v Aotea District Maori Land Board* wrongly applied authorities on which it purported to rely.<sup>341</sup> This is not a matter we are required to make a determination on, because the Treaty of Waitangi Act 1975 does in fact incorporate the Treaty and we are required to have regard to its terms. Dr Frame also asked us to accept the Vienna Convention as binding on the Crown, and (by virtue of the Supreme Court's finding) part of domestic law. But it seems unlikely to us that the Vienna Convention would lead us to a place where we could arrive at conclusions that might assist our task under the Treaty of Waitangi Act 1975.

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340. Orange, *The Treaty of Waitangi*, p85.

341. *Te Heuheu Tukino v Aotea District Maori Land Board* [1941] NZLR 590 (PC).

Dr Frame's analysis of the writings of Sir John Salmond is, we consider, more relevant. Sovereignty may well be capable of division internally in a legal sense. Certainly, that is what occurs in federal states and in terms of Native American jurisdiction on reservations in the United States. Given the essential exchange of the Treaty – *kāwanatanga* for *rangatiratanga* and the constraints imposed upon the Crown as a result – we note that these are matters that would warrant further investigation in the Waitangi Tribunal's forthcoming kaupapa inquiry into constitutional issues. However, the law in that field we doubt would add much more to our current jurisdiction, which is set out in the Treaty of Waitangi Act 1975 at sections 5 and 6.

In that latter regard, we have explained how our approach is based on the meeting of two legal traditions – one based on European law, the other on *tikanga*. In both legal traditions, there needed to be consent and mutual acknowledgement of the other's authority. That is because we regard the Treaty as the outcome of two peoples coming together, each with their own traditions of treaty-making. The Treaty created a realm in which their two authorities were to co-exist.

The Treaty, therefore, did not give rise to a situation in which either Māori or the Crown are able to claim an absolute authority. If an overarching power could be said to have arisen by virtue of the Treaty, it would need to include both Māori and the Crown; neither could be excluded, nor could one be said to be subordinate to the other. In essence, the power arrangement that would exist under this arrangement would be more in the nature of one sovereign entity consisting of multiple governmental authorities, much like in the model described by Dr Frame. This arrangement would not be capable of segmentation along *de jure* and *de facto* lines, in which the acquisition of nominal power by one party includes the actual assumption of power over another as a legal inevitability. It is rather a conception in which all forms of authority are given equal protection.

This is not to say, however, that in a functional way, one party could not act on behalf of the other. The Treaty imagined a situation in which the Crown would need to act in protection of Māori. However, they needed to first act in partnership in order to bring into effect an arrangement by which this could happen. In addition, the Crown needed to discuss with Māori any measures that it would introduce that would impact on their *tino rangatiratanga*. The Crown could not, for example, introduce government institutions for Te Rohe Pōtae Māori without their consent, such as the Native Land Court. That was because *tino rangatiratanga* continued to be a standing qualification on the Crown's right to govern. Such institutions in their district needed to reflect and give effect to their *tino rangatiratanga*.

Thus, our conclusion is that through the Treaty the Crown acquired a right to govern and make laws, and thereby to control settlers and settlement, and to manage international relationships with foreign European states. With respect to Māori communities, the power of *kāwanatanga* provided for the possibility of the Crown governing and making laws, so long as those powers were used in a manner that was consistent with their *tino rangatiratanga*, and which offered them protection from any harmful effects of settlement or foreign intervention. The Treaty thereby

provided a basis upon which Māori and settlers could gain mutual benefit from their relationships.

We consider that the obligation to use *kāwanatanga* in this manner continued even after the Crown proclaimed and asserted its sovereignty. The nature of the Crown's protective obligations would naturally depend on the circumstances, including the degree to which Te Rohe Pōtae iwi and hapū needed that protection, the practical ability of the Crown to provide it, and the nature of the Māori rights and interests involved. The practical details of how Crown authority might be exercised, especially where Crown and Māori interests intersected, remained to be worked out through negotiation and discussion in the years after 1840. In section 3.4.4 we will consider what the Treaty said about how that working out might occur.

#### **3.4.4 What was the relationship between Crown and Māori authority?**

We have set out our conclusions in relation to the rights accorded to Māori and the Crown through the Treaty. *Kāwanatanga* was an authority to govern and make laws for the explicit purpose of controlling settlers and preventing the harm that might otherwise arise to Māori from uncontrolled settlement or foreign intervention. The guarantee of *tino rangatiratanga* was for the existing autonomy and authority of Māori communities in relation to their lands, resources, and all other valued things to continue, whilst Māori also enjoyed the same rights as British subjects. The question inevitably arises: how were *kāwanatanga* and *tino rangatiratanga* to co-exist, particularly as the colony developed and circumstances changed?

We consider that there are several key principles of the Treaty and related Crown duties that should have governed how the relationship between the parties moved into the future. We deal with each in turn.

##### **3.4.4.1 *Tino rangatiratanga and kāwanatanga have distinct functions***

The Treaty, through the provision and guarantee of rights to *kāwanatanga* and *tino rangatiratanga*, allows for the Crown and Māori to exercise distinct functions. Those functions, and their related spheres of authority, had the potential to intersect and overlap. However, at their core, they provided for two different spheres of authority.

The primary responsibility for Māori was with the maintenance and well-being of their own communities and territories. As already discussed, *rangatira* who signed the Treaty had no expectation that their systems of law and authority, their social and political structures, and indeed their human, environmental, and spiritual relationships might be broken down and replaced by the new Crown authority. As other Tribunals have found, the guarantee of *tino rangatiratanga* meant that Māori autonomy and authority would endure and that Māori communities would continue to have the right to govern themselves according to their own systems of *mana* and *tikanga*.

The Crown's principal focus, clearly spelled out in the Treaty's preamble and in verbal explanations, was on control of settlers and settlement. The role of

kāwanatanga, as found by other Tribunals, also included authority to manage New Zealand's foreign relations, albeit in a manner that did not interfere with tino rangatiratanga.<sup>342</sup> Together, these functions implied the existence of a significant new power, where hitherto political authority had rested with iwi and hapū. In Māori terms, the new arrangement would most likely have been seen not as surrendering authority to the Crown, but as forging a new alliance under which their tino rangatiratanga would be respected, protected, and indeed enhanced.<sup>343</sup> As part of this arrangement, the Crown could only exercise its powers in ways that respected Māori rights and interests. This was a guarantee that could be overridden only in exceptional circumstances.<sup>344</sup>

Over time, while the nature of the authority of each party remained the same, the areas of life over which each party exercised authority would inevitably evolve. Societies are liable to change over time; thus both Māori and the Crown would need to adapt in the way they exercised the respective functions of tino rangatiratanga and kāwanatanga, and would need to negotiate over how that might occur. We will consider the principles underlying such negotiation in section 3.4.4.3.

To summarise, the Treaty recognised two distinct spheres of authority, each with distinct functions. While each party had a duty to acknowledge the other's sphere of interest, and while the Treaty granted the Crown kāwanatanga powers, it also specifically provided for Māori to retain their tino rangatiratanga, and therefore their rights of autonomy and self-determination. As the Central North Island Tribunal put it, the Treaty provided for 'two authorities, two systems of law, and two overlapping spheres of population and interest'.<sup>345</sup> From this are derived the principles of kāwanatanga and rangatiratanga, including Māori autonomy or self-government.

#### **3.4.4.2 The Treaty involved reciprocal recognition of rights for mutual benefit**

The Treaty recognises that the exercise of Crown authority was qualified by the guarantee of tino rangatiratanga. Rangatira of Te Rohe Pōtae consented to the Crown making laws for the purpose of controlling settlement and thereby minimising the harm that might otherwise arise. But they did not cede all their authority, except to the extent necessary for the Crown to control settlers and settlement. On the contrary, the guarantee of tino rangatiratanga conveyed that their existing authority would endure and most likely be strengthened through this new alliance with Britain. The Crown was required to respect Māori authority and self-determination, and could not unreasonably exercise kāwanatanga in a manner that altered, interfered with, or was inconsistent with tino rangatiratanga.<sup>346</sup> Likewise, tino rangatiratanga was limited by the Crown's right to govern, and in particular to control settlers and settlement in accordance with the principle of

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342. Waitangi Tribunal, *Ko Aotearoa Tēnei, Te Taumata Tuatahi*, p 236; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 524–525.

343. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, p 525.

344. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 191.

345. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 166.

346. Waitangi Tribunal, *The Ngai Tahu Report 1991*, vol 2, pp 233–234.

kāwanatanga. In these ways, the Treaty involved a reciprocal exchange of rights, which was intended to provide a place in this country for both Māori and settlers, and to provide a basis for ongoing relationships founded on mutual protection and benefit. From this exchange of rights are derived the principles of reciprocity and mutual benefit.

#### **3.4.4.3 *The Treaty established a partnership subject to ongoing dialogue***

The Treaty established a relationship akin to a partnership between the Crown and Māori that would be subject to ongoing negotiation and dialogue. This required the Crown and Māori to work out how the Crown's new power of kāwanatanga might intersect with Māori communities' rights of tino rangatiratanga in a manner that made a place for both powers while also delivering on the Treaty's promise of mutual protection and benefit.

Other Tribunals have concluded that the negotiations required to bring the Treaty relationship into practical effect needed to be conducted honestly, fairly, in good faith, and in a spirit of cooperation and partnership.<sup>347</sup> Negotiation and dialogue were inevitable because the Treaty dealt in 'large generalities', rather than addressing detailed arrangements for the co-existence of kāwanatanga and tino rangatiratanga,<sup>348</sup> because it promised both parties significant forms of authority, and because those forms of authority would inevitably overlap or affect each other.<sup>349</sup>

Among the matters that would have to be worked out were the laws that would be needed to control settlement and to protect tino rangatiratanga, and the institutions – Crown and Māori – that would be needed to provide for the exercise of kāwanatanga on the one hand and Māori autonomy and self-government on the other. The Crown, in this inquiry, acknowledged that the 'precise spheres of responsibility and authority' were not specified in the Treaty and remained to be negotiated afterwards, including the institutional arrangements that would be required.<sup>350</sup>

In any negotiations over laws and institutions to give effect to kāwanatanga and tino rangatiratanga, neither party could impose its will. These matters could only be worked out through ongoing dialogue and partnership, in which the parties acted with the utmost good faith. From this are derived the principles of partnership and good governance.

#### **3.4.4.4 *The Crown has a duty of active protection of Māori rights, interests, and taonga***

A Crown duty of active protection arises from the provisions of the Treaty and is inherent in the Crown's partnership obligations. It is an essential part of the Treaty

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347. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp173–174, 191, 208; Waitangi Tribunal, *Ko Aotearoa Tēnei, Te Taumata Tuatahi*, p 24.

348. Waitangi Tribunal, *He Whiritaunoka*, vol 1, p 151.

349. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 173.

350. Submission 3.4.312, p 5.

bargain: as we have seen throughout this chapter, the Crown acquired its right of *kāwanatanga* on the basis that such authority was needed to protect Māori from uncontrolled settlement and also foreign intervention. This protective guarantee was made clear in the preamble and in article 3, as well as in the oral explanations that were recorded in this district and elsewhere. The preamble, in particular, made it clear that the Crown's protective guarantee was in respect of both *rangatiranga* and land ('kia tohungia ki a ratou o ratou rangatiranga, me to ratou wenua'). The Central North Island Tribunal found that the guarantee of active protection includes the protection of *tino rangatiranga*.<sup>351</sup>

Te Rohe Pōtae Māori appear to have been prepared to accept the Crown acting in a protective capacity, and to exercise its legislative powers in doing so. We know from Te Awaitaia's comments that the promise of protection, in particular from the potential for foreign threat, was one of the factors that motivated *rangatira* to sign.<sup>352</sup> This understanding may have been shared by other *rangatira* who signed the Treaty, based on the assurances Maunsell said he had made. This was reflected in the comments recorded when the protector of Aborigines, George Clarke, travelled through the Waikato and to the north of Te Rohe Pōtae shortly after the Treaty was signed. These understandings were also reflected in the petition of the four tribes in 1883, and in the *Kawenata* in 1904. These documents explained the view of Te Rohe Pōtae Māori, and Ngāti Maniapoto in particular, that the Treaty had guaranteed to Māori their *tino rangatiranga*, and that the Crown's role was to actively protect their authority through the provision of suitable laws.

As other Tribunals have explained, the Crown's duty is one of *active* protection, which imposes an obligation to protect Māori rights and interests 'to the fullest extent reasonably practicable'.<sup>353</sup> This means that the Crown cannot ignore, deny, or interfere with Māori communities' *tino rangatiranga*, including authority over and relationships with people, lands, and *taonga*. But it also means that the Crown is positively obliged to protect and support Māori communities' *tino rangatiranga*, for example, by putting in place legislative or administrative measures that support those communities' authority and relationships, if that is what the community wants.<sup>354</sup>

The nature of this protective obligation necessarily varies according to the circumstances. In 1840, Te Rohe Pōtae Māori were in little need of protection from settlers, and indeed were generally welcoming of the opportunities that they provided. As we will see in later chapters, growth in the settler population subsequently created pressures that would lead Te Rohe Pōtae Māori to seek the Crown's protection, particularly its protection of their lands.

351. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 172, 201.

352. Document A23, pp 66–67.

353. For example, see Waitangi Tribunal, *Report on the Manukau Claim*, ch 8.3; Waitangi Tribunal, *Report on the Orakei Claim*, pp 135–136; Waitangi Tribunal, *Ngai Tahu Sea Fisheries Report*, pp 269–270.

354. Waitangi Tribunal, *Ngawha Geothermal Resource Report*, pp 100–101; Waitangi Tribunal, *Te Arawa Representative Geothermal Resource Claims*, ch 5.



The nature of the Crown's obligation of 'active protection' also depends on the degree of practical influence the Crown is able to exercise. Initially, it had very little capacity to exercise practical authority in this district, and therefore to protect Te Rohe Pōtae Māori in exercising their tino rangatiratanga, which they continued to exercise without the Crown's assistance. Over time, the Crown's practical power grew and therefore so did its capacity to protect Te Rohe Pōtae Māori rights and interests.

From the principle of partnership is derived the Crown's duty to use its powers of kāwanatanga to actively protect Māori interests.

#### **3.4.4.5 The Crown has a duty of equitable and equal treatment**

The rights accorded to the Crown through the Treaty also imposed a duty to treat Māori equitably. The Crown could not favour settlers over Māori at an individual level, and nor could it favour settler interests over the interests of Māori communities. This obligation arises from article 3, which promises all Māori the same rights of British subjects. It guarantees Māori equal citizenship rights, including equal rights to political representation. As the Te Tau Ihu Tribunal explained:

The obligations arising from kawanatanga, partnership, reciprocity, and active protection required the Crown to act fairly as between settlers and Maori. The interests of settlers could not be prioritised to the disadvantage of Maori. Where Maori have been disadvantaged, the principle of equity – in conjunction with the principles of active protection and redress – requires active measures to restore the balance.<sup>355</sup>

The Crown's duties, to this extent, also required the Crown to treat Māori groups equally, and to act in a way that allows Māori groups to maintain amicable relations. From these are derived the principles of equity (between Māori and settlers) and equal treatment (between Māori and Māori).

#### **3.4.4.6 Māori have the right to pursue options**

Articles 2 and 3 together provide Māori with a right to 'choose their social and cultural path' – that is, to continue to govern themselves along customary lines, or to engage with the emerging settler society, or both.<sup>356</sup> From this is derived the principle of options.

#### **3.4.4.7 The Crown has a duty to provide redress**

Should the Crown act in excess of its kāwanatanga powers, or otherwise breach the Treaty's terms, in a manner that resulted in prejudice to Māori, the Crown was liable to compensate its Treaty partner. From this is derived the principle of redress.

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355. Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims*, 3 vols (Wellington: Legislation Direct, 2008), vol 1, p 5. Also see Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Preliminary Report*, p 6.

356. Waitangi Tribunal, *Report on the Muriwhenua Fishing Claim*, pp 193–195.

**3.4.4.8 *The Treaty's application to non-signatories***

Finally, for the sake of completeness, we must consider the Treaty obligations of those iwi and hapū who did not sign. As discussed in section 3.4.1.5, other Tribunals have found that the Treaty applies to non-signatories as a unilateral declaration by the Crown of its intent. To the extent that the Crown exercised its powers of *kāwanatanga* with respect to those hapū and iwi, it was obliged to do so in a manner that gave effect to their Treaty rights. The Treaty guaranteed *tino rangatiratanga* to all hapū and iwi, and their *tino rangatiratanga* therefore remained intact, irrespective of whether they had signed or not. Any Crown action fundamentally affecting the *tino rangatiratanga* of a Māori community, whether its *rangatira* had signed or not, required its consent. As we have seen, the Treaty's terms provided for a working out of arrangements by which the Crown's authority and that of Māori might co-exist and be exercised in partnership. Such a working out remained possible for non-signatories as well as signatories, and as we will see in chapter 8, during the 1880s signatories and non-signatories alike would seek Crown recognition of and protection for their *tino rangatiratanga*.

**3.4.5 Conclusions on the Treaty's meaning and effect**

The Treaty of Waitangi was brought to this district at a time when *rangatira* were eager to engage with Pākehā. Their contact to date had been limited to a few traders and missionaries, and their experiences had been largely positive. Britain, they understood, was a source of considerable wealth, offering new food crops, new agricultural methods, new trading opportunities, and new ideas.

When Queen Victoria offered to deepen the relationship, and in particular to lend her empire's considerable power to the protection and defence of *mana Māori*, many of this district's *rangatira* took up the offer. As a complex constitutional transaction taking place in two languages between people with markedly different ideas about law and authority, some misunderstanding was inevitable.

So far as we can determine, official explanations given in Te Rohe Pōtae did not convey the full legal meaning of its proposal. What was made clear, from the texts (especially in *te reo*) and from the missionaries' recorded explanations, were Britain's immediate, practical intentions, which had been spelled out in Normanby's instructions. It sought a power to control settlers and thereby minimise the harm that might come from uncontrolled settlement.

What was offered to Māori, both in terms of the text and in oral explanations, did not necessarily reflect the inbuilt assumptions that were associated with the Crown's intention to acquire sovereignty. These assumptions were repeated to us by the Crown in our hearings: through the Treaty, the Crown acquired Māori consent to it asserting sovereignty, which included a supreme authority over all places and people, including the power to determine institutions necessary for governance (after further discussion and engagement with its Treaty partner). Although the Crown acknowledged that it did not and could not assert that authority immediately over all Māori communities, it was an authority the Crown considered it had legitimately acquired.

Contrary to that position, we consider that the Treaty represented a coming together of two peoples, each with their respective cultural, legal, and political traditions. The Treaty therefore cannot be understood only on the basis of what British officials or the Crown believed it to mean in 1840; nor can it be understood solely in terms of its meaning and effect under English law at that time. The rangatira who signed the Treaty had pre-existing systems of law (tikanga) and authority (mana and tino rangatiratanga), which could be modified only with the free, informed consent of Māori communities. What Māori consented to depended on what they understood the Treaty to mean, and this inevitably reflected the explanations that were made to them in their own language, and which they interpreted through the lenses of their own assumptions about law and authority. The Treaty's meaning and effect can therefore be found in the common ground between Māori and British understandings – a common ground that provided for the Crown to exercise a new governing power, but one that did not interfere with the rights of Māori to continue to govern themselves in a manner consistent with their own mana and tikanga; for the Crown's new power to be used in a manner that protected Māori interests; and for the relationship to provide for mutual benefit to Māori and settlers alike. Inevitably, much remained to be negotiated, in particular about the potential overlaps and tensions between Crown and Māori spheres of influence. It is from these key elements of the Treaty transaction that we can derive principles that should be applied to the claims before us.

#### **3.4.5.1 *The Treaty's meaning and effect***

Under the Treaty, Māori were guaranteed that their right to exercise tino rangatiratanga (and therefore mana) would continue. The Treaty in turn created an obligation on the Crown to protect Māori communities in possession of and authority over their lands, resources, and all other valued things. Māori would have understood this as including their mana, their tino rangatiratanga, and their tikanga – their systems of authority and law, including systems for managing relationships among people, among groups, and with the environment and natural resources. In this respect the Treaty did not diminish Māori authority, but affirmed it.

Under the Treaty, the Crown was granted a right to exercise kāwanatanga – a right to govern and make laws. To the extent that it applied to Māori people and territories, that right was to be used for the control of settlers, and for the protection of Māori and the benefit of Māori and settlers alike, including the protection of Māori authority in respect of lands and other taonga. The rangatira who signed the Treaty appear to have understood its terms as creating a relationship between themselves and the Queen, and in turn with the governor as her representative, each acting as leaders and guides – rangatira – for their respective peoples. They were not consenting to the establishment of settler-controlled institutions of law and government with power over them.

The Treaty created a formal relationship. In tikanga terms, it can be understood as a mutually beneficial alliance with common and overlapping interests. This was an arrangement based on mutual interest and mutual benefit, intended to provide a place in this district for both peoples – and for their cultures, traditions,

systems of law and government, and relationships with the natural world. It was an arrangement that allowed both forms of authority to co-exist.

The exact relationship between Māori and Crown authority was not spelled out. However, the Treaty established a number of concrete elements about the nature of the powers accorded to the respective parties, and how their relationship could be brought into practical effect:

- ▶ Kāwanatanga and tino rangatiratanga had distinct spheres of authority, with distinct functions, but with potentially overlapping spheres of interest – kāwanatanga being principally concerned with settlers, and with international relationships, and tino rangatiratanga being principally concerned with Māori communities.
- ▶ The relationship between the Crown and Māori was in the nature of a partnership in which any differences would be resolved through negotiation and dialogue conducted honestly and in good faith, and as much as possible in ways that delivered on the Treaty's original promise of mutual benefit. Neither partner in this relationship was superior. Further discussions were required in order to bring into effect the specific legal or institutional arrangements that might be needed to provide for the ongoing exercise of both forms of authority.
- ▶ The Crown had a duty to actively protect Māori rights and interests, including the exercise of Māori authority – this included a duty not to ignore, deny, or interfere with Māori authority or relationships with lands and other taonga, and a duty to actively support those relationships to the greatest extent practicable in accordance with Māori wishes (including through legislation and institutional arrangements if that was what Māori communities sought).
- ▶ The Crown also had a duty to treat Māori equitably, not favouring settlers over Māori or settler interests over those of Māori communities; and a duty to treat Māori communities equally.
- ▶ The Crown's exercise of its right of kāwanatanga was fettered by the requirement to give effect to tino rangatiratanga; it could not alter or interfere with tino rangatiratanga except with consent. Tino rangatiratanga was also fettered by the Crown's right to govern and make laws, and in particular its obligations to control settlers and settlement and to protect New Zealand from foreign threat.

Above all, the Treaty signalled a relationship that would be mutually beneficial, providing access to new opportunities and also providing for mutual protection. In this respect, it represented the formal beginning of a relationship akin to a partnership.

We also conclude that the Treaty applied to non-signatory hapū as a unilateral set of promises by the Crown to respect and protect their tino rangatiratanga and other rights just as it would for hapū whose leaders had signed. Out of practical necessity, all Māori needed to engage with the Crown on the basis of the Treaty's guarantees, whether they had signed the Treaty or not. At a minimum, however, the Crown was obliged to approach these groups on the basis that a workable

relationship had to be put in place based on mutual consent, much as Māori needed to do the same with the Crown.

### **3.4.5.2 *The principles and duties we apply***

From these conclusions, we apply the following principles and duties of the Treaty to the claims before us:

- ▶ **Kāwanatanga:** The Crown has a right to make laws and govern, which was initially for the principal purposes of controlling settlers and settlement, and managing foreign relationships. This power is qualified by the rights that are reserved to Māori. To the extent that it affects Māori communities, the right of kāwanatanga must be used to protect Māori interests.
- ▶ **Good governance:** The Crown must keep to its own laws and not act outside the law. The Crown should be accountable for its actions in relation to Māori and subject to independent scrutiny.
- ▶ **Tino rangatiratanga, self-government, and autonomy:** Māori communities retain their tino rangatiratanga, including their right to autonomy and self-government, and their right to manage the full range of their affairs in accordance with their own tikanga. As part of the Treaty exchange, the Crown guarantees to protect and provide for the exercise of Māori authority and autonomy.
- ▶ **Reciprocity and mutual benefit:** The Treaty provided for two peoples to share one country. Māori granted the Crown its new power of kāwanatanga in return for a guarantee of protection for their tino rangatiratanga. Through this mutual recognition of powers, the Treaty also provides a basis for mutual protection and for relationships that would bring mutual benefit.
- ▶ **Partnership:** The Treaty established a relationship that was subject to ongoing negotiation and dialogue, under which the Crown and Māori would work out the practical details of how kāwanatanga and tino rangatiratanga would co-exist. Both partners owe each other a duty to act honourably and in good faith. Neither partner can act in a manner that fundamentally affects the other's sphere of influence without their consent, unless there are exceptional circumstances.
- ▶ **Active protection:** The Crown is obliged to use its power of kāwanatanga to actively protect the Māori rights and interests guaranteed under articles 2 and 3 of the Treaty.
- ▶ **Options:** Māori have the right to continue to govern themselves along customary lines, or to engage with the developing settler and modern society, or a combination of both.
- ▶ **Equity:** The Crown must act fairly as between Māori and settlers. It cannot use its powers of kāwanatanga to advance Pākehā interests at the expense of Māori. **Equal treatment:** The Crown must treat all Māori groups equally and in a manner that is not intended to create division between them.
- ▶ **Redress:** Should the Crown act in excess of its kāwanatanga powers, or should it breach the Treaty's terms in any other way by act or omission resulting in prejudice, the Crown should compensate.

### 3.4.5.3 *The Treaty in Te Rohe Pōtae after 1840*

In the rest of our report, we assess the extent to which the Crown acted in accordance with these Treaty principles and duties in respect of the hapū and iwi of Te Rohe Pōtae.

For many years after the Treaty was signed at Waikato Heads and Kāwhia, the Crown and this district's Māori followed divergent paths. The Crown, basing its understanding on the English texts, proclaimed its sovereignty and moved to establish the machinery of government. Its immediate concern was with establishing authority among settler communities, not asserting power over Māori except in relation to land transactions.<sup>357</sup> For the most part, from its point of view, governing Māori could wait.<sup>358</sup>

Over time, as settlement increased in other parts of New Zealand, the Crown began to devolve authority to its settlers in New Zealand. In the 1850s it established an elected settler legislature (voting rights were subject to a property test that effectively disenfranchised Māori), and it accorded responsible government to settler Ministers accountable to the settler Parliament (except in respect of Māori affairs, for which responsible government was granted in 1864).<sup>359</sup>

The Crown's efforts to establish a government had little or no practical effect in this district until many years after the Treaty. Few government officials even visited during the 1840s. Māori communities continued to govern themselves as before, showing some interest in missionary ideas, and considerable interest in trade and agriculture.<sup>360</sup> The 1840s was something of a golden age of economic development as Māori communities grew corn, wheat, potatoes, and other crops, much of it for export to Sydney.<sup>361</sup> Interaction with the Crown was limited to the confirmation of a few pre-Treaty transactions, as well as a handful of Crown purchases, which mainly occurred in coastal areas (discussed in chapters 4 and 5). This lack of sustained interaction meant that the Crown was able to secure its position in other parts of the country, including establishing institutions for governing New Zealand, before it came to any significant engagement with Te Rohe Pōtae Māori.

However, Te Rohe Pōtae Māori leaders closely observed the Crown's actions in other parts of the country, where the settler population grew and became more demanding for land, and the Crown became increasingly responsive to settler demands. The establishment of a settler legislature, derisively labelled 'the English

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357. Orange, *The Treaty of Waitangi*, pp 85, 92–93; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 386–387, 389; Alan Ward, *National Overview*, Waitangi Tribunal Rangahaua Whanui Series, 3 vols (Wellington: GP Publications, 1997), vol 2, pp 76–79; 'New Zealand officially becomes British colony', Ministry for Culture and Heritage, <https://nzhistory.govt.nz/letters-patent-issued-making-new-zealand-a-colony-separate-from-new-south-wales>, updated 23 December 2016.

358. Wai 1040 ROI, doc A21, pp 78–79.

359. Document A23, pp 142–152, 157, 234; Alan Ward, *National Overview*, vol 2, pp 461–462.

360. This period is discussed in doc A23, pp 75–92, 123–134.

361. Document A23, pp 123–131; Tūhuatahi Tui Adams and Paul Meredith, 'Ngāti Maniapoto — The coming of the Pākehā, Te Ara — the Encyclopedia of New Zealand, <http://www.TeAra.govt.nz/en/ngati-maniapoto/page-3>, accessed 12 April 2017.

Committee' by some Waikato Māori,<sup>362</sup> saw rangatira begin to explore new institutional arrangements. Many of those who had signed the Treaty in the hope of forging an alliance with the Queen now turned to a new alliance among themselves: the Kingitanga was born in 1856–58. Haupōkia, who was among the Treaty signatories, was also among those who selected Te Wherowhero as the first Māori King; and most of this district's signatories supported the movement along with him.<sup>363</sup>

By the 1860s, Waikato and Ngāti Maniapoto were at war with the Crown. War was followed by confiscation, and by two further decades of independence before negotiations over the practicalities of the Crown–Māori relationship in this district finally began. We will consider these events in chapters 6, 7, and 8, particularly how the Crown responded to Te Rohe Pōtae Māori requests for laws to be enacted and institutions created that protected their authority.

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362. Document A23, p 142.

363. Document s11(d), p 18; doc A97, p 21; transcript 4.1.8, p 1214 (Moepātu Borell, hearing week 2, Waitomo Cultural and Arts Centre, 14 December 2012); doc A144, pp 14–15.





## CHAPTER 4

### NGĀ WHAKAWHITI WHENUA O MUA: OLD LAND CLAIMS

As long as a person or a people sat on the land and people agreed for them to be there, kei te pai. The minute they left that land, e whakahokia mai te mana o te whenua.

—Thomas Moke<sup>1</sup>

#### 4.1 INTRODUCTION

By the Treaty of Waitangi, the Crown was granted a right to exercise kāwanatanga – a right to govern and make laws. As set out already in chapter 3, that right had particular application to Māori people and territories. It was to be used for the control of settlers, for the protection of Māori, and for the benefit of Māori and settlers alike, including the protection of Māori authority in respect of lands and other taonga.

In asserting its new powers to achieve these aims, the Crown regarded control of land purchasing as fundamental. In 1839, Secretary of State for the Colonies Lord Normanby had instructed Captain William Hobson to proclaim that land purchases would be valid only if derived from or confirmed by the Crown. This proclamation was first issued by Governor Gipps in Sydney on 14 January 1840, and repeated by Hobson on 30 January after he arrived in New Zealand. Among other things, the proclamation declared that the Crown would recognise no title to land ‘which either has been, or shall hereafter be acquired’, unless that title derived from or was confirmed by a grant from the Crown.<sup>2</sup>

As well as asserting the necessity of the Crown’s pre-emptive right to purchase land from Māori, Normanby’s instructions required that commissioners be appointed to investigate previous transactions between Māori and Pākehā. Again, this was first provided for by Gipps, who in 1840 produced legislation establishing a process to investigate land claims. After the annexation of New Zealand in May 1841, Governor Hobson re-enacted this as the New Zealand Land Claims Ordinance 1841. These ordinances stated all claims to land obtained by Europeans before 1840 to be null and void, and declared the Crown’s ‘intention to recognize claims to land which may have been obtained on equitable terms from the said

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1. ‘The land is returned to the original owners’: transcript 4.1.9 (Thomas Moke, hearing week 3, Maketu Marae, 5 March 2013, pp 308–309).

2. Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 1, p76; doc A70 (Boulton), p 51.

chiefs or aboriginal inhabitants' and that were 'not prejudicial to the present or prospective interests' of future settlers.<sup>3</sup>

When the Treaty was signed by Te Rohe Pōtae rangatira in the months after February 1840, only a small population of Pākehā were resident in the inquiry district. From the late 1820s, traders had settled around harbours and river mouths on the coast. They exchanged European goods and crops for flax, pork, potatoes, and other produce. Living under the protection of rangatira such as Te Wherowhero and Haupōkia Te Pakarū, they were often married into their host communities.<sup>4</sup> From the mid-1830s, Anglican and Wesleyan missionaries began establishing mission stations in the Waipā area of southern Waikato and on the west coast around the Kāwhia and Whāingaroa Harbours. Māori in the region formed close relationships with missionaries, who offered opportunities to acquire literacy and European agricultural techniques.<sup>5</sup>

The prospect of Britain's annexation of New Zealand prompted a rush of speculative land purchases by Sydney-based merchants, often purporting to transact fancifully large areas of land. For example, John Jones and Francis Leathart claimed to have acquired 101,493 acres of land in Te Rohe Pōtae between January 1839 and January 1840. Some of this land they then claimed to have disposed of to a further Sydney claimant, WC Wentworth.<sup>6</sup> Ernst Dieffenbach, the German naturalist who travelled through parts of the inquiry district in April 1840, recorded that '[t]he greater part of the land in the vicinity of Kawia [*sic*] is claimed by Europeans.'<sup>7</sup>

The number of old land claims in this inquiry district that were registered with the land claims commissions is not clear from the evidence.<sup>8</sup> Most of the claimed transactions were speculative in nature, however, and were not pursued. The land claims commissions ultimately investigated just six claims in the inquiry district. Each was accorded a plan number beginning with the letters 'OLC'.<sup>9</sup>

The land claims commissions operated in two distinct phases. The first phase was overseen by Edward Godfrey and Matthew Richmond, who served as commissioners from 1840 to 1845. Godfrey and Richmond investigated four related claims. All four were heard in June 1843. Three of these claims concerned land occupied by the Wesleyan Missionary Society (WMS) at Nihinihi, Whāingaroa (OLC 946), Ahuahu, Kāwhia (OLC 947), and Awaroa, Kāwhia (OLC 948). The fourth claim (OLC 1040) was lodged by former WMS employee William Johnston

3. Document A70, pp 51–54.

4. Document A97 (Borell and Joseph), p 137.

5. Document A70, p 19; doc A23 (O'Malley), pp 33–36.

6. Document A70, pp 45, 480–484.

7. Document A23, p 39.

8. Leanne Boulton stated there were 41 claims: doc A70, pp 47, 471–484. The Crown stated there were 51: submission 3.4.288, pp 14–15. In the Tribunal's assessment, the evidence cited does not unambiguously support either figure.

9. In this chapter we follow the 'OLC' numbers used by the parties and in Ms Boulton's evidence. Some sources provide a different sequence of OLC numbers: see, for example, doc A21, p 39 (Douglas, Innes, and Mitchell); 'Appendix to the Report of the Land Claims Commissioner', AJHR, 1863, D-14.

for land at Kinohaku, Kāwhia. The governor awarded Crown grants in all four cases, in accordance with the commissioners' recommendations.

In the second phase, Commissioner Francis Dillon Bell investigated two claims between 1857 and 1862, initially under the Land Claims Settlement Act 1856. In July 1858, Bell heard George Charleton's claim to land at Pouewe, Kāwhia (OLC 1353). Charleton died in 1862 before the commission reported, but in 1864, on Bell's recommendation, a Crown grant was issued to his widow, Ann Charleton. Bell's investigation of a claim to land at Ōhaua, Kāwhia, by John Laurie and Samuel Joseph (OLC 1314), was carried out by correspondence alone. This claim was declared abandoned in 1880.<sup>10</sup>

In sum, five Crown grants totalling just over 416 acres were awarded to Pākehā in the inquiry district based on the commissions' recommendations.

Separately from the five old land claims for which land was granted, four further transactions in the inquiry district that derived from pre-Treaty relationships were later alienated by other mechanisms. Two were areas of land claimed by the wms: the Raoraokauere Mission Station at Aotea Harbour and the Te Kōpua Mission Station at Waipā. Under the Land Claims Ordinance 1841, the land claims commission could not investigate transactions that had taken place after 14 January 1840. However, in 1844, Governor Robert FitzRoy decided to waive the Crown's pre-emptive purchase right in certain circumstances. FitzRoy indicated he would grant a waiver at Raoraokauere, and the wms applied for a waiver at Te Kōpua. Nonetheless, it took until 1862 – nearly 20 years – for Crown grants to be awarded to the wms. The Te Kōpua Mission Station is not discussed here: it was not the focus of any claim in this inquiry and has reverted to Māori freehold land status.<sup>11</sup> At Ōhaua a third area, adjacent to OLC 1314, was granted as OLC 400 to Samuel Joseph in circumstances that are unclear. The land has since been repurchased and returned to Māori freehold status. A fourth area, known as Rangitahi, south of Whāingaroa Harbour, was occupied by Edward Meurant and his Māori wife, Eliza Kenehuru. Upon Meurant's death in 1851, the land remained in Māori communal ownership. A Crown grant was later issued to the land – designated OLC 118 – in circumstances that are not entirely clear.

The awards resulting from these four transactions alienated a further 516 acres.

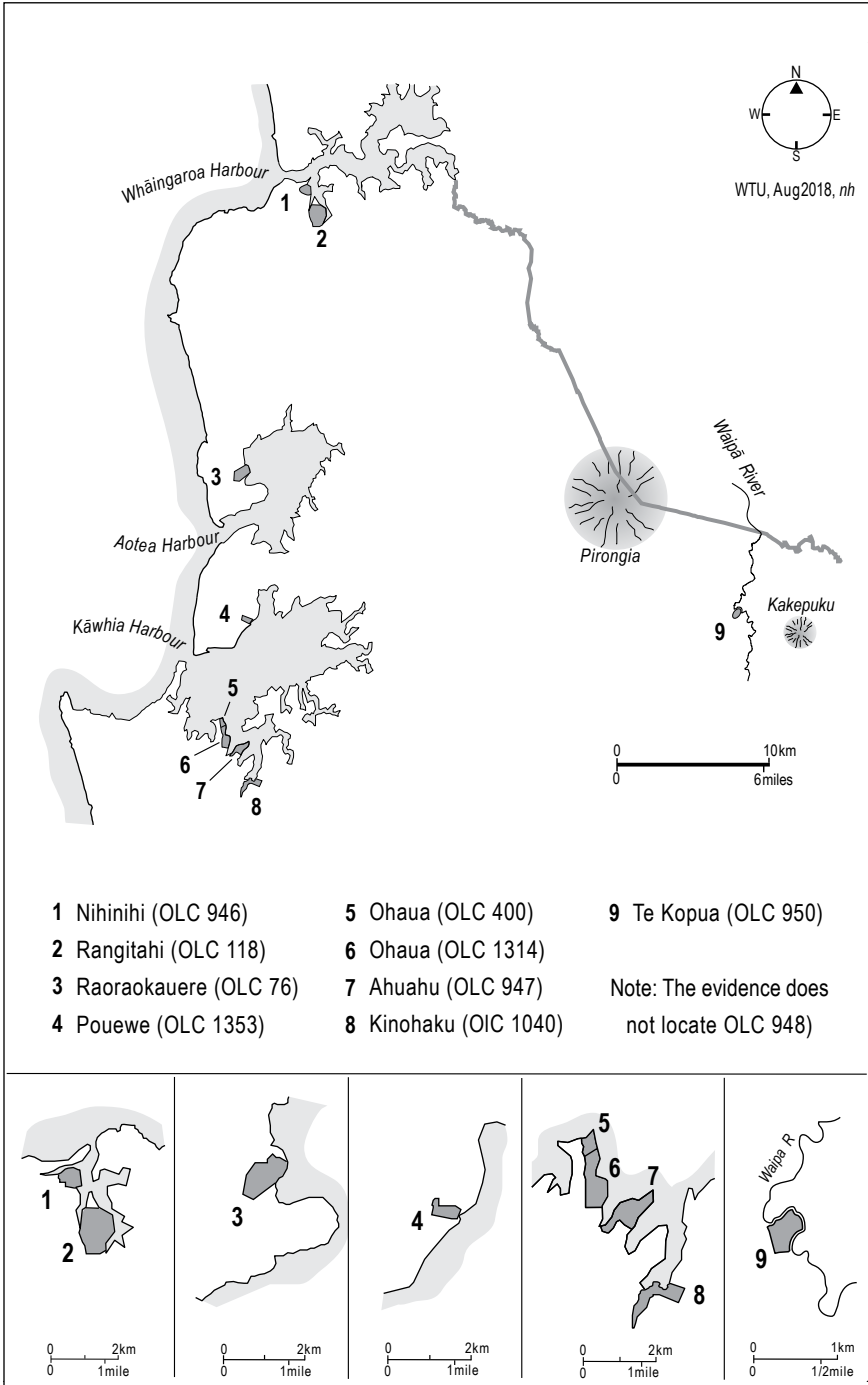
The main research reports addressing these matters was presented by Leanne Boulton. Reports prepared by Vincent O'Malley and Andrew Francis also contained relevant material, as did the traditional history report prepared by the Ngāti Hikairo claimants.<sup>12</sup>

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10. Document A70, p 121.

11. Document A21, p 39.

12. Leanne Boulton, 'Hapu and Iwi Land Transactions with the Crown and Europeans in Te Rohe Potae Inquiry District, c 1840–1865' (document A70); Vincent O'Malley, 'Te Rohe Pōtae Political Engagement, 1840–1863' (document A23); Andrew Francis, 'The Rohe Potae Commercial Economy in the Mid-Nineteenth Century, c 1830–1886' (document A26); Frank Thorne, 'Te Maru-ō-Hikairo: Oral and Traditional History Report of Ngāti Hikairo' (document A98).



Map 4.1: Pre-Treaty transactions referred to in this chapter

No	Location	Claimant	Date(s) of deed(s)	Approximate area initially claimed (acres)	Approximate area granted (acres)	How land was granted
946	Nihinihi, Whāingaroa	WMS	27 February 1839	90	76	Crown grant, 8 November 1855
947	Ahuahu, Kāwhia	WMS	20 November 1834, 24 November 1834, 12 April 1839, 24 April 1839, 1 August 1839	160	160	Crown grant, 8 November 1855
948	Awaroa, Kāwhia	WMS	3 January 1840	4	4	Crown grant, 8 November 1855
1040	Kinohaku, Kāwhia	Johnston	30 January 1836, 8 October 1839, 18 January 1840, 13 February 1840	600	118	Crown grant, 25 July 1848
1353	Pouewe, Kāwhia	Cowell, Charleton	11 January 1840, 11 March 1846	50	44	Crown grant, 25 October 1864
76	Raoraokauere, Aotea	WMS	12 June 1840, 14 March 1844	34	167	Crown grant, 10 June 1862
370	Te Kōpua, Waipā	WMS	5 May 1840, 2 September 1848	35	35	Crown grant, 10 June 1862
400	Ōhau, Kāwhia	Joseph	Unknown	Unknown	34	Unknown
118	Rangitahi, Whāingaroa	Meurant	1839?	300	280	Unknown

Table 4.1: Pre-Treaty transactions in the inquiry district that led to alienations

#### 4.1.1 The purpose of this chapter

The land alienated through these processes represents a very small portion of the inquiry district. Yet the alienations raise important issues. By entering into a Treaty relationship, the Crown recognised that its assertion of *kāwanatanga* imposed on it a duty to protect Māori rights. This was clear from the preamble and article 2 of the Treaty, in which the Crown promised to protect ‘o ratou rangatiratanga, me to ratou wenua’ or the ‘just rights and property’ of Māori and assured them ‘te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa’ or ‘full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties . . . so long as it is their wish and desire to retain the same’ (see chapter 3, section 3.3.2.4).

The process of awarding Crown grants for land transacted in the pre-Treaty period was the first serious test of the Crown’s commitment to protect the Māori rights it had recognised under the Treaty. Crown officials in the 1840s knew that

this meant respecting Māori law and custom. In 1845, for example, Lord Stanley, the secretary of state for the colonies, told the House of Lords:

law and custom are well understood among the natives of the islands. By them we have agreed to be bound, and by them we must abide. These laws – these customs – and the right arising from them on the part of the Crown – we have guaranteed when we accepted the sovereignty of the islands . . . the interpretation of the Treaty of Waitangi, with regard to these rights, is, that, except in the case of the intelligent consent of the natives, the Crown has no right to take possession of land . . .<sup>13</sup>

To grant title to Pākehā for a claimed pre-Treaty transaction, the Crown first had to establish that Māori had given their informed consent to the full and final alienation of the affected land.

#### 4.1.2 How the chapter is structured

This chapter examines land alienated from Te Rohe Pōtae Māori as a result of the Crown's process for investigating pre-Treaty transactions. Section 4.2 establishes the issues for determination in this chapter. Section 4.3 considers Māori understandings of pre-Treaty transactions, and section 4.4 then examines the operations of the land claims commissions in Te Rohe Pōtae. Other alienations in the inquiry district that derived from pre-Treaty relationships are examined in section 4.5. Section 4.6 contains our Treaty analysis and findings, and an assessment of prejudice. These findings are summarised in section 4.7.

## 4.2 ISSUES

This section sets out the findings of previous Tribunals, the Crown's acknowledgements regarding pre-Treaty transactions, and the arguments made by the claimants and the Crown, in order to establish the issues for determination.

### 4.2.1 What other Tribunals have said

The Tribunal has a well-developed jurisprudence on pre-Treaty transactions, which have been addressed in several reports. Of these, the *Muriwhenua Land Report* and the *Hauraki Report* considered the issues in most depth.<sup>14</sup> Both Tribunals examined the nature of pre-Treaty transactions in their inquiry districts and assessed the adequacy of the land claims commissioners' investigations into those transactions.

The Muriwhenua Land Tribunal's findings on the nature of pre-Treaty transactions were unequivocal. The Tribunal concluded that pre-Treaty transactions in

13. Document A23, p 87.

14. Waitangi Tribunal, *Muriwhenua Land Report* (Wellington: GP Publications, 1997), pp 53–108, 392–398; Waitangi Tribunal, *The Hauraki Report*, vol 1, ch 3; see also Waitangi Tribunal, *The Ngati Te Rangiteaorere Claim Report* (Wellington: Brooker and Friend Ltd, 1990), pp 10–14, 18–22; Waitangi Tribunal, *The Whanganui River Report* (Wellington: Legislation Direct, 1999), ch 4; Waitangi Tribunal, *The Kaipara Report* (Wellington: Legislation Direct, 2006), chs 3, 4.

their inquiry district 'did not effect, and could not have effected, binding sales, and that the parties were not of sufficiently common mind for valid contracts to have formed'. Rather than sales, the pre-Treaty transactions were *tuku whenua*, an arrangement that 'conferred [upon Pākehā] a personal right of occupation conditional upon acceptance of the norms and authority of the local Maori community as represented in the *rangatira*'.<sup>15</sup>

The Tribunal substantiated this finding with reference to the power dynamic evident on the ground in Muriwhenua. In its view, there was no compelling evidence to suggest that Māori had bowed to an alternative power structure at the time the transactions were conducted. Instead, Māori retained control of the area 'by sheer weight of numbers' and, therefore, '[t]he presumption must be . . . that Maori saw things faithfully in terms of their own law, which was the only law they needed to know and the only one to which they owed commitment'.<sup>16</sup> The Tribunal found that, under Māori land law, land was owned by the community as a whole, with use-rights allocated by *rangatira*. These use-rights were conditional upon the occupiers' continued contribution to the common wealth.<sup>17</sup>

The Hauraki Tribunal, by contrast, found that a sharp dichotomy between customary and modern expectations of exchange was inappropriate for their inquiry district. The Tribunal explained:

In the light of the different circumstances of Hauraki, we take a modified view of these transactions from that of the Muriwhenua Tribunal for their district. On the basis of both claimant and Crown evidence, we consider that some of the pre-1840 and pre-emption waiver transactions in Hauraki did not take place in a wholly customary environment but one in which more modern concepts of commodity trade and entrepreneurship had some influence.<sup>18</sup>

Accordingly, the Tribunal found that 'Maori alienors could well have intended to convey substantial and perhaps permanent rights to Pakeha purchasers'.<sup>19</sup> However, the Tribunal qualified that statement by adding, 'we are by no means persuaded that the *rangatira* and *hapu* concerned intended to relinquish *all* their interests in or connections with the land' (emphasis in original).<sup>20</sup>

Like its Muriwhenua counterpart, the Hauraki Tribunal premised its findings on the contemporary distribution of power, but differed in its analysis. While Hauraki remained a predominantly Māori place in the late 1830s, the Tribunal found that the growing importance of Pākehā in the region meant that the area was 'no longer a wholly traditional world'. The inter-tribal fighting of the 1820s had left Hauraki almost void of Māori habitation in the years immediately

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15. Waitangi Tribunal, *Muriwhenua Land Report*, p 392.

16. Waitangi Tribunal, *Muriwhenua Land Report*, pp 68, 106.

17. Waitangi Tribunal, *Muriwhenua Land Report*, pp 68, 108.

18. Waitangi Tribunal, *The Hauraki Report*, vol 1, p 153.

19. Waitangi Tribunal, *The Hauraki Report*, vol 1, pp 153–154.

20. Waitangi Tribunal, *The Hauraki Report*, vol 1, p 154.

preceding the land transactions, as iwi and hapū fled to the Waikato.<sup>21</sup> This meant that Hauraki Māori were re-establishing their presence on their whenua as Pākehā were establishing theirs. The residence patterns of returning Hauraki iwi were, in part, informed by proximity to these newcomers. The Tribunal concluded that, for some Māori, association with wealthy Pākehā served to reaffirm their presence in the region and, in this context, both traditional and modern forms of exchange held sway.<sup>22</sup>

While the Muriwhenua Land and Hauraki Tribunals offered distinct findings on the nature of pre-Treaty transactions, they reached similar conclusions regarding the efficacy of the commissioners' investigations. The Muriwhenua Land Tribunal listed several matters that the commissioners were bound to inquire into to ensure that the Crown actively protected Māori interests. The Tribunal found:

The matters that needed spelling out, in our view, were these: had the alienors sufficient right and title? was a sale in fact intended? would a sale be in breach of any trusts? had the affected hapu sufficient other lands . . .? were the transactions otherwise contrary to the interests of the Maori alienors? was the consideration adequate? and had matters been honestly put without fraud or unfair inducement?<sup>23</sup>

Using these questions as a guide, both Tribunals found that the inquiries of Godfrey and Richmond failed to protect Māori interests and that the resulting Crown grants thereby breached Treaty principles.<sup>24</sup>

The two Tribunals made similar findings in respect of the later commission overseen by Francis Dillon Bell. The Muriwhenua Land Tribunal concluded that Bell's primary task was 'to tidy an uncertain title situation' by 'converting vague Crown grants into certain ones by surveying the original grantee's entitlements'. The Tribunal found that 'Maori were not called upon to be heard' and that Bell 'simply assumed that valid alienations had been effected.'<sup>25</sup> The Hauraki Tribunal drew a similar conclusion, noting that, while he was willing to recommend additional payments or to modify the boundaries of previously awarded land, Bell was unwilling to rule a transaction void on the basis that not all owners had given consent.<sup>26</sup> Bell thus failed to consider the possibility that the transactions were conducted on a Māori customary basis. For these reasons, both Tribunals once again concluded that the resulting Crown grants breached Treaty principles by failing to actively protect Māori interests.

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21. Waitangi Tribunal, *The Hauraki Report*, vol 1, p 89.

22. Waitangi Tribunal, *The Hauraki Report*, vol 1, pp 88–91.

23. Waitangi Tribunal, *Muriwhenua Land Report*, p 126.

24. Waitangi Tribunal, *Muriwhenua Land Report*, p 126; Waitangi Tribunal, *The Hauraki Report*, vol 1, pp 154, 163–164.

25. Waitangi Tribunal, *Muriwhenua Land Report*, pp 171, 172.

26. Waitangi Tribunal, *The Hauraki Report*, vol 1, p 156.



#### 4.2.2 Crown concessions and acknowledgements

The Crown in this inquiry made no concessions of Treaty breach in relation to pre-Treaty transactions. The Crown did acknowledge that the land claims commission system was ‘not perfect’, and may have been deficient in some respects, but it maintained that these deficiencies did not breach Treaty obligations.<sup>27</sup>

The Crown made several specific acknowledgments regarding George Charleton’s claim to Pouewe (OLC 1353), although again it did not concede any Treaty breach or resulting prejudice. The Crown acknowledged:

- ▶ ‘there may have been a failure of process with respect of the Charleton claim’;
- ▶ ‘the evidence on the record of inquiry may suggest that this pre-Treaty transaction may not have been intended by the original Māori owners to be a permanent alienation’;
- ▶ ‘in this particular instance, the pre-Treaty transaction may have been intended to be an interest in land for life held on trust for future Māori beneficiaries’;
- ▶ ‘there is evidence of later Māori opposition to the alienation’; and
- ▶ ‘[p]rejudice may have resulted to Māori in result of the old land claims process in relation to George Charleton’s claim.’<sup>28</sup>

#### 4.2.3 Claimant and Crown arguments

The Tribunal received several specific claims concerning pre-Treaty transactions.<sup>29</sup> The parties to this inquiry agreed that the Crown had a duty under the Treaty of Waitangi to actively protect Te Rohe Pōtae Māori interests in land transacted with Europeans prior to the signing of the Treaty, and properly investigate the nature and effect of those transactions. The key difference between the parties is that the Crown said it met this duty, and claimants said it did not.<sup>30</sup>

On the nature of pre-Treaty transactions, the claimants argued that the findings of the Muriwhenua Land Tribunal were applicable to the Te Rohe Pōtae inquiry district. Counsel framed pre-Treaty transactions as traditional arrangements premised on reciprocity, suggesting that, in accordance with Māori custom, ‘pre-Treaty transactions in Te Rohe Pōtae were more about the relationships between people (enabling access to resources) than about title to property.’<sup>31</sup> To substantiate this perspective, counsel emphasised the similarities between the

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27. Submission 3.4.288, pp 1, 3, 6.

28. Submission 3.4.288, pp 3, 20, 22, 31, 33; statement 1.3.1, pp 37, 42.

29. Wai 1112, Wai 1113, Wai 1439, Wai 2351, Wai 2353 (submission 3.4.226); Wai 1448, Wai 1495, Wai 1501, Wai 1502, Wai 1592, Wai 1804, Wai 1899, Wai 1900, Wai 2126, Wai 2135, Wai 2137, Wai 2183, Wai 2208 (submission 3.4.237); Wai 1588, Wai 1589, Wai 1590, Wai 1591 (submission 3.4.143); Wai 1450 (submission 3.4.196); Wai 1499 (submission 3.4.171); Wai 2014 (submission 3.4.171; submission 3.4.208); Wai 125 (submission 3.4.210); Wai 1327 (submission 3.4.249(c)); Wai 2345 (submission 3.4.139).

30. Claim 1.5.20, p 2; submission 3.4.116, pp 2–3; submission 3.4.288, pp 1, 13.

31. Submission 3.4.116, pp 2–3.

Muriwhenua Land and Te Rohe Pōtae inquiry districts at the time the transactions were conducted.<sup>32</sup>

The Crown argued that the Hauraki Tribunal's findings on the nature of pre-Treaty transactions were more applicable in Te Rohe Pōtae than those of the Muriwhenua Land Tribunal. Counsel suggested that 'Māori in the relevant areas of the inquiry district became familiar with European trade in the period', pointing to testimony given before the land claims commission in 1843 in which a Māori witness appeared to distinguish between arrangements conducted according to Māori expectations of exchange, on the one hand, and Pākehā notions of 'sale' on the other.<sup>33</sup> In addition, the Crown pointed to the lack of protest in response to four of the five land claims granted in Te Rohe Pōtae as evidence that Māori understood the transactions as permanent alienations. The Crown's view was that in these transactions the subsequent conduct of the parties in each case is the best guide to their intentions.<sup>34</sup> The claimants submitted in reply that the Crown 'should not apply the principle that silence means acceptance', especially in the context of its duty of active protection toward Māori.<sup>35</sup>

On the land claims commissions' investigations of the transactions, the claimants argued '[t]he principles of the Treaty of Waitangi required the Crown to protect the customary interests of Māori in relation to pre-Treaty transactions.'<sup>36</sup> Claimant counsel asserted that the commissions failed to inquire into Māori understandings of the transactions or to seek to understand Māori customary land rights. Instead, counsel submitted, the commissioners simply asked Māori witnesses to affirm the accuracy of the information provided.<sup>37</sup> In addition, the claimants argued that the location of hearings in Auckland and the Crown's failure to provide independent advice to Māori witnesses were detrimental to the interests of Māori.<sup>38</sup> These failings, and the subsequent awarding of Crown grants in accordance with the commissioners' flawed findings, amounted to a failure to actively protect the interests of Te Rohe Pōtae Māori.<sup>39</sup>

The Crown, however, disputed this assessment. It did not consider that it had 'breached the Treaty through its involvement in the assessment and administration of pre-Treaty transactions.'<sup>40</sup> Crown counsel argued that there was no evidence to support the suggestion that the commissioners simply assumed that all transactions were sales.<sup>41</sup> Instead, counsel said that the commissioners sought the confirmation of interested parties, including Māori. The Crown argued that the

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32. Transcript 4.1.22, pp 306–310 (Dominic Wilson, questioned by Tribunal, hearing week 15, Napinapi Marae, 4 November 2014).

33. Submission 3.4.288, pp 11–12, 16–17.

34. Submission 3.4.288, p 11.

35. Submission 3.4.343, pp 2–3.

36. Submission 3.4.116, p 2.

37. Submission 3.4.116, pp 9–12.

38. Submission 3.4.116, pp 10–11.

39. Submission 3.4.116, pp 2–4; doc s12 (Kaati), pp 17–18.

40. Submission 3.4.288, p 1.

41. Submission 3.4.288, pp 19, 25.

accuracy of this evidence should be questioned only if the commissioners' rulings were subsequently opposed.<sup>42</sup> The Crown described the commissions' hearings as fair, and asserted that Māori right holders and Māori evidence were adequately represented throughout the process.<sup>43</sup> As to the hearings, Crown counsel disputed the suggestion that holding them in Auckland somehow singled out Māori for unfair treatment, emphasising that the location was also an obstacle to some Pākehā claimants.<sup>44</sup>

On the specific matter of George Charleton's claim to Pouewe, the claimants emphasised commissioner Bell's failure to address the protests of Māta Ritana Kaore and others. The claimants also described the Crown's subsequent acquisition of the block as a means of establishing a foothold in Te Rohe Pōtae or as a 'lever for the Crown to break the aukati', a matter that is addressed in chapter 8 (sections 8.3.1.2 and 8.5.1.1).<sup>45</sup> As noted above, the Crown made a number of acknowledgements regarding Pouewe, accepting that the pre-Treaty transaction may not have been intended as a permanent alienation and that Māori may have suffered prejudice as a result of the claims process.<sup>46</sup> However, it rejected any suggestion that deficiencies in the handling of Charleton's claim were representative of wider failings in the regime for investigating pre-Treaty transactions, observing that the protests of Māta Ritana Kaora and others were concerned with Charleton's claim to the land, rather than with the commission's investigation processes.<sup>47</sup>

#### 4.2.4 Issues for discussion

Having reviewed the Tribunal Statement of Issues and summarised the arguments of the parties, we identify the issues for us to determine as follows:

- ▶ How did Māori in Te Rohe Pōtae understand pre-Treaty transactions?
- ▶ Were the Crown's regimes for investigating and validating pre-Treaty transactions consistent with its obligations under the Treaty? Specifically:
- ▶ Did the land claims commissioners inquire sufficiently into the nature and extent of pre-Treaty transactions?
- ▶ Were the commissions' processes fair to Māori right holders?
- ▶ Did the Crown respond adequately to concerns expressed by Māori arising from the commissions' investigations?
- ▶ What were the outcomes of the land claims process for Te Rohe Pōtae Māori?

#### 4.3 MĀORI UNDERSTANDINGS OF PRE-TREATY TRANSACTIONS

In this inquiry, the claimants and the Crown expressed fundamental disagreement about the extent to which the understandings of Te Rohe Pōtae Māori had been modified by European expectations of exchange, both at the time the original

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42. Submission 3.4.288, pp 19, 25.

43. Submission 3.4.288, pp 25–31.

44. Submission 3.4.288, pp 26–29, 31.

45. Submission 3.4.143, pp 23–24; submission 3.4.226, pp 51–57.

46. Statement 1.4.3, p 55; submission 3.4.288, p 22.

47. Submission 3.4.288, p 32.

transactions were conducted and at the time the commissions investigated. Claimant counsel argued that evidence of the application of Māori custom at the time of the pre-Treaty transactions (and well into the 1840s) supported their view that the transactions were ‘made in terms of Māori custom and . . . did not absolutely alienate land to the settlers’, instead being ‘allocations of use for the settler party so long as the parties were engaged in a reciprocal relationship’.<sup>48</sup> In contrast, Crown counsel argued that ‘the nature of the evidence suggests that Maori in the relevant areas of the inquiry district became familiar with European trade in the period’ and that new concepts of trade and entrepreneurship arising from contact with Europeans had some influence on Te Rohe Pōtae Māori from the time of the original transactions.<sup>49</sup> Claimant counsel responded that ‘European views of the transactions are irrelevant as they were conducted at a time that Māori customary law applied in fact and in law on the ground’.<sup>50</sup>

The parties also disagreed about the political situation in the inquiry district before and immediately after the signing of the Treaty. Counsel differed over whether Te Rohe Pōtae had more in common with the Muriwhenua or Hauraki regions, and which Tribunal’s findings were more applicable. Claimant counsel submitted that the available evidence demonstrated that, as in Muriwhenua, throughout this period ‘Te Rohe Pōtae Māori controlled nearly all aspects of the lives of the settlers on the ground’.<sup>51</sup> The Crown, for its part, cited the Hauraki Tribunal’s conclusion that a sharp dichotomy between traditional and modern expectations of exchange was not an adequate framework for an analysis of the pre-Treaty transactions in that inquiry district.<sup>52</sup>

#### 4.3.1 Early interactions with manuhiri

The first recorded Pākehā visitor to the inquiry district was Captain John Rodolphus Kent (known to Māori as Hamukete), who entered Kāwhia Harbour on 1 January 1824 aboard the *Elizabeth Henrietta*. His visit was prompted by a request from the New South Wales government to establish greater flax-trading connections with Māori. In 1828, Kent established a trading post at Kāwhia. Māori were extremely interested in acquiring European goods, especially muskets, and Kent was welcomed to Kāwhia. Over the following years he was instrumental in the expansion of land-based trading in the inquiry district.<sup>53</sup>

In 1829, Kent brought more Pākehā traders from Sydney. At a Native Land Court hearing in 1886, Wiremu Te Wheoro said they included Te Kaora (John Cowell senior), Te Kawana (Cavanagh), and Tamete (Thomas Smith). These Europeans ‘were claimed and taken away by the various Chiefs as their *pakehas*’.<sup>54</sup>

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48. Submission 3.4.116, pp 2, 6.

49. Submission 3.4.288, pp 11–12.

50. Submission 3.4.288, pp 11–12; submission 3.4.343, p 6.

51. Submission 3.4.343, p 6.

52. Submission 3.4.288, p 11.

53. Document A26 (Francis), pp 8, 13; doc A23, p 21.

54. Document A23, p 22; also see doc A26, p 13 and doc A70, p 27.

The arrival of these newcomers was also discussed before the Native Land Court in 1886 by Hōne Kaora, a Ngāti Hikairo grandson of Te Kaora:

These different Pākehās were appropriated by various chiefs, who settled them as follows: ‘Hamukete’ was taken by Te Wherowhero, and settled at Heahea (near Kāwhia Heads, north side); Te Tuhi took ‘Te Rangi-tera’ and settled him also at Heahea; Kiwi took ‘Te Kaora’ and settled him at Pouewe (Kāwhia township); Te Kanawa took ‘Tamete’ and settled him at Maketū (near the above). ‘Hamukete’ married Tiria, Te Wherowhero’s daughter; ‘Te Rangi-tera’ married Heihei, Te Tuhi’s daughter, and ‘Tamete’ married Rangi-ātea, niece of Te Kanawa. . . . They would be appropriated by these various chiefs in order that they might, through them, obtain arms, etc, and with whom to barter their flax.<sup>55</sup>

The senior Ngāti Maniapoto and Ngāti Apakura rangatira Haupōkia Te Pakarū and Te Waru, of southern Kāwhia, also travelled to Sydney in 1830. They too returned with traders, including Joseph Montefiore, a Sydney-based merchant who established stations at Ahuahu on the Kāwhia harbour, and further south at Mōkau.<sup>56</sup> Haupōkia’s descendant, Moepatu Borell, told us that his tupuna made land available on the coast for inland Ngāti Maniapoto hapū to live on so they too could benefit from the trade.<sup>57</sup>

These accounts of the arrival of Pākehā traders to Te Rohe Pōtae speak to the customary nature of the initial interactions. Māori recognised the economic opportunities the newcomers represented and, as a result, rangatira claimed (or appropriated) them so as to access the material benefits their presence would provide. The traders were not simply placed in proximity to Māori but were incorporated into their tribal structures, often through marriage. These relationships between tangata whenua and manuhiri and the obligations and privileges they created were governed by tikanga.

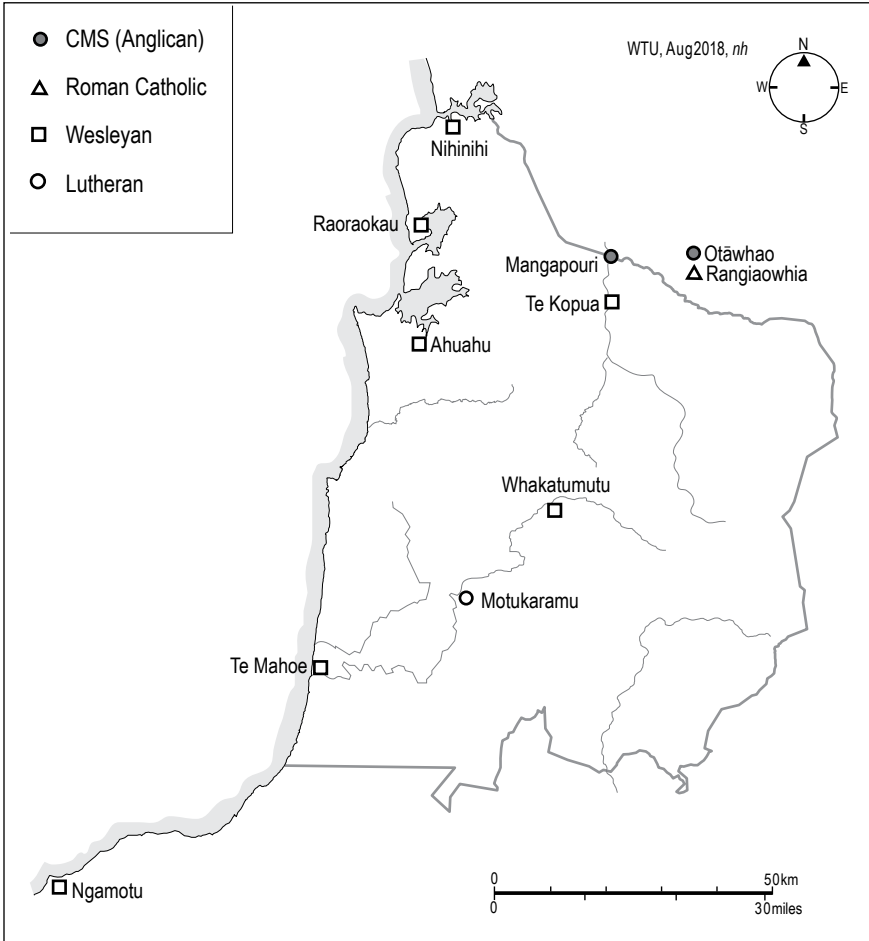
The first missionaries arrived in the inquiry district in the mid-1830s. In 1834, the Church Missionary Society (CMS) established a station inland at Mangapōuri, at the junction of the Waipā and Pūniu Rivers. The WMS established stations at Ahuahu, on the south side of Kāwhia Harbour, and Whāingaroa in 1835. The Wesleyan stations were vacated between 1836 and 1838, after a dispute between the CMS and the WMS regarding their respective spheres of operation. The CMS also abandoned the region, but returned to the Waipā area in 1839, establishing a station at Ōtāwhao. On the Wesleyans’ return, the Ahuahu station was expanded and the Whāingaroa station was relocated to Nihinihi, on the southern shore of Whāingaroa Harbour.<sup>58</sup> WMS operations expanded further in the early 1840s with the founding of the Raoraokauere station at Aotea Harbour and the

55. Document A98 (Thorne), p 212.

56. Document A26, pp 10, 13; doc A70, pp 17, 28; doc A110 (Joseph), p 435.

57. Document 11(e) (Borell), pp 2–3; transcript 4.1.10, pp 150–151 (Moepatu Borell, hearing week four, Mangakotukutuku campus, 8 April 2013).

58. Document A70, pp 18–20; doc A26, pp 21–22.



Map 4.2 Mission stations in the inquiry district

Te Kōpua station at Waipā in about 1840, and stations at Te Māhoe, Mōkau and Whakatumu on the upper reaches of the Mōkau River, both in about 1843. Around 1844, a Lutheran mission was established at Motukaramu, also inland on the Mōkau River, and a Roman Catholic mission was set up at Rangaiowhia.<sup>59</sup>

Like traders, missionaries were welcomed to Te Rohe Pōtae, in recognition of the benefits their presence offered Māori. Although the missionaries retained some independence, they were expected to make gifts to their hosts. And while the missionaries' primary goal was to disseminate the Christian faith, they, too, established mutually beneficial relationships: missionaries built homes, schools,

59. Document A70, pp 68–70, 94, 105; doc A28 (Thomas), p 29; doc A23, p 128.

and churches, and they provided access to Christianity, literacy, and new agricultural techniques.<sup>60</sup>

#### 4.3.2 Evidence of Māori understandings

The Tribunal received a range of evidence relating to Māori understandings of pre-Treaty transactions. This included claimant kōrero about the relationships and arrangements formed between their tūpuna and Pākehā traders and missionaries. It also included documentary evidence from the time of the transactions, and in the 1840s and 1850s, at the time they were investigated by the land claims commissions

According to claimant Thomas Moke, ‘any land rights given to settlers or missionaries prior to 1840 would have been non-permanent arrangements based on *tikanga*.’ This was because the *mana* of the land was placed first and foremost with the *rangarira* for safekeeping and protection, an obligation embodied in the saying ‘*e tuku mana, e tuku tangata, e tuku whenua*’, which describes the ceding of authority over people and land.<sup>61</sup> Mr Moke continued:

I am of the view that our tūpuna at Kāwhia were working under customary concepts of *tuku whenua* and allocating usage rights. Even if there was a sense or growing knowledge of permanent alienation of land at the time (which I think personally was highly unlikely), how could these *rangatira* go against the wishes of Te Wherowhero and alienate the land under his *mana* by the very people he put there to keep the land safe?<sup>62</sup>

Mr Moke considered reciprocity to be a fundamental element of these transactions, and that occupation depended on ongoing agreement.<sup>63</sup> This applied, for example, if there was any change in the purpose for which gifted land was used. And if the newcomers left, the expectation was that the land would be returned to the original owners.<sup>64</sup>

Claimant Verna Tuteao gave a similar account of *tuku whenua* arrangements entered into by Ngāti Mahuta around Kāwhia Harbour with missionaries and other early Pākehā.<sup>65</sup> With regard to the placement of Te Kaora at Pouewe, Ms Tuteao described it as a Ngāti Mahuta expression of ‘*kaua e tuku te whenua*’, meaning that the land was not intended to be relinquished permanently.<sup>66</sup> Use of the land continued for as long as the relationship remained beneficial. It was also expected that the recipient of the land would remain loyal to the *rangatira* who had placed them there, in this case Kiwi Te Roto of Ngāti Mahuta. This transaction

60. Document A23, pp 34–35; doc A70, pp 19–20; doc A26, pp 20–39.

61. Transcript 4.1.9, pp 285–286 (Thomas Moke, hearing week 3, Maketu Marae, 5 March 2013).

62. Transcript 4.1.9, p 286.

63. Transcript 4.1.9, p 310.

64. Transcript 4.1.9, p 317.

65. Transcript 4.1.9, p 41 (Verna Tuteao, hearing week 3, Maketu Marae, 4 March 2013).

66. Transcript 4.1.9, p 75.

formed the basis of OLC 1353 and was a matter of some tension between Ngāti Hikairo and Ngāti Mahuta (see section 4.4.2).

Evidence in support of these understandings comes from Joseph Montefiore, who established trading interests at Kāwhia in 1830. Montefiore gave evidence before the House of Commons in 1838 on arrangements between Māori and Europeans over land. Speaking to the nature of his land transaction with the chief Haupōkia Te Pakarū, Montefiore explained: ‘when I was at Kaffea [*sic*] I obtained a Grant of Land from a Chief, which I have here; it is a very small Quantity; it is under a Condition that I should establish a mercantile Establishment there. I did not purchase it; it was given to me.’<sup>67</sup>

Montefiore clearly indicated that the rights he acquired at Kāwhia were not in the nature of a purchase but were rather a gift contingent upon his obligation to establish a trading post on the land. Although the merchant had the arrangement recorded in writing by one of his crew, he considered that written deeds were meaningless for Māori: ‘it is merely making a Man put his Signature to an Instrument he knows nothing about.’<sup>68</sup> On the other hand, he was sure that Haupōkia understood their oral arrangement ‘perfectly’, not least because Montefiore had brought ‘a large Quantity of Trade’ to Kāwhia.<sup>69</sup>

Montefiore saw himself as having acquired a lifetime interest at Kāwhia. He said that, if he left for three or four years and then returned, he would be allowed to live there again and that, ‘though only a Gift’, the land was ‘to be considered as mine for ever.’<sup>70</sup> Yet Montefiore was also in no doubt that his occupation of land at Kāwhia was on Māori terms. He stated that, if a dispute arose between Māori and those Europeans who had settled amongst them, ‘the Settler would have no Power; he would be obliged to succumb to the Desire of the Natives’. Overall, he described his arrangement with Kāwhia as enduring and functional. Montefiore stated that Māori never molested the trader who was working for him and instead treated him ‘in the best possible way.’<sup>71</sup>

Historian Leanne Boulton observed that trading relationships were further strengthened when newcomers were assimilated into iwi or hapū by marriage. Within this customary context, use-rights could be passed to family members and close associates of the traders, though the tangata whenua would not tolerate the transfer of land to strangers.<sup>72</sup> This distinction was at the heart of opposition prompted by George Charleton’s claim to Pouewe (see section 4.4.2). Charleton based his claim on his purchase of the land from John Vittoria Cowell, who himself claimed the land through marriage to Māta Ritana, as well as on his father’s occupation of the land at Kāwhia. Māta Ritana disputed Charleton’s claim on the basis that she and her whānau retained customary interests in the land. From their

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67. Joseph Barrow Montefiore, evidence, 6 April 1838 (doc A70, pp 28–29).

68. Joseph Barrow Montefiore, evidence, 6 April 1838 (doc A70, p 29).

69. Joseph Barrow Montefiore, evidence, 6 April 1838 (doc A70, p 29).

70. Document A70, p 34.

71. Document A70, p 29.

72. Document A70, pp 33, 437–438.



perspective, the land remained in customary ownership and Cowell possessed use-rights only. He had no right to transact the land with a third party.<sup>73</sup>

These accounts are consistent with the Muriwhenua Land Tribunal's view that the reciprocal expectations that underpinned Māori relationships were reflected in the allocation of land to Pākehā. In the Māori world it was unthinkable that a person could hold land rights without owing corresponding obligations and responsibilities to the community. Land was a communally held asset, but rangatira possessed the authority to allocate use-rights. The rangatira would do so if the manuhiri was a visitor of value, as was often the case with traders or missionaries. Agreement concerning the specific parcel of land was reached and sealed when the manuhiri provided gifts to the rangatira and his people. Ongoing occupation depended on the user's continued contribution to the community's collective welfare.<sup>74</sup> The Wairarapa ki Tararua Tribunal described this as a mutually beneficial exchange that carried with it the expectation of an ongoing relationship.<sup>75</sup> It is in this way that a *tuku whenua* can be differentiated from a land sale: in the latter case, land is permanently transferred from one party to another and no enduring relationship is formed.

The Crown in this inquiry argued that the evidence showed that Māori 'understood that pre-Treaty transactions could be of varying natures'. By 1843, when the land claims commissioners began their investigations in the district, counsel said, the evidence suggested those transactions 'were understood by the owners as sales in accordance with the European conception of those transactions.'<sup>76</sup> In support of this view, the Crown placed significance on a statement made by Hamiora, a Māori witness, to the commissioners investigating the Wesleyan claim to Ahuahu (see section 4.4.1). Hamiora was addressing competing claims to the land, one by John Whiteley on behalf of the Wesleyan mission and the other by Montefiore. The Māori owners, Hamiora said, 'sold the land therein described as Kawhia to the Wesleyan Mission several years ago and received for them the payment stated . . . none of this land was ever sold to Mr Montefiore – we allowed an agent to live on it but we kept the land ourselves.'<sup>77</sup>

The Crown said Hamiora's testimony was evidence that Māori understood two distinct forms of transaction during the pre-Treaty period – one involving use-rights and another more akin to permanent sale.<sup>78</sup> It may be that Māori distinguished between these types of transaction. In our view, however, Hamiora's dismissal of Montefiore's claim as inferior to that of the wms does not constitute compelling evidence that Māori regarded the latter as a permanent land sale. Rather, it reflects the growing influence of the Wesleyan mission in Te Rohe Pōtae by the time of the 1843 commission.

73. Document A70, pp 129–130.

74. Waitangi Tribunal, *Muriwhenua Land Report*, pp 68, 106.

75. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, 3 vols (Wellington: Legislation Direct, 2010), vol 1, p 120.

76. Submission 3.4.288, pp 16–17.

77. Document A70, p 71.

78. Submission 3.4.288, pp 16–17.

The lack of evidence of protest by Te Rohe Pōtae Māori over the land claims commissions' activities in the 1840s and 1850s was identified by the Crown as further evidence that Māori understood the transactions as permanent alienations.<sup>79</sup> The claimants, in contrast, argued that at the time of the commissions Māori did not see a strong need to protest because they continued to control matters on the ground.<sup>80</sup> The extent and significance of Māori protest against grants of land for pre-Treaty transactions is addressed later in this chapter (see sections 4.1.1.4 and 4.4.2.3). In general terms it is significant that, in the four Wesleyan claims, the original arrangements between tangata whenua and Pākehā remained intact at the time of the investigations. Tellingly, the case that did prompt protest was the Pouewe claim made by George Charleton, who had no part in the original agreement.

Other evidence of interactions between Te Rohe Pōtae Māori and Europeans in the inquiry district speaks to the ongoing pre-eminence of tikanga after 1840 (see chapter 3, section 3.4.3.2.3). Cort H Schnackenberg, the Wesleyan missionary at Te Māhoe in Mōkau, recorded this diary entry in 1846:

If I cut down a Manuka tree that may be in my way or any other of no value to the natives, I am often reminded that I ought to have got the consent of the owner of the land or in other words ought to pay for it. . . . If they come to my house, perhaps for no other purpose than to look about or beg, or light their pipes . . . and I tell them not to sit in my way as I am busy, but to go to their work or else spend their idle time in their own places, 'we are in our own place' is the reply.<sup>81</sup>

The settler Thomas Emery was placed in 1845 at Mangamāhoe, near Kakepuku in the north of the inquiry district, by the rangatira Te Oro, an elder of Ngāti Unu and Ngāti Kahu. Each year, Emery would gift a cattle beast to the whānau as payment for grazing his cows on the land. He paid for three years, but the gift was discontinued after he married Rangiamohia, the daughter of Merekihereka, another local rangatira.<sup>82</sup>

These examples concern relationships formed in the years after the Treaty of Waitangi was signed. They demonstrate that, even in areas where cross-cultural contact dated back more than a decade, Māori law and custom continued to hold sway. In Mōkau and Mangamāhoe, as elsewhere in Te Rohe Pōtae, land remained a communally owned asset, and European access to both the land and its resources continued to be governed by Māori expectations. The Hetet, Ormsby, Searancke, Turner, Hughes, Eketone, Barton, and other Pākehā-Māori whānau provide further evidence that Europeans in the inquiry district lived, in the main, on Māori terms at least until the 1880s.<sup>83</sup>

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79. Submission 3.4.288, pp 11–12.

80. Submission 3.4.116, pp 12–14.

81. Document A23, p 129.

82. Document A110, p 409.

83. Document A110, pp 392–422.

The Crown submitted that pre-Treaty transactions in Te Rohe Pōtae should be understood as akin to those in the Hauraki inquiry district, which the Tribunal found ‘did not take place in a wholly customary environment.’<sup>84</sup> On balance, we prefer the view of claimant counsel that, in Te Rohe Pōtae, custom prevailed. In Hauraki, the Tribunal pointed to the growing influence of Pākehā and the effects of political instability as factors that altered Māori understandings of exchange.<sup>85</sup> We accept that, in parts of this inquiry district, interactions with traders and missionaries appear to have led to some appreciation of European expectations of exchange. But this was limited by the tiny Pākehā presence in the inquiry district. This continued to be the situation in the early 1840s, when the land claims commission began its investigations. It was also the case that in this inquiry district there had been considerable unrest in the recent past, at Kāwhia in particular (see chapter 2, section 2.5.2.4). In Te Rohe Pōtae, however, these events had enhanced rather than weakened the mana of rangatira such as Te Wherowhero, Te Awaitaia, and Haupōkia. In our view this only strengthened their ability to engage with the Pākehā arrivals on their own terms.

#### 4.4 THE OPERATION OF THE LAND CLAIMS COMMISSIONS

The land claims commissions operated in the inquiry district in two distinct phases:

- ▶ Commissioners Godfrey and Richmond heard the four Wesleyan mission claims (OLC 946, OLC 947, OLC 948, and OLC 1040) in June 1843.
- ▶ Commissioner Bell heard George Charleton’s claim to Pouewe (OLC 1353) in July 1858.

The parties to this inquiry expressed strong disagreement over the commissions’ operations. The claimants argued that the Crown’s regime for investigating old land claims breached Treaty principles because it did not require the commissioners to inquire into Māori understandings of the transactions or Māori customary land rights. The commissioners’ role, the claimants said, was limited to assessing the accuracy of the information provided. The claimants said the commissions’ processes were unfair as the hearings were poorly notified and were located at an unreasonable distance from Te Rohe Pōtae; Māori witnesses were not given independent advice; Māori right holders were inadequately represented in the process; and the commissioners relied on insufficient and flawed evidence in making decisions to recommend Crown grants.<sup>86</sup>

The Crown denied that its involvement in the land claims commissions in Te Rohe Pōtae breached Treaty principles. It said its old land claims regime included scope for recognition of Māori custom and that the commissioners were empowered to inquire into the intentions of the parties to pre-Treaty transactions. It disputed the suggestion that the commissioners assumed that all transactions

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84. Submission 3.4.288, p 11.

85. Waitangi Tribunal, *The Hauraki Report*, vol 1, p 153.

86. Submission 3.4.116, pp 9–12.

were sales; rather, commissioners sought the confirmation of interested parties, including Māori. The Crown described the commissions' hearings as fair and asserted that Māori right holders and Māori evidence were adequately represented throughout the process. The lack of opposition to four of the five old land claims pursued in the inquiry district demonstrated, in the Crown's view, that the commissions' processes were considered acceptable by Māori at the time.<sup>87</sup>

#### **4.4.1 The Wesleyan mission claims (OLC 946, OLC 947, OLC 948, and OLC 1040)**

In June 1843, commissioners Matthew Richmond and Edward Godfrey investigated four old land claims concerning land in Te Rohe Pōtae. All involved land claimed by, or in association with, the WMS.

##### **4.4.1.1 The Godfrey and Richmond commission**

The legal basis for a land claims commission was established by the governor of New South Wales, George Gipps, who oversaw the passage of the New Zealand Land Claims Act in August 1840.<sup>88</sup> Colonel Edward Godfrey and Captain Matthew Richmond were appointed as commissioners in September 1840, and notice of their appointment was published in New Zealand in December. The New South Wales legislation was re-enacted by New Zealand's Legislative Council as the Land Claims Ordinance 1841, following the establishment of New Zealand as a separate Crown colony in May that year.<sup>89</sup>

Section 3 of the Land Claims Ordinance 1841 empowered the governor to appoint commissioners to 'hear[,] examine and report' on pre-Treaty transactions, and stated it was 'expedient and necessary' that 'an inquiry be instituted into the mode in which such claims to land have been acquired, the circumstances under which such claims may be and are founded, and also to ascertain the extent and situation of the same'.

Section 6 required the commissioners to ascertain the price paid for the land in question; the date payment was made; the manner and circumstances of payment; and the amount of land acquired. In cases where the commissioners found the land to 'have been obtained on equitable terms from the said chiefs or aboriginal inhabitants,' they were to recommend the issuing of a Crown grant to the claimant under section 2.<sup>90</sup>

To investigate claims, the commissioners were empowered under section 9 to set and advertise the date of claim hearings. Hearings were to be advertised in the *New Zealand Government Gazette* or in newspapers and such notifications were deemed 'sufficient warning and summons to any claimant or opponent under this Ordinance'. Section 9 also provided that, during the hearings, the commissioners were to take sworn evidence from witnesses. If the commissioners deemed Māori

87. Submission 3.4.288, pp 22–32.

88. For a discussion of the establishment of the land claims commission, see Duncan Moore, Barry Rigby, and Matthew Russell, *Old Land Claims*, Waitangi Tribunal Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1997), pp 14–17.

89. Document A70, p 52.

90. Document A70, pp 55–56.

witnesses incapable of understanding the oath, they were to give the oral testimony 'such credit as it may be entitled to from corroborating or other circumstances'.<sup>91</sup>

The legislation gave clear instructions to the commissioners on matters of process, but it paid little attention to the nature of land ownership in New Zealand. The Land Claims Ordinance 1841 largely re-enacted Gipps's New Zealand Land Claims Act, which was patterned on an Act developed in New South Wales in the 1830s to address property rights derived from the sale of land by squatters to other settlers. Thus, the Land Claims Ordinance said nothing about indigenous tenure and land rights, and assumed transactions in which both parties held the same assumptions regarding the transfer of land.<sup>92</sup>

Despite being silent on matters of customary tenure, the legislation did allow the commissioners some flexibility in their decision-making. Section 6 called for the commissioners' investigations to 'be guided by the real justice and good conscience of the case without regard to legal forms and solemnities'. The legislation also entertained the possibility that pre-Treaty transactions were not necessarily purchases. Under section 2 the ordinance applied to anyone who:

Held or claimed by virtue of purchases or pretend purchases gifts or pretended gifts conveyances or pretended conveyances leases or pretended leases agreements or other titles, either mediately [through an agent] or immediately from the chiefs or other individuals or individual of the aboriginal tribes inhabiting the said Colony.

Godfrey and Richmond also received instructions from Gipps in October 1840 regarding the nature of their inquiries. The protector of Aborigines, or a representative on his behalf, was to attend all their hearings in order to protect Māori rights and interests. A formal deed of alienation would not be needed before recommending a Crown grant: 'proof of conveyance according to the custom of the country and in the manner deemed valid by the inhabitants is all that is required'. Later instructions from Gipps added that a transaction should be deemed valid when at least two chiefs 'admit the sale'.<sup>93</sup>

The legislation under which the first commissioners operated did not, therefore, overtly address matters of customary rights and exchange. This omission led the Muriwhenua Land Tribunal to conclude that the Land Claims Ordinance 1841 was 'insufficient, in all the circumstances, to compel the full examination that was needed if Maori law was to be upheld, and Maori interests protected'.<sup>94</sup> We accept that the Land Claims Ordinance and Gipps's instructions did not prevent the commissioners exploring Māori custom and law. But nor did they direct the commissioners to do so. The Treaty guarantee of tino rangatiratanga obligated the Crown to ensure that tikanga and Māori understandings of these transactions be addressed. The Crown's failure to do so meant the responsibility for establishing

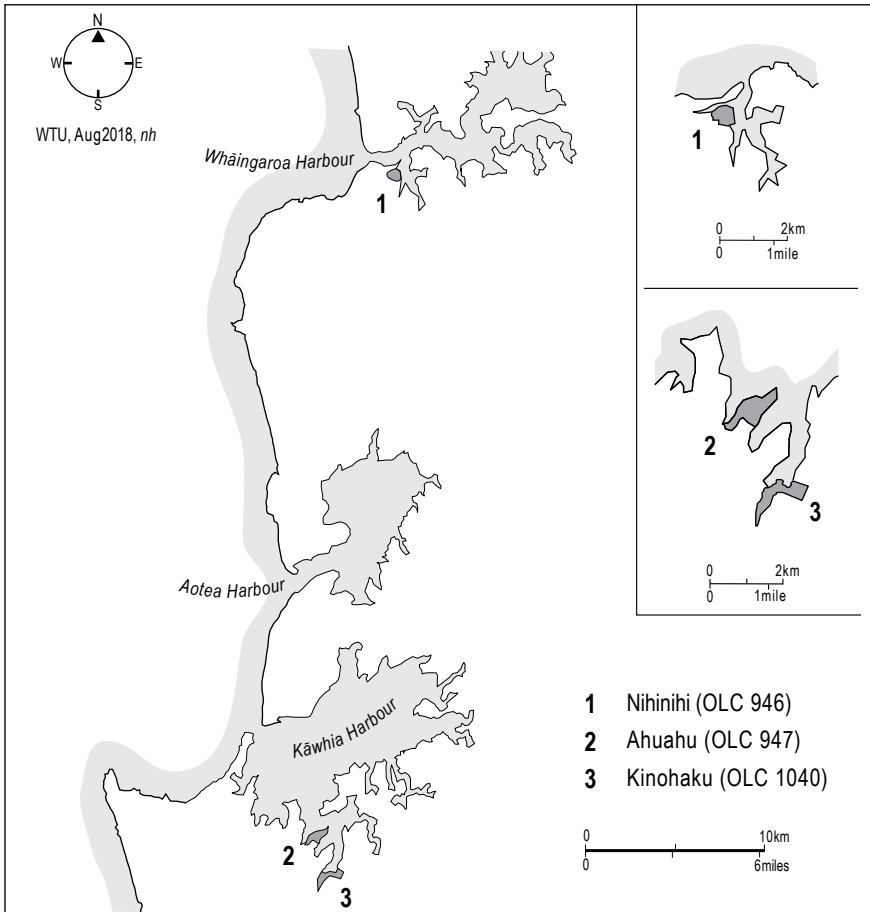
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91. Document A70, p 57.

92. Waitangi Tribunal, *Muriwhenua Land Report*, pp 122–124.

93. Document A70, p 58.

94. Waitangi Tribunal, *Muriwhenua Land Report*, p 122.



Map 4.3: The Wesleyan mission claims

whether Māori clearly understood pre-Treaty transactions as full and final alienations relied almost entirely upon the efficacy of the commissioners' inquiries.

#### 4.4.1.2 Background to the claims

The Wesleyan missionaries' relationships with tangata whenua included making arrangements over land. They made four claims for land acquired at Kāwhia and at Whāingaroa in 1834, 1839, and 1840.<sup>95</sup> Several of these transactions involved the Kāwhia-based Ngāti Maniapoto and Ngāti Apakura rangatira Haupōkia Te Pakarū and Te Waru, who by this time had also established relationships with European traders on the west coast of the district. Haupōkia in particular developed close

95. Document A70, p 67.

ties to the Wesleyan mission at Kāwhia. He and his people built the mission house at Waiharakeke.<sup>96</sup>

The four Wesleyan mission claims were based on a series of purchase deeds, of which 11 were presented to the land claims commission in 1843. Multiple deeds usually indicated the addition of adjoining pieces of land to the purchase area. Some were signed only by Haupōkia or Te Waru, whereas others had 10 or more Māori signatories. The earliest deed, for Ahuahu, Kāwhia, was dated 20 November 1834, and two more were dated to the early to mid-1830s. The remainder were dated between April 1839 and February 1840.<sup>97</sup> It is unclear how the dates on which the deeds were drawn up and signed aligned with when the original transactions took place. However, the timing of most of the deeds close to 1840 suggests that, as elsewhere in New Zealand, impending British annexation caused the Wesleyan missionaries and associated Pākehā to hurriedly cement transactions with Māori in order to secure title to land at and around the mission stations.

Of the 11 deeds, six appear to be written in te reo Māori, and five in English.<sup>98</sup> It is difficult to assess how well Māori who signed the deeds understood their content. Most of the deeds contain a mark alongside the names of each of the Māori signatories, which suggests they were illiterate in the writing sense, but whether this also means they could not read is unknown. We do not know whether the te reo deeds were read aloud to those Māori who may not have been able to read, or if the English deeds were translated.

#### 4.4.1.2.1 NIHINIHI, WHĀINGAROA (OLC 946)

The Nihinihi claim for land on the Opoturu River at Whāingaroa was based on a deed signed on 27 February 1839. The deed was written in te reo Māori (most likely by the Wesleyan missionary John Whiteley)<sup>99</sup>, and was later translated by protector of Aborigines Thomas Forsaith when it came before the commission in 1843.

The deed was signed by Ngāti Māhanga rangatira Wiremu Nera Te Awaitaia, together with the missionary James Wallis. Hakopa, Hone Kingi, Warekura, and Mahikai were described as witnesses ('Ko nga kai titiro'), however the text of the deed suggests that they were in fact parties to the transaction:

Tenei ano maua, ko o maua ingoa i raro nei ka tukua atu nei to maua whenua Ko te Nihinihi, ki Te Hohaiate Mihanere Weteriana me o ratou wanaunga hei wenua mo ratou ake tonu atu.

96. Document A97, p137; doc s21(b) (Jensen), p19; doc H15 (Kaati), p6; doc A110, p435; doc A26, p17; transcript 4.1.7, p100 (John Kaati, hearing week 1, Te Tokanganui-a-noho marae, 6 November 2012); doc s55 (Borell), pp13–14.

97. Document A70(a) (Boulton document bank), vol 2, pp817, 826–837, 847–848, 888–897.

98. Document A70(a), vol 2, pp817, 826–837, 847–848, 888–897.

99. Several of the Wesleyan old land claim deeds appear to be written in a dialect common to certain areas, including Taranaki and Hokianga, where the 'h' is dropped from words such as 'wenua' and 'wanaunga'. This suggests they were written by John Whiteley, who learnt te reo Māori at Mangungu (Hokianga).

We whose names are undersigned do hereby agree to deliver Our land called The Nihinihi to the Wesleyan Missionary Society and their Successors, a place for them for ever.

The payment for the lands, waters and all things thereon ('ko nga utu mo taua kainga me nga wai me nga mea katoa o taua wenua koia enei') was 20 blankets, one piece of printed cloth, 11 handkerchiefs, 24 spades, 24 axes, 20 hatchets, 36 razors, 36 knives, 10 iron pots, 300 fish hooks, 320 figs of tobacco, and 100 pipes. The deed concluded:

Kua roiro mai enei mea ki a maua i tenei ra hei utu mo taua wenua. Koia ka tukua rawatia atu nei to maua nei kainga ki a te Warihi mo te Hohaiate Mihanere Weteriana ake ake ake.

We have received the said articles this day as payment for the said land; and in consideration of the above we now fully deliver up our land as aforesaid to Mr Wallis for the Wesleyan Missionary Society for ever.<sup>100</sup>

#### 4.4.1.2.2 AHUAHU, KĀWHIA (OLC 947)

Ahuahu was where the main Wesleyan mission station at Kāwhia was located. There were five deeds, three in English and two in te reo Māori. Again the translations appear to have been made later by Forsaith.

- ▶ The first, described as 'a memorandum of an agreement', was signed on 20 November 1834 and written in English. The deed was signed by Haupōkia Te Pakarū and the missionary William White and witnessed by four Europeans. This transaction concerned a parcel of land called Ahuahu, which bordered lands belonging to Te Waru and Makahu, as well as Uwatahi Bay and the Waiharakeke River. Payment included 14 axes, four iron pots, four blankets, 50 pipes, and 18 pounds of tobacco.<sup>101</sup>
- ▶ The second deed, also described as 'a memorandum of an agreement' and written only in English, was entered into on 24 November 1834. The signatories were Te Waru and William White, and there were five European and Māori witnesses. The parcel of land concerned in this transaction was known as Tawiti. The payment was listed as exactly the same as that of the first deed.<sup>102</sup>
- ▶ The third and fourth deeds, signed on 12 April and 1 August 1839, concerned land called Te Tauranga, bordered by Uwatahi Creek, the mission station at Ahuahu, the Waiharakeke River, and Te Kume. The April deed was written in English. It was signed by Te Au, Wero (a woman), and Tatata, and witnessed by Hakopa Tauranga and William Johnston. Payment included six axes, six

100. Document A70(a), vol 2, p 817.

101. Document A70(a), vol 2, p 837.

102. Document A70(a), vol 2, pp 835–836.



spades, six blankets, and 18 yards of printed cloth. The August deed was written in te reo Māori, and was evidently a further transaction for the same land, Te Tauranga, between John Whiteley and the rangatira Haupōkia and Te Raku. As with the Nihinihi deed, these chiefs agreed to ‘deliver our land’ (‘ka tukua atu nei to matou wenua’) to the wms ‘and their heirs or successors to be by them possessed from henceforth and for ever’ (‘me o ratou wanaunga hei wenua mo ratou ake tonu atu’). Payment included £1, four blankets, four shirts, two frocks, four knives, four pairs of scissors, four razors, four shaving boxes, four pipes, and 40 figs of tobacco.<sup>103</sup>

- ▶ The fifth deed was dated 24 April 1839, and was written in te reo Māori. It was signed by 13 Māori, including Te Waru and the Ngāti Maniapoto rangatira Rangituatea. In this case, the signatories agreed to ‘sell and deliver up these our said lands to the Rev. J. Whiteley’ (‘ka hokona rawatia atu o matou nei kainga ki a Te Waitere’) The lands in question were situated west of Tawiti and included land known as Tamoe, Te Tutu, Pareparenga, Waotu, Para, Kume, Nukutauri, Heronui, Pukehinau, Ratahi, Te Tahinga ‘me era atu ingoa nohi-nohi’ (‘and other names of inferior note’). Payment for these lands included: 1 Camlet Cloak, Receipt. 20 Blankets, 20 Spades, 20 Axes, 20 Trowsers, 20 Shirts, 20 Handkerchiefs, 20 Razors, 20 Knives, 16 Scissors, 16 Tin Pots and 400 Fish Hooks.<sup>104</sup>

#### 4.4.1.2.3 AWAROA, KĀWHIA (OLC 948)

The Awaroa deed was written in te reo Māori and signed on 3 January 1840 by Te Waru and John Whiteley, witnessed by James Wallis and Edward Meurant. It was later translated by Forsaith. The land in this transaction went by the names of Te Tekoteko and Te Rawiri and was stated to be at Awaroa, Kāwhia, near the villages of England, or Huwihuwiawa, and Paul. Te Waru agreed to ‘fully deliver up the said land’ (‘Koia ka tukua rawatia atu aua kainga’) in exchange for £2, two blankets, and two razors.<sup>105</sup>

#### 4.4.1.2.4 KINOHAKU, KĀWHIA (OLC 1040)

The fourth claim was made by William Johnston, a former wms employee. It was based on four deeds, two in English and two in te reo Māori:

- ▶ The first deed was signed on 30 January 1836 by Haupōkia and Johnston and was written in English. It was witnessed by Whiteley, Meurant, Opataia, Wahanui, Te Arai, and Te Tuhituhi and began:

Know all men by these presents that I Haukopia do hereby sell and fully deliver up to William Johnston, and his heirs and successors for ever, the several parcels of land known by the names of Puketutu, Hamakuku, Tutemanawa, Rangiatea,

103. Document A70(a), vol 2, pp 826–827, 833–834.

104. Document A70(a), vol 2, pp 828–831.

105. Document A70(a), vol 2, pp 847–848.

Arohamanu and other names, lying at the head of a branch of the Waiharakeke River . . . known by the name of Kotekimu.<sup>106</sup>

The payment comprised a coat, a handkerchief, four duck frocks, four trousers, four shirts, four axes, two razors, two knives, 25 pipes, and 20 pounds of tobacco.

- ▶ The second deed was signed by Haukopia, Johnston, and Ahuriri on 8 October 1839, was witnessed by Whiteley and Warareka Eketone. It was also written in English and stated that Haupōkia did 'hereby sell and fully deliver up' lands to the south of the earlier transaction known as Kaipoku, Witenga, and Puketoa together with 'their Timber, Tapued places and their appurtenances'. Payment comprised £2, six blankets, six axes, six spades, five iron pots, six knives, six razors, four handkerchiefs, and 12 pounds of powder.<sup>107</sup>
- ▶ The third deed was written in te reo Māori and was signed on 18 January 1840 by Johnston, Haupōkia and 22 other Māori, witnessed by Whiteley. The deed stated, 'ka hokona rawatia atu o matou nei kainga ki a Wiremu Honetona' (translated as 'we are selling fully our places to William Johnston'). These places were listed as Kopounai, Te Rua, Mangareporepo, Te Takapau, Te Kume, Kuranui, Te Kata, Te Ratau, Pairoa, Waikotuku, Wahimate, Poutaha, Moari, Kaori, Pourewa, Awapune, Puketutu, Puiamanuka, Pamamaku, Rapaki, and Te Titaha, adjacent to Puketutu. The payment (ko nga utu) was 10 iron pots, 20 spades, 20 axes, 20 hatchets, 200 figs of tobacco, 20 pipes, one cask of powder, 10 gowns, 10 shirts, 20 blankets, 10 razors, and four tinder boxes.<sup>108</sup>
- ▶ The final deed, also written in te reo Māori, was signed on 13 February 1840. Haupōkia and Johnston signed, together with nine other Māori, once again witnessed by Whiteley. The deed began: 'Tenei ano matou te tuku nei i o matou nei whenua' (translated as 'Here are we delivering up (or selling) our lands'). The lands in question were named Ngataumutu, Pukeokiokinga, Ruatupapaku, Mamaku, Taumanuka, Hapua, Tirohangakaipuke, Pokanoa, Pukematai, Horopari, Hiwaka, Kahakaharoa, 'me etahi atu ingoa' ('and other (minor) names'). Payment included four cartridge boxes, one gun, 10 gowns, 20 hatchets, one cask of powder, 20 axes, 20 blankets, 10 iron pots, 10 tinder boxes, 10 spades, 10 knives, 10 razors, 20 pipes, 200 figs of tobacco, and four pieces of soap. The deed concluded: 'Ka tukua rawatia te whenua, nga rakau nga wai nga mea katoa ka riro rawa riro tonu ake ake ake.' (Translated as: 'We fully deliver up the lands, the trees, the waters, all things above and below, all things, all (are) gone fully, gone for ever.')<sup>109</sup>

106. Document A70(a), vol 2, p 888.

107. Document A70(a), vol 2, p 889.

108. Document A70(a), vol 2, pp 890–893.

109. Document A70(a), vol 2, pp 894–897.

**4.4.1.3 The commission investigates, June 1843**

Hearings for all four claims were held in Auckland in early June 1843. On 22 March that year, the *New Zealand Gazette* had provided notice in English that the three wms claims would be heard by the commissioners on 3–4 April. However, the hearings did not take place until 3–5 June, with Johnston's claim being heard on 7 June.<sup>110</sup> The fact that hearings were held at such a distance from the land in question was remarked on by one witness, Tawito, who said that the chiefs he represented, Haupōkia and Ahuriri, were 'afraid to come so far from home'.<sup>111</sup>

John Whiteley, the Kāwhia-based Wesleyan missionary, attended all four hearings, appearing on behalf of the wms and William Johnston. At the hearings, Whiteley detailed the nature of the transactions, specified the money and goods paid for the land, and presented deeds to substantiate this detail.<sup>112</sup>

The commissioners also questioned four Māori witnesses. Two, Hakopa and Waka, appeared before the commissioners to confirm the sale of Nihinihi to the wms. On behalf of the Ngāti Māhanga rangatira Wiremu Nera Te Awaitaia, Hakopa declared that the deed was accurate and that the purchase price was paid. Waka represented himself and confirmed the same detail.<sup>113</sup> The two other witnesses, Hamiora and Tawito, appeared in respect of the three Kāwhia claims. Hamiora and Tawito were recorded as confirming that they had signed, or witnessed the signing of, the deeds; that payment was received; that the boundaries were correct; and that those who had transacted the land had the right to do so.<sup>114</sup> Gipps had instructed that the protector of Aborigines or his deputy should attend all hearings to provide independent advice and support to Māori witnesses. Thomas Forsaith, who in 1843 was promoted from sub-protector to protector of Aborigines, guaranteed the various deeds to be true copies or true translations. The records of what the Māori witnesses said are written translations by Forsaith.<sup>115</sup>

Our understanding of the evidence of the Māori witnesses is limited to Forsaith's English-language summaries. Based on this record, it appears that the Māori witnesses were each asked to confirm the detail provided by the claimants and outlined in the deeds. There is no evidence that the commissioners asked the witnesses to clarify their understandings of the original transactions or confirm that all customary right holders consented to the arrangements. Nor is there evidence to indicate that the commissioners questioned the relationship between the purchase deeds and the claimants' original arrangements with tangata whenua.<sup>116</sup> It appears that the deeds were taken at face value.

110. Document A70, pp 68, 84. Boulton found no evidence that notice was given for the Johnston claim.

111. Document A70, p 82.

112. Document A70, pp 69–71, 84–85.

113. Document A70, pp 69–70.

114. Document A70, pp 71–72, 85.

115. Document A70(a), vol 2, pp 816–845, 887–904; A H McLintock (ed), *An Encyclopaedia of New Zealand* (Wellington: Government Printer, 1966), vol 1, p 732.

116. Document A70, pp 75–79, 86.

In our inquiry, the descendants of Wetini Mahikai (Wai 2345) raised issues concerning the text of the purchase deed produced in support of the WMS claim to land at Nihinihi (OLC 946).<sup>117</sup> Claimants noted that the deed, written in te reo Māori, refers to Ngāti Mahanga chief Wiremu Nera Te Awataia as the sole Māori alienor, and that the deed also refers to some of the chiefs who received payment for the land – including the claimants’ tupuna, Wetini Mahikai – as ‘kaititiro’, or witnesses, rather than as sellers.<sup>118</sup>

There is no evidence that the commissioners identified or sought to resolve these inconsistencies. It seems clear to us that, if the commissioners had undertaken their task under legislation that required a proper inquiry into customary interests, these problems would have been uncovered and resolved. In our view, the correct way to address contested claims to land would have been to hold an open process accessible to all Māori who lived in the area. For the reasons we have set out, the Crown’s legislative regime limited the possibility of such an inquiry taking place. It was made less likely still by the location of the hearings in Auckland, and the limitations of the notification process.

The claimants also questioned the commissioners’ use of a pre-printed template form in their report on the Wesleyan claims.<sup>119</sup> The claimants argued the language used in the template report was evidence that the commissioners did not inquire into the nature of the transactions, and instead sought to simply confirm them as valid sales. The template form included a space to identify the name of the ‘sellers’ and called on the commissioners to confirm that the claimant had ‘made a bona fide purchase from the Native Chiefs.’ Furthermore, in the space beneath where the names of alienors were entered, the template form noted ‘a deed of sale was executed by the above-named chiefs and others, and they had admitted the payment they received, and the alienation of the Land.’<sup>120</sup>

#### **4.4.1.4 Outcomes of the investigation**

The commissioners reported on all four claims on 1 July 1843. In each case they recommended the award of a Crown grant.<sup>121</sup> In the case of William Johnston (OLC 1040), the commissioners initially recommended that he be awarded 232 acres. This comprised the 150 acres represented by the deeds signed in 1836 and 1839 and a one-acre-per-pound award for the 500 acres Johnston claimed to have purchased for goods valued at £82 following the Crown’s January 1840 proclamation.<sup>122</sup> The award was subsequently reduced to 118 acres 2 roods 37 perches when the land represented by the 1836 and 1839 deeds was surveyed and found to comprise only 36 acres rather than the claimed 150 acres. A Crown grant was issued to Johnston for this amount in July 1848.<sup>123</sup> Crown grants for the three WMS claims

117. Submission 3.4.139, pp 8–12.

118. Submission 3.4.139, pp 8–9; doc M17 (Tuteao), pp 7–9; doc M17(a) (Tuteao appendices), p 2.

119. Submission 3.4.249(c), p 25; submission 3.4.139, p 10.

120. Document A70, p 77.

121. Document A70, pp 73, 87.

122. Document A60 (Berghan), pp 24–25; doc A70, pp 87–88.

123. Document A70, pp 89–91.

were not issued until November 1855. The Ahuahu and Awaroa claims at Kāwhia (OLC 947 and OLC 948) were awarded in their entirety, representing 160 acres and 4 acres respectively. The 90-acre Nihinihi claim for OLC 946 was initially awarded to the WMS in full, though for reasons that are unclear this was reduced to 76 acres in 1862. In total, the commission's investigations into the four claims by the WMS and William Johnston resulted in the award of Crown grants amounting to 358 acres 2 roods 37 perches.<sup>124</sup>

With one minor exception, we did not receive evidence of Māori opposition to the Wesleyan claims, either during the commission's 1843 investigations or thereafter.<sup>125</sup> There are several possible explanations for this. One is that, as the Crown argued, Māori did not object to the transactions. As noted earlier, in each case the original arrangements between tangata whenua and Pākehā remained intact at the time the claims were investigated. However, the fact that the hearings were poorly advertised and held in Auckland may have meant that some right holders were unaware of the commission's processes. In any case, the paperwork for the award of the Crown grants took up to 12 years to complete. In the meantime, as far as Māori were concerned, little would likely have changed on the ground. This contrasts with George Charleton's claim to Pouewe, which involved two settlers whose presence was not sanctioned by all tangata whenua, and whose claims provoked significant Māori opposition.

#### 4.4.2 George Charleton's claim at Pouewe (OLC 1353)

The fifth old land claim investigated in the inquiry district was OLC 1353, a 44-acre block at Pouewe, Kāwhia, claimed by George Charleton and heard by Commissioner Francis Dillon Bell in 1858. The commission reported on Charleton's claim in July 1864.

##### 4.4.2.1 The Bell commission

In presiding over Charleton's claim to Pouewe, Commissioner Bell operated under a different legislative regime than his predecessors. The Land Claims Settlement Act 1856 retained many elements of the earlier legislation, but its overall effect was to further limit the scope for commissioners to investigate matters of custom and the intentions behind pre-Treaty transactions.<sup>126</sup> For example, section 25 of the Act defined old land claims as claims 'arising under purchases made from the Natives' before 14 January 1840. This was a departure from the Land Claims Ordinance 1841, which allowed for the possibility that pre-Treaty transactions were not necessarily purchases.<sup>127</sup>

124. Document A70, p 73.

125. In 1854, the missionary John Whiteley reported that a Māori man named Paora had hinted he would 'try to disturb' Johnston's claim at Kāwhia, which Whiteley called 'a case of honourable purchase long since settled by Crown title'. It is not clear what caused this dispute or how it was resolved: doc A70, p 91.

126. Moore, Rigby, and Russell, *Old Land Claims*, p 41.

127. Document A70, pp 64–65.

Section 25 required the commissioners to determine the amount paid by the claimant; the area of land involved in the claim; and the circumstances in which the payment was made. These terms, too, were narrower than the 1841 ordinance, section 2 of which held it necessary for the commissioners to inquire into ‘the circumstances under which such claims may be and are founded’. Section 39 of the 1856 Act provided that, where the commissioners were satisfied ‘that the Native title is extinguished’, they could recommend that the Crown issue a grant to the claimant.<sup>128</sup> This left open a small window for the commissioners to exercise some discretion in inquiring into the nature of the original pre-Treaty transactions. However, as with the previous regime, the 1856 Act did not explicitly require the commission to consider matters of custom or tikanga Māori. The legislation did not, therefore, improve or rectify the Crown’s omission to direct the land claims commissioners to have regard to Māori understandings of these transactions.

Importantly, by the time Charleton’s claim was ruled on by the commissioner, the Land Claims Extension Act 1858 had been enacted. Among other things, this legislation empowered the commissioner to recommend Crown grants to settlers based on their long-term occupation, effectively removing the requirement that they prove the extinguishment of customary title.<sup>129</sup> This legislation was thus a clear contravention of the Crown’s commitment under article 2 of the Treaty to respect Māori laws and customs relating to their lands.

#### 4.4.2.2 *Background to the claim*

Pouewe is where Kāwhia township is now located, on the northern side of Kāwhia Harbour. It is a place of great significance to Māori. Claimant evidence described Pouewe’s importance to several iwi and hapū, in particular Ngāti Hikairo and Ngāti Mahuta, who share close whakapapa connections with common ancestors as well as overlapping land interests in the north-western corner of the inquiry district.<sup>130</sup>

Ngāti Hikairo researcher Frank Thorne recorded that Pouewe was traditionally Ngāti Apakura land but was vested in the Waikato family of Te Uira, who was killed and eaten at the site by Ngāti Toa in reprisal for Te Uira’s own killing of Te Hurinui, a Ngāti Maniapoto and Ngāti Toa rangatira.<sup>131</sup>

In section 4.3, we described how the trader John Cowell senior (Te Kaora) was placed at Pouewe by tangata whenua upon his arrival in Kāwhia in 1829. According to one account, this was done by the Ngāti Mahuta rangatira Kiwi Te Roto (also known as Pihopa, or ‘Bishop’).<sup>132</sup> Cowell senior died in 1839 and his son, John Vittoria Cowell, took over the Pouewe trading post and married Māta Ritana, the half-sister of Wiremu Toetoe Tumohi, a prominent Ngāti Apakura rangatira.<sup>133</sup> On 11 January 1840, John Vittoria Cowell signed a deed with Kiwi, described as ‘chief

128. Document A70, pp 64–65.

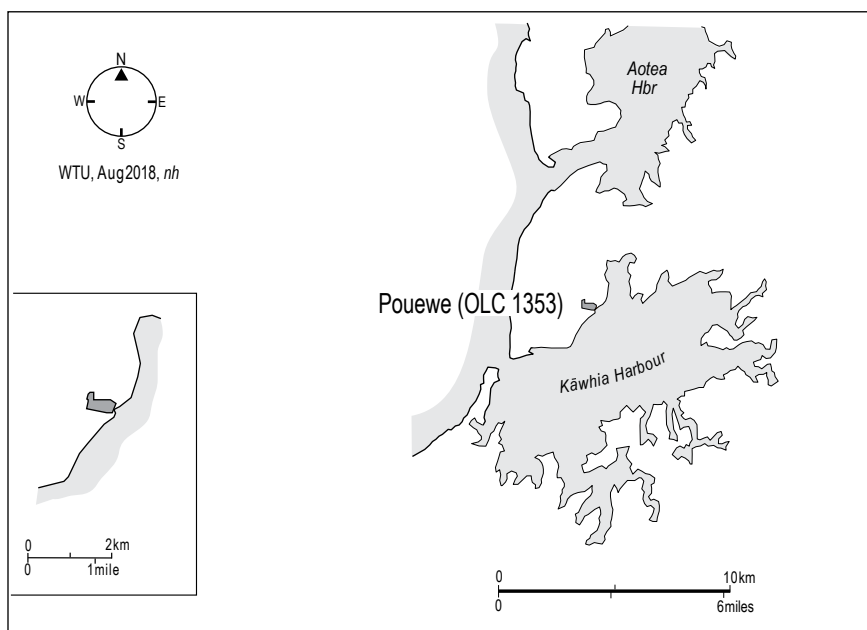
129. Document A70, pp 130–131.

130. Document A98, pp 24, 28, 78.

131. Document A98, pp 211, 235.

132. Document A98, p 212.

133. Document A70, p 36; doc A26, p 16; doc A98, pp 211–212.



Map 4.4: George Charleton's claim at Pouewe

of the Tribe of Waikato, in which he purported to purchase 20,000 acres in the vicinity of Kāwhia Harbour, including Pouewe. Written in English, the deed listed payment including one cask of tobacco, 40 spades, 40 axes, eight casks of powder, 10 handkerchiefs, 10 blankets, six muskets, a dozen pairs of trousers, a dozen shirts, 1,000 flints, and 1,000 pipes.<sup>134</sup>

In 1843, Cowell travelled to Auckland to attend a land claims commission hearing for another block of land located on the shores of Kāwhia. Cowell and a Sydney-based merchant, Edward Lee, claimed 5,250 acres of land on the southern shores of the harbour, and this claim was scheduled to be heard by the commission on 17 April 1843. To cover his travel to the hearing, Cowell borrowed money from his neighbour, George Charleton. However, he did not arrive in Auckland until after the hearing. Cowell returned to Kāwhia indebted to Charleton and without any award of land.<sup>135</sup>

To satisfy his debt, Cowell signed a second deed with Charleton that purported to sell him 50 acres of land – known as Pouewe – on 11 March 1846. This deed was also written in English, and the payment for the land was £33.<sup>136</sup> Charleton moved to Pouewe, built a house, and cultivated crops. By 1847, however, Charleton had become concerned about his title. According to the missionary John Whiteley,

134. Document A70, p 122; doc A70(a), vol 3, p 972.

135. Document A60, p 23; doc A70, p 36.

136. Document A70, pp 122–123, 127–128.

Charleton was 'aware that he had no legal claim upon the Government for a Crown Title', but he wished to 'throw himself' on 'the kind consideration of the Governor'.<sup>137</sup> In this vein, he wrote to the colonial secretary on 15 January 1850 seeking a solution. In this letter, Charleton detailed the extent of his investment in the property during the intervening years and suggested that the Crown either grant him 25 acres of land upon the payment of £1 per acre (in accordance with Governor FitzRoy's pre-emptive waiver proclamation of 26 March 1844, discussed in section 4.5.1) or place the land up for public auction and use the proceeds to compensate him for the improvements he had made.<sup>138</sup>

Initially, it appeared that the Crown would issue a pre-emption waiver. Governor George Grey announced that Charleton would 'be allowed to acquire the land he asked for on paying £1 per acre, the contents of the piece being estimated at 25 acres'.<sup>139</sup> However, for reasons unknown this directive was not pursued and, in line with a survey conducted in June 1854, the Crown put the land at Pouewe (now calculated at 38 acres) up for public auction, with improvements valued at £700.<sup>140</sup>

The auction announcement prompted Māori opposition to the alienation of the land. The only record we have of this protest is from a *Daily Southern Cross* article of 2 January 1855. The article stated that the land 'has never been purchased by the Government [and] was a gift to a Mrs Cowell, (a Maori and her children)', and went on to say 'the tribe who gave the land have sent a strong remonstrance to the Government to prevent the sale of it' and a 'good authority' had reported 'the Natives have already said they will not permit any stranger purchaser to take possession of the land'.<sup>141</sup>

The opposition to the proposed auction prompted the Crown to cancel the sale.<sup>142</sup> However, matters were further complicated when the Ngāti Hikairo rangatira Kikikoi – also known as Waikawau or Kīngi Te Waikawau – wrote to the governor in February 1855. Kikikoi's intentions appear to have been twofold. First, he wanted to support Charleton's claim to ownership of Pouewe, and secondly, he disputed the right of Kiwi Te Roto and Ngāti Mahuta to have sold the land in the first place. He wrote: 'Katahi au ka whakaaro, kei te pakeha tenei kainga, kei a Kamura; ko Ngati Mahuta e he ana; kaore he wahi i a ratou' (then I decided this village belongs to Charleton: Ngāti Mahuta are mistaken; no part belongs to them).<sup>143</sup>

The basis for Kikikoi's support for Charleton's occupation is unclear. He may have been motivated by a desire to demonstrate that Charleton remained at Pouewe at the will of his own iwi, Ngāti Hikairo, and not because of Kiwi and Ngāti Mahuta. Yet Charleton's claim ultimately derived from Cowell's arrangement

137. Document A70, p123.

138. Document A70, p124.

139. Document A70, p125.

140. Document A70, p125.

141. 'Land Sale', *Daily Southern Cross*, 2 January 1855, p3; doc A70, pp125–126.

142. Document A70, p126.

143. Document A70, p127; doc A70(a), vol 3, p990; Tribunal translation.



with Kiwi in January 1840, which Kikikoi's letter disputed on behalf of Ngāti Hikairo. The letter recalled:

E Hoa ma, Whakarongo mai ki taku korero ki a korua mo ta korua pukapuka kua tae mai nei ki a Kamura [Charleton], ara, mo Pouewe; rere! Whakarongo mai. Na Pikia rangatira o Ngāti Hikairo raua ko tana tamaiti ko Kikikoi i whakanoho a Te Kaora [Cowell], haunga tenei Kaora engari ko te Kaora kua mate. Ko te Kaora hoki, na Pikia tera Pakeha kai tenei kainga. Ko Kawhia katoa i a Pikia katoa. Ka mate Pikia; ora ke ko Kikikoi; i a ia ka ratoa te whenua. Te haeranga mai o Pihopa [Kiwi Te Roto] ki te hoko i Pouewe mai, ka ki mai ki a Kikikoi kia hokona; nā ka ki atu ki Kikikoi, e kore e marere i au. Ka ki mai nei me hoko. Ka ki atu ia, kahore, na hae ana ia ki waho o te whare mai muri i a ia; katahi ka tonoa tahaetia nga taonga ra – homai e Te Kaora nga taonga; ka kawea mai ki tатаhi tu ai ana taonga. Ka ki Kikikoi, haria o taonga; me utu e koe ki tou whenua kore nei. Whenua ko Pouewe e kore e marere e au. Ka ki mai a Pihopa me waihoki e koe nga taonga ki te tangata i te kainga. Ka ki atu ia, e kore e marere i au; na, tiro ana ia, waihotia iho nga taonga; katahi ka haria e nga tamariki ki te whare. E rua tau katahi ka tukua e au nga taonga ki a Ngāti Haua, ki na, ka tae mai a te Raika [Ligar, a surveyor]; ka ruritia tenei kainga. Katahi au ka whakaaro, kei te pakeha tenei kainga, kei a Kamura; ko Ngāti Mahuta e he ana; kaore he wahi i a ratou. . . . Tenei naku ki a korua e te Kawana, e te Raika, ko te pukapuka a te Kuini me homai ki a Kamura, arā, ko te pukapuka mo tenei pihī, mo Pouewe. Na Kikikoi, Kawhia.<sup>144</sup>

This was translated at the time by a Crown official as:

Friends, hear you – in reference to your letter addressed to Kamura [Charleton] to a piece of land at Pouewe. Hear you, Pikia, chief of the Ngāti Hikairo, and his son Kikikoi, were the persons who paid the Father of the present JV Cowell in possession – This land and the whole of Kawhia belonged to Pikia, when Pikia died, Kikikoi became his successor. When Pihopa [Kiwi Te Roto] proposed to sell, Kikikoi objected. Afterwards he Pihopa clandestinely sold and took the goods from Cowell which were laid on the beach. Kikikoi said take your goods, pay for them with your land, for Pouewe shall not be the payment. Pihopa proposed to leave the goods with Kikikoi the real owner of the land, but he refused. The goods were kept in a house for two years and then Kikikoi gave them to the 'Ngatihaua', 'Ngatiapakura' and to all the Tribes. Subsequently this land was taken by Kamura and Mr Ligar came and surveyed it. I then found out that this land was in the possession of the surveyor. Hear you now. This land belongs to Kamura – no portion of it belongs to the Ngatimahuta. Hear now Governor and Ligar. Let the Crown Grant for this piece of ground for Pouewe, be given to Kamura. Signed, Kikikoi of Kawhia.<sup>145</sup>

A modern translation of the Māori text of the letter reveals further details:

144. Document A70(a), vol 3, p990.

145. Document A70, p126.

Friends, Listen to my accounting to you two concerning your letter which came here to Charleton. It came here to Charleton about Pouewe. Now, listen to me, It was Pikia, chief of Ngāti Hikairo together with his son, Kikikoi, who caused Cowell to settle there. Not this Cowell, but the one who died. Cowell was Pikia's Pākehā at this village. All of Kāwhia was Pikia's. Pikia died, but his son Kikikoi lives. By him was the land distributed. Then came Bishop [Kiwi Te Roto] to purchase Pouewe. He said to Kikikoi it would be bought. Kikikoi said to him it will not be given away by me for free. He [Kiwi] answered, it must be bought. He [Kikikoi] said, no, and went out of the house behind him. Then the goods for it were sent secretly. Cowell brought the goods, which were carried to the coast and there left. Kikikoi said, take away your goods; you must pay for the land which is not yours. The land Pouewe will not be given away by me. Bishop said, you must return the goods to the man in the village. He replied, it [the land] will not be given away by me. Now, seeing this, the goods were left down there, then they were carried by the youths to the house. After two years, I sent the goods to Ngāti Haua and Ngāti Apakura, and to all the tribes. Afterwards, Charleton took that place. Later Ligar came and surveyed the village; then I decided this village belongs to Charleton: Ngāti Mahuta are mistaken; no part belongs to them. . . . This is my explanation to you oh Governor, oh Ligar. The Queen's paper should be sent to Charleton, that is, the paper for this piece, Pouewe. From Kikikoi, of Kāwhia.<sup>146</sup>

Kikikoi's letter sheds some light on how Māori understood this pre-Treaty transaction. He claimed that Kiwi Te Roto of Ngāti Mahuta had no rights to Pouewe and that it was not for Kiwi to determine the purchase. Although this dispute over who had mana over the land was explicit in the letter to the governor, it was not taken into consideration by the commission when it investigated.

The letter also highlights the cultural value of the payment. Cowell secretly gave some goods to Kiwi in payment for the land. It is likely these were the goods referred to in the 11 January 1840 deed, which as mentioned listed numerous trade items including muskets, gunpowder, tools, clothing, blankets, pipes, and a cask of tobacco.<sup>147</sup> The secretive nature of this transaction, however, did not sit well with Kikikoi, who initially refused to accept Cowell's payment. The goods were then taken and stored for two years, before Kikikoi distributed them to other iwi and hapū. In doing so, Kikikoi asserted that he had the mana and rights over the land. Making sure that the benefits from permitting Pākehā to occupy land were appropriately distributed was an essential element of tuku whenua. As such, because Kikikoi claimed rights over the land, and because he had distributed the goods, he believed that he had the right to determine that the land should be granted to Charleton.

The proposal to put Pouewe up for auction was raised for a second time in 1855 but came to nothing. There the matter rested, until 1857, when a request on Charleton's behalf was made to the land claims commission for an investigation of his claim to Pouewe.

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146. Translation by Waitangi Tribunal.

147. Document A70(a), vol 3, p972.

**4.4.2.3 The commission investigates, July 1858**

Charleton's claim to Pouewe came before the commission in mid-July 1858. The block had been surveyed earlier that year by Edwin Davy to be 44 acres in extent. Davy included all the land encompassed by a fence on the site and noted: 'No objection whatever was made to the additional piece at the North West corner being included and being already enclosed by the same fence with the rest of the land.'<sup>148</sup> Phillipa Barton, named claimant for Wai 2353, stated that this additional piece was known by Ngāti Hikairo as Pākanāe and that it subsequently housed the Kāwhia Native School.<sup>149</sup>

Commissioner Bell's investigations followed a similar pattern to his predecessors. He heard evidence from Charleton's appointed agent – Captain John Salmon – and was presented with the deeds of the transactions between Kiwi Te Roto and Cowell, and Cowell and Charleton. Bell also heard the testimony of Hone Wetere Ngainui, of Ngāti Hikairo, who confirmed the accuracy of the deed and the survey, the payment of the purchase price, and declared that 'there is no dispute between us [Ngāti Hikairo] as to [the lands] now belonging to Mr Charleton.'<sup>150</sup>

There is no evidence to indicate that Bell inquired into the nature of the original pre-Treaty transaction or considered the validity of Cowell's transaction with Kiwi Te Roto. Cowell's right to sell the land to Charleton was not questioned; the deeds were taken at face value. Nor is there any evidence to suggest that the commissioner asked Ngainui about the nature of customary interests in Pouewe.

In September 1858, two months after the hearing, Māta Ritana Kaora and others wrote to Donald McLean, Native Secretary and chief land purchase commissioner, to dispute Charleton's claim to the land. Ritana told McLean: 'he whenua kua oti te whakapumau hei kainga mo aku tamariki ake ake' ([Pouewe] is land that has been confirmed to my children for ever).<sup>151</sup>

She warned McLean: 'kia tupato koe ki tena pakeha, ki a Kamura, no te mea e haere tahae atu ana ia ki te hoko huna i toku whenua i Pouewe kei Kawhia . . . e noho noa iho i runga i toku whenua. Kāore ona whenua i reira.'<sup>152</sup> This was translated at the time as, 'be cautious with respect to that Pakeha Kamura (Charleton) as he is going secretly and dishonestly to sell my land at Pouewe . . . he is merely occupying my land, he has no land there.'<sup>153</sup> A modern translation of this passage says, 'be careful of that Pākehā, Charleton, because he is going stealthily to sell my land Pouewe at Kāwhia dishonestly . . . he is living there without rights on my land; he has no land there.'<sup>154</sup>

A second letter to McLean followed in October 1858, co-authored with Māta Ritana's half-brother, Wiremu Toetoe Tumohi. In this letter they restated Ritana's claim to the land, suggesting that it was given to her by their parents: 'he whenua

148. Document A70, p128.

149. Document N4 (Barton), pp15–17.

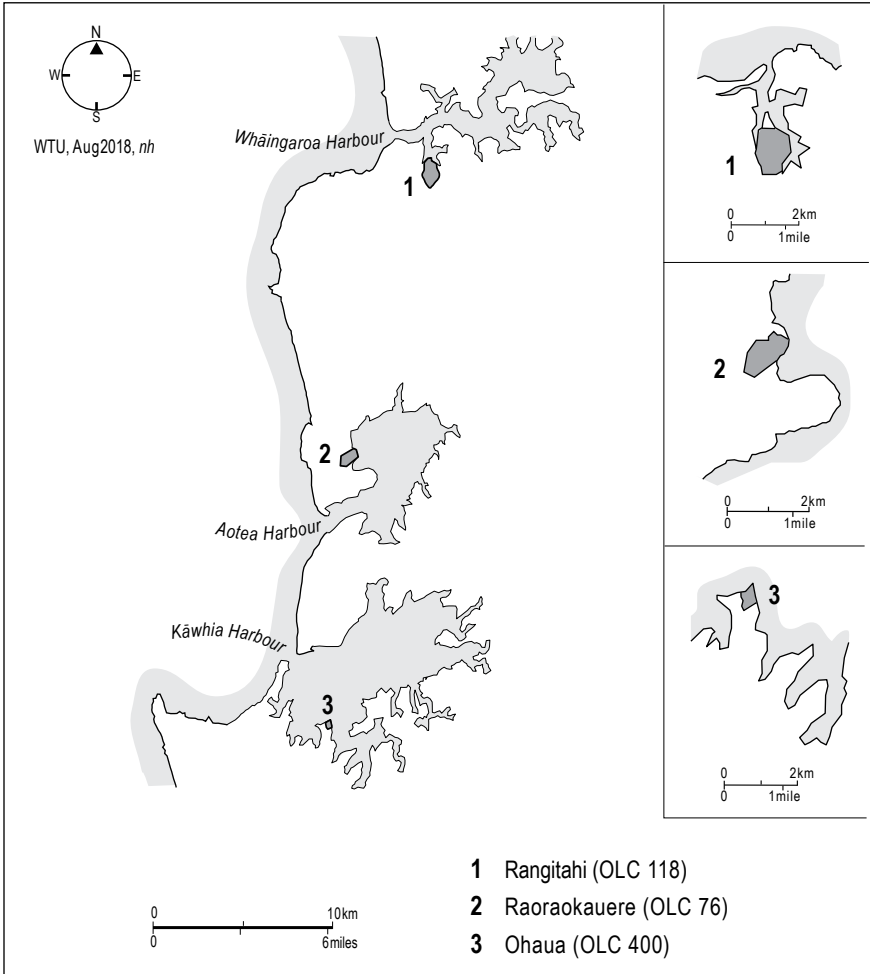
150. Document A70, p129.

151. Document A70(a), vol 2, pp872–873; doc A70, pp129–130.

152. Document A70(a), vol 2, pp872–873.

153. Document A70, pp129–130.

154. Translation by Waitangi Tribunal.



Map 4.5: Land granted through other mechanisms

tuku atu enei na o matou matua mona, ara ma ratou, ko ana tamariki, hei whenua pumau mo ratou’ (that is, for her and her children, as land fixed permanently for them).<sup>155</sup>

They disputed Charleton’s claim and suggested that, by writing to McLean, they wished ‘to let you know lest you purchase Pouewe’: ‘he pukapuka whakamohio tena kia mohio koe kei hoko koe i Pouewe.’<sup>156</sup>

155. Document A70(a), vol 2, pp 867–868.

156. Document A70(a), vol 2, pp 867–868; translation by Waitangi Tribunal; doc A98, pp 211–212.

As chapter 5 sets out, McLean and his agents were actively acquiring land in the inquiry district at this time, which may explain the rumours that the Crown wanted to purchase land at Pouewe.

There is no evidence that the Crown responded to either of Ritana's letters. At the foot of Ritana's second letter, a note written by Assistant Native Secretary TH Smith and dated 24 December 1858 recommends that 'her letter should be referred to the Land Claims Commr – it appears her intention is to protest against Charleton's claim.'<sup>157</sup> We do not know if Bell saw either letter, let alone took them into account in determining whether native title was extinguished for Pouewe.

#### **4.4.2.4 Outcomes of the investigation**

In March 1864, commissioner Bell recommended issuing a Crown grant to 44 acres at Pouewe. George Charleton had since died, and the land was granted to Charleton's widow, Ann. In his report, Bell employed section 15 of the Land Claims Extension Act 1858, which empowered the commissioner to recommend a Crown grant based on a claimant's long-term occupation. Accordingly, a Crown grant of 44 acres was issued to Ann Charleton on 25 October 1864.<sup>158</sup>

Two years later, Ann Charleton was evicted from Pouewe by adherents of the Kingitanga, prompting her first to seek compensation and then offer to sell the land to the Crown.<sup>159</sup> These matters, and the Crown's eventual purchase, are addressed in detail in chapter 8.

## **4.5 LAND GRANTED THROUGH OTHER MECHANISMS**

Three Crown grants were awarded for land that was alienated through other mechanisms for confirming pre-Treaty and related transactions:

- ▶ The WMS applied for a pre-emption waiver over two blocks associated with the Raoraokauere Mission Station at Aotea Harbour (OLC 76).
- ▶ Samuel Joseph acquired title to Ōhau/Nathan's Point at Kāwhia (OLC 400).
- ▶ A Crown grant was awarded in respect of Edward Meurant's occupation of land at Rangitahi (OLC 118).

### **4.5.1 Raoraokauere pre-emption waiver (OLC 76)**

A Crown grant for the Raoraokauere Mission Station land at Aotea Harbour was issued to the WMS in June 1862. The alienation occurred in the context of Governor FitzRoy's 26 March 1844 proclamation that the Crown was prepared to waive its pre-emptive land purchase right. FitzRoy's system of pre-emption waivers meant private individuals could apply to the governor to purchase land directly from Māori under certain conditions.<sup>160</sup> Although the scheme was intended

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157. Document A70, p130.

158. Document A70, p131.

159. Document A70, pp131–133.

160. Waitangi Tribunal, *The Hauraki Report*, vol 1, pp109–112.

to apply only to lands transacted after 1844, in practice the governor received numerous requests to validate transactions that had occurred after the 14 January 1840 proclamation and were therefore barred from investigation by the land claims commission.<sup>161</sup>

The original transaction between the wms and Aotea Māori for land at Raoraokauere took place in June 1840. A second transaction followed in March 1844.<sup>162</sup> Both transactions occurred after the 14 January 1840 proclamation, and could not be processed as old land claims. The wms asked FitzRoy to grant a pre-emption waiver for Raoraokauere in 1844 and the governor did so, but for reasons unknown no action was taken until Land Claims Commissioner Bell reviewed the matter in 1858. In 1862, Bell recommended that a Crown grant be issued to the wms for 167 acres.<sup>163</sup>

In this inquiry, the Ngāti Te Wehi claimants argued that the wms and Governor FitzRoy viewed the Raoraokauere Mission Station transactions as sales in the European sense, and sought to apply a pre-emption waiver on that basis. The claimants maintained, to the contrary, that their tūpuna only intended to convey a use-right to the Wesleyan missionaries for as long as they remained in the rohe and carried out their duties.<sup>164</sup>

#### **4.5.1.1 *The application to waive pre-emption***

The wms request for a Crown pre-emption waiver for land at Aotea Harbour came on 29 March 1844, just three days after FitzRoy's proclamation. In a letter to the governor, Wesleyan missionaries John Whiteley, James Wallis, and Gideon Smales requested he recognise two blocks claimed to have been purchased by the wms in association with the Raoraokauere Mission Station. The deed for the first transaction was signed by Aperahama, Te Materau, Te Moke, and Te Haratua on 12 June 1840. The area was estimated at 40 acres and the missionaries paid a £2 deposit.<sup>165</sup> The text of the first deed, written in te reo Māori, read in its entirety: 'Kua riro mai inaianei e rua Pauna moni hei whakatapu mo tenei kainga mo nga rakau hei hanga ware mo te Mihinere. Ma te Kawana e wakarite.'<sup>166</sup> A modern translation is, 'Two pounds in money have been received to reserve this place and the trees to build a house for the Missionary. It is for the Governor to arrange this.'<sup>167</sup>

By 1844, however, the arrangement that underpinned this transaction had become strained. In their letter to FitzRoy, the missionaries explained that 'much unpleasantness was occasioned by several persons from Waikato', who were distressed that the mission station was being built on land which included the graves of several of their kin and places where their tūpuna had died. In response, a second deed was signed, dated 14 March 1844, for what Whiteley, Wallis, and Smales

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161. Document A70, p 61.

162. Document A70, p 92.

163. Document A70, pp 104–105, 109.

164. Submission 3.4.237, p 78.

165. Document A70, pp 94–95.

166. Document A70(a), vol 3, p 1041.

167. Translation by Waitangi Tribunal.

described in their letter as an 'adjoining piece of land of about the same extent and including that part of the original allotment which is at present occupied by one dwelling house and garden.'<sup>168</sup>

The second deed was also written in te reo Māori. It was signed by some 15 Māori, including Hori Kingi Te Matera, Aperahama Te Karu, Kiripahoko Te Haratua, and Te Manihera Moke, and witnessed by EW Stockman, Joseph Teabought, Heriatera Ngā Ahi, and Hoani Weteri Ngamuka.

The deed began:

No te mea kua roa te nohoanga o tetahi Mihanere o te Hahi Weteriana i to matou kainga, A kahore ano i rite noa te hoko ki a matou, ka mea ai me tuku e matou to matou kainga nei ki a ratou, ara ki a te Waitere raua ko Te Mera mo te Hohaiati Mihanere o te Hahi Weteriaua o Ingarani, Ka tukua hoki inaianei to matou nei kainga kua oti nei te ruri.<sup>169</sup>

A modern translation of this passage reads:

Because the residence of a missionary of the Wesleyan Church has been of long duration in our settlement, and because we have not arranged a sale, to achieve it we must gift our place to them for the Missionary Society of the Wesleyan Church of England. So now we gift this, our place, the survey of which has been completed.<sup>170</sup>

The deed then described the boundaries of the land, stating:

E takoto ana i te taha ki uta o te Pa Raoraokaueri, anga atu ana ki tua atu i te kainga o Eruera puta rawa ki tatahi. Ko tetahi wahi o tenei wenua i wakatapu imua e te Pumipi ratou ko Te Whaitere, ko Te Tatona.

It lies on the inland side of the Raoraokaueri [*sic*] Pa; it faces outwards beyond Edward Stockman's place as far as the sea.' The deed noted that 'Part of this land was previously set aside by Pumipi [Bumby], Waitere [Whiteley] and Te Tatana.

The payments made for this place ('Ko nga utu mo tenei kainga') were listed as:

£7 koura, £3 hiriwa, 4 paraikete, 2 kororirori, 4 kaone, 12 haikiha, 24 ho, 36 heu, 24 kutikuti, 10 kohue, 300 matau, 100 paipa, 300 tupeka, 1 huri paraua, 1 tatari paraua.

£7 in gold, £3 in silver, 4 blankets, 2 preserving pans, 4 gowns, 12 handkerchiefs, 24 hoes, 36 sets of shears, 24 pairs of scissors, 10 boilers, 300 hooks, 100 pipes, 300 figs tobacco, 1 flour grinder, 1 flour sifter.

In return for these goods, the signatories said:

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168. Document A70, p 98.

169. All references to the Māori text of this deed are to doc A70(a), vol 3, pp 1043–1045.

170. Translation of this and subsequent passages by Waitangi Tribunal.

i homai, koia matou ka tuku ai i tenei kainga me nga wai katoa me nga repo katoa, me nga taepa me nga mea katoa o tenei kainga ki a raua mo te Hohaiati Mihanere o te Hahi Weteriana o Ingarani, mo o ratou tangata ake ake ake.

we gave them [Whiteley and Smales] this place and all its waters and marshes plus the fences and all the appurtenances of this place for the Missionary Society of the Wesleyan Church of England and their people for ever more.

The deed ended by saying:

No te mea i tuhituhi mai te Pukapuka o Te Kawana imua, kia kaua ai matou e hoko wenua ki te Pakeha koia matou ka mea ai, me tuhituhi matou ki tenei Kawana hou nei, me ki atu, mo te mea kua roa ke te noho o te Mihanere ki tenei kainga, koia matou ka hoko atu ai ki a ia, kia tika ai tona noho: mana hoki, ma te Kawana e wakaae mai ki tenei kainga hei nohoanga mo to matou Kaiwakaako.

Because the Governor's instruction was written earlier, that is that we should not sell land to Europeans, we said we would write to this new Governor and say, because of the long occupation of the Missionary in this place, so we sell to him so that his staying here is proper according to tikanga; it is for him, the Governor to agree to this place being a residence for our Teacher [or Mentor].

While the missionaries viewed the initial June 1840 transaction as a permanent alienation, Aotea Māori do not appear to have shared this view. Following the signing of the second deed in March 1844, they repossessed the land named in the first deed and proposed to transact that land with a trader.<sup>171</sup> The WMS, however, opposed the establishment of a trading post alongside their mission station. In their letter to the governor, the missionaries requested FitzRoy's assistance to address the issue while acknowledging that Māori now refused to let them occupy the land. Whiteley, Wallis, and Smales nevertheless claimed the land on the basis that Māori had 'made [it] over to us' in 1840, and 'a deposit was paid upon it'.<sup>172</sup> At around the same time, a copy of the deed of the second transaction was sent to FitzRoy, together with a letter signed by a number of the deed's signatories, including Te Kiripahoko, Te Manihera Te Moke, and Aperahama Te Karu. In this letter the signatories explained:

Kua tae mai ano te pukapuka o Te Kawana i mua, kia kaua ai matou i hoko i te whenua, otiia ka w[h]akaaro matou kua roa ke te noho o te Mihanere ki tenei kainga, he kainga iti, ka tohe ano etahi o nga tangata ki a ia, kia utua, koia matou ka mea ai, kia utua, kia tika ai tona noho, kia pai ai.

Koia matou ka tuhituhi atu nei ki a koe, kia pai koe, kia wakaae mai, kia wakapai mai ki tenei hokonga.

171. Document A70, p102.

172. Document A70, p102.



This was translated by an unnamed Crown official as:

We some time ago received the letter of the Governor requiring us not to sell land but we have thought that our Missionary has long been living on that land, that it is a small place, that some of the people (who have an interest in the land) have teased for payment, therefore we have decided to sell that our Teacher may dwell in peace and quietness.

We therefore write to you to request that you will be pleased to favour this sale with your sanction and approbation.<sup>173</sup>

#### 4.5.1.2 *The Crown's response*

The terms of FitzRoy's March 1844 proclamation stated that, in considering Crown pre-emption waivers, the governor would consider '[the] nature of the locality; the state of the neighbouring and resident natives; their abundance or deficiency of land; their disposition towards Europeans; and [their disposition] towards Her Majesty's Government'. In addition, he was to consult with the protector of Aborigines before consenting 'in any case'.<sup>174</sup> FitzRoy therefore sought the advice of George Clarke, protector of Aborigines, on the situation at Raoraokauere Mission Station. Clarke expressed doubt as to the validity of the 1840 transaction, concluding that the Wesleyans had not conducted themselves 'with their usual discretion'. However he suggested that the 1844 transaction appeared to be in the form of a purchase, not a gift. FitzRoy also sought the advice of Robert FitzGerald, a land claims commissioner, who recommended that the governor 'might waive the Crown's right of pre-emption over any lands the Natives may be *quite willing* to sell to the Mission' (emphasis in original).<sup>175</sup>

On receiving this advice, FitzRoy instructed colonial secretary Andrew Sinclair to 'inform these parties that if they apply to me in compliance with the regulations of April last – I will waive the Crown's right of pre-emption over such portions of land as the Natives may be quite willing to alienate – to the extent specified in this letter'.<sup>176</sup> For reasons unknown, the matter rested until February 1858, when WMS chairman Thomas Buddle wrote to commissioner Bell seeking to finalise the issue.<sup>177</sup> Buddle identified the land claimed for the Raoraokauere Mission Station at Aotea as 36 acres 3 roods 1 perch, in accordance with a survey commissioned in 1844 by the WMS.<sup>178</sup>

Bell noted in his review that 'Gov FitzRoy offered a Pre-emptive Certificate but no steps appear to have been taken'. In addition, he questioned the sufficiency of

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173. Document A70, p96. The phrase in brackets in the English translation is that provided in the original translation, despite there being no equivalent in the Māori original: doc A70(a), vol 3, pp1019–1020.

174. Rose Daamen, *The Crown's Right of Pre-Emption and Fitzroy's Waiver Purchases*, Waitangi Tribunal Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1988), p73.

175. Document A70, pp103–104.

176. Document A70, p104.

177. Document A70(a), vol 3, p1040.

178. Document A70(a), vol 4, p1046.

a sketch plan provided by the wms and suggested that ‘probably the best way will be to have an inquiry under the Native Reserves Act 1856.’<sup>179</sup> It is not clear why Bell thought this legislation would be best suited to address the matter, and in any case his suggestion was not followed.

#### 4.5.1.3 *Outcomes of the process*

On 10 June 1862, a Crown grant was awarded to the wms under the Land Claims Settlement Act 1856 for the land on which their three mission stations sat, including the Raoraokauere Mission Station at Aotea. The final award constituted 167 acres, which was more than double the acreage represented by the 1840 and 1844 deeds combined. The reason for awarding a far larger area than requested is not clear.<sup>180</sup> There is no evidence to indicate Aotea Māori ever agreed to this larger area, or how if at all it related to the earlier transactions.

#### 4.5.2 *Ōhaua/Nathan’s Point (OLC 400)*

Unlike the old land claims investigated in this district by the land claims commission, the permanent alienation of land at Ōhaua appears to have occurred without any inquiry whatsoever. OLC 400 is located at the northern point of Ōhaua Peninsula, on the southern shores of Kāwhia Harbour.<sup>181</sup> It is adjacent to, or possibly contiguous with, another claim by John Laurie and Samuel Joseph (OLC 1314), that was investigated by Bell but declared abandoned in 1880. Speaking to this alienation, the claimant Tangiwai King expressed profound confusion and frustration: ‘What I don’t understand is how the title for Mr Joseph became registered without any investigation or verification. There were systems in place but they did not protect Māori land or interests.’<sup>182</sup>

During the 1830s, Samuel Joseph established a trading post on the land, living at Ōhaua with his Ngāti Kinohaku wife and their children. The evidence available identifies OLC 400 as 34 acres 1 rood in area and suggests that Joseph initially transacted the land with Ngāti Mahuta chiefs Wiremu Hoeta Kumete and Te Manihera. Somehow, in the absence of an old land claim investigation, Joseph managed to secure title to a 34-acre block at the north-eastern point of Ōhaua. It is unclear how this was able to happen. Ms Boulton suggested that further research would be required ‘to determine the circumstances that led to Joseph being allowed to secure title to land he had acquired from Maori before 1840 without going through the old land claims investigation and validation process.’<sup>183</sup>

By the late 1850s, Joseph had run into financial difficulties and become indebted to his Auckland-based trading partner, LD Nathan. To satisfy his debt, and unbeknownst to his family, Joseph sold the land to Nathan, from whom it gained the

179. Document A70, p 104.  
Document A70, p 104.

180. Document A70, p 105.

181. Document J1 (King), pp 15–16.

182. Document J1, p 16; submission 3.4.171(a), pp 95–96.

183. Document A70, pp 116–117.

name Nathan's Point. Ms Boulton stated that 'it appears a Crown grant was issued', although whether to Joseph or Nathan she did not know.<sup>184</sup> When the land came up for private sale, the former Māori owners bought it back. Tangiwai King stated that his father bought the land back in 1928, 'because we wanted it in the family and we wanted Ngāti Mahuta land to stay Ngāti Mahuta land'.<sup>185</sup> In 1994, the land was returned to Māori freehold status.

#### 4.5.3 Rangitahi (OLC 118)

Rangitahi is located on a peninsula in the southern reaches of Whāingaroa Harbour, bounded by the Omahina and Oporoturu Rivers.<sup>186</sup> The land was occupied from the late 1830s by a Pākehā, Edward Meurant, who lived there with his Ngāti Mahuta wife Eliza Kenehuru, the daughter of Te Tuhi-o-te-Rangi and niece of Te Wherowhero.<sup>187</sup> Meurant appears never to have sought a Crown grant to the land.<sup>188</sup>

After Meurant's death in 1851, the missionaries John Whiteley and James Wallis corresponded with Crown officials in an attempt to organise his affairs. In a letter dated April 1853, they wrote that Meurant had purchased about 300 acres from Whāingaroa Māori in 1839, for which a deed had been drawn up but since lost. Whiteley and Wallis asked that the land 'be made over to the Government and that some consideration should be made to the surviving widow and children'. Wetini [Mahikai], Wharekura, and Hone Kingi signed a statement in te reo Māori, dated 23 April 1855, which recorded that they had formerly sold their land at Rangitahi to Meurant. This was forwarded to the government by Whiteley and Wallis, who continued to ask that the Crown use Rangitahi for the benefit of Meurant's widow and children. The missionaries also stated that 'the natives still regard the land as the property of Mr Meurant's family'.<sup>189</sup> Other evidence, however, suggests that Meurant made an agreement for the land with Muriwhenua, Wharekura, and [Wetini] Mahikai on 5 January 1845.<sup>190</sup>

We have not seen evidence that the circumstances of these purported transactions were investigated or that a Crown grant was ever awarded. Rangitahi is no longer Māori land, but in the absence of further evidence relating to the alienation of Rangitahi, we are unable to take the matter further.

## 4.6 TREATY ANALYSIS AND FINDINGS

The Crown's undertaking to properly investigate pre-Treaty transactions was a key part of the Treaty bargain. In the Treaty, and in associated public statements,

184. Document A70, p 116.

185. Document J1, p 16.

186. Submission 3.4.210, p 22.

187. Document A70, pp 32–33.

188. Document A70(a), vol 2, p 527.

189. Document A70, p 33; doc A70(a), vol 2, pp 528–532.

190. Document A70, p 32; doc A70(a), vol 3, pp 961–965.

Crown officials also undertook to deal with Māori land in accordance with their laws and customs. Failure to uphold these promises would reflect poorly on the honour of the Crown.

#### 4.6.1 Māori understandings of pre-Treaty transactions

We view the land transactions conducted between tangata whenua and Pākehā traders and missionaries in the inquiry district prior to February 1840 as constituting traditional arrangements established in accordance with Māori custom. Evidence on the record of inquiry speaks to the customary nature of Pākehā interactions and dealings with Māori prior to the signing of the Treaty of Waitangi. Traders and missionaries were incorporated into their host communities; land was made available to newcomers in recognition of their contribution to their hosts; and, on those occasions where manuhiri strayed from the expectations of tangata whenua, they were swiftly reminded of the community's expectations. This evidence points to the ongoing application of Māori custom across Te Rohe Pōtae during and after the time when pre-Treaty transactions were entered into. It was therefore those cultural expectations of customary interaction that Māori brought to the table when transacting land with manuhiri prior to the signing of the Treaty.

However, the extent to which Te Rohe Pōtae Māori would have understood the nature of the deeds they signed, whether these were in English or te reo, remains unclear. It is impossible from the commissions' records to say if and how they inquired into whether the deeds were accurate representations of the original transactions. Although the files show that some of the reo Māori deeds were translated by officials such as Thomas Forsaith, there is no evidence that the commissioners themselves examined how key terms such as 'tukuā' (gift) or 'hokonga' (sale) were understood by Māori signatories. Nor is there evidence that the commissions examined the deeds' timing, to establish whether these were hurried attempts to cement transactions that occurred years before in response to the prospect of British annexation. For these reasons, we agree with historian Leanne Boulton's assessment that the commissions largely took the deeds at face value.<sup>191</sup>

Further, it is unknown whether those Māori who signed the deeds understood their content. We do not know whether the deeds written in te reo Māori were read to those Māori who may not have been able to read. As noted in section 4.4.1.2, most of the deeds seem to have contained a mark next to the name of the Māori signatories, which suggests they were illiterate in the writing sense, though signatories' reading abilities at this time are not known. If they could not read, the issue then turns to whether the deeds were read aloud to Māori present. If so, in the case of the reo Māori deeds, a further question is then whether the oral translations accurately depicted the nature of the agreements, the lands subject to the transactions and the payments Māori received. Overall, due to the paucity

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191. Document A70, p 39.

of evidence in relation to Māori understanding of these deeds, we make no firm conclusions on these matters.

#### **4.6.2 The operation of the commissions**

##### **4.6.2.1 The Wesleyan mission claims**

We find that, in its mandating and supervision of the land claims commissions in the inquiry district, the Crown failed or omitted to direct the commissioners to take into account Māori understandings of pre-Treaty transactions and the tikanga Māori principles associated with them. In accordance with Normanby's instructions and the Treaty itself, the Crown was required to actively protect Māori tino rangatiratanga over their land interests. That Treaty standard extended to the investigation of pre-Treaty transactions and the subsequent issuing of Crown grants. In the case of the three wms claims and the claim of William Johnston, Crown grants were issued to Pākehā based on the commissioners' recommendations without the commission being required to clearly ascertain the nature of the original transactions. The Crown failed to fulfil its duty of active protection, resulting in the permanent alienation of some 358 acres of ancestral land in the inquiry district.

The evidential record of Godfrey and Richmond's investigation into the four Wesleyan-related claims suggests a failure on the part of the Crown to ensure, through the legislation under which the commission operated, that the commissioners adequately determined the nature of the pre-Treaty transactions before recommending that the Crown issue grants to the claimants. The commissioners failed to inquire into the nature of the original transactions; did not explore Māori understandings or customary interests in the land when questioning Māori witnesses; and paid little or no mind to any potential discrepancies between the written deeds and the original oral arrangements. The commissioners' failure to uncover issues regarding the Nihinihi deed indicates the legislative effect of not requiring them to have regard to such matters.

These failings were compounded by other issues regarding the operation of the land claims commission under a legislative regime for which the Crown was responsible. In particular, we consider Māori were disadvantaged as a consequence of the hearings being held in Auckland, which limited participation and so failed to provide adequate opportunities to investigate customary interests. This undermined the transparency of the commission's inquiries. In addition, the protector of Aborigines, or his deputy, was meant to attend all hearings to provide independent advice and support to Māori witnesses. Although protector of Aborigines Thomas Forsaith seems to have been present at the 1843 inquiry into the Wesleyan claims, the evidence (section 4.4.1.3) suggests that, in practice, his role was confined to that of an interpreter and translator.

We find that these factors combined meant the Crown failed to fulfil its article 2 duty of active protection of Māori tino rangatiratanga over their lands, resulting in the prejudicial loss of land. We find, further, that prejudice resulted from the

land claims process in relation to these transactions, as the customary interests of those who gifted the land were permanently alienated in a manner contrary to their tikanga.

#### **4.6.2.2 *George Charleton's claim at Pouewe***

The Crown has acknowledged the possibility of a failure in respect of the way Charleton's claim was processed, and accepted that the pre-Treaty transaction may not have been intended by the original owners to be a permanent alienation.<sup>192</sup> We accept these acknowledgements, and go further. We find that the Crown's regime for investigating old land claims resulted in a failure to ascertain that the original pre-Treaty transaction was not intended as a permanent alienation by the original owners. Charleton's claim to the land derived from a transaction with John Vittoria Cowell, though Cowell's interest in the land was customary and in the nature of a life interest only, deriving from his father's occupation of the site and from his marriage to Māta Ritana. While Cowell claimed to have purchased the land from Kiwi Te Roto of Ngāti Mahuta, this purchase was speculative and never validated and Cowell's interest remained based in custom. He had no right to sell the land to Charleton, and the commission would have recognised this had it been required to consider Māori understandings of the transaction and the tikanga associated with it.

In investigating this claim, Commissioner Bell was responsible for determining whether the native title had been extinguished. However, he failed to do so. The evidence suggests that Bell's inquiry paid little attention to the nature of the pre-Treaty transaction, or Cowell's right to sell the land to Charleton. Instead, the evidence suggests that the commissioner's investigation of the claim was superficial. This impression is further substantiated by Bell's failure to address protest by Māta Ritana Kaora and her family. Māta Ritana opposed Charleton's claim based on her ongoing customary interests in the block and, despite voicing her concerns both before and after the commissioner's inquiries, her protests fell on deaf ears.

Bell recommended that a Crown grant for the 44-acre block be issued to Charleton's widow, Ann Charleton, in 1864. This grant was awarded under section 15 of the Land Claims Extension Act 1858, which empowered the commissioner to recommend a grant on the grounds of the settler's long-term occupation. As noted above, this legislation was directly in breach of the Crown's commitment under article 2 of the Treaty to respect Māori laws and customs relating to their lands. Consequently, and in issuing this grant, the commissioner failed to consider Māori customary law or tikanga, nor did he establish Māori understandings of the pre-Treaty transaction. He also overlooked the continuing protest and disputes over customary ownership as voiced by Māta Ritana, Kikikoi of Ngāti Hikairo, and others. Thus, due to the deficiencies in the legislation, and in awarding this land to Charleton in accordance with the commissioner's recommendations, the Crown failed to fulfil its duty to actively protect the interests of Te Rohe Pōtae Māori.

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192. Statement 1.4.3, p 55; submission 3.4.288, p 22.

In its concessions on the topic, the Crown acknowledged that '[p]rejudice may have resulted to Māori in result of the old land claims process in relation to George Charleton's claim at Pouewe in Kawhia (OLC 1353)'.<sup>193</sup> We find that prejudice did indeed result from the land claims process in relation to Charleton's claim to Pouewe, as the customary interests of Ngāti Apakura, Ngāti Hikairo, Ngāti Mahuta, and others were permanently alienated. This was due to the commission's failure to establish the intentions of Māori in transacting the land with John Vittoria Cowell during the pre-Treaty period. Moreover, we note that the effects of the Crown's decision to award Pouewe to Charleton were not confined to those with direct interests in the land, but had a wider impact due to the cultural and strategic importance of Kāwhia to Māori across the inquiry district.

#### 4.6.3 Other alienation mechanisms

The record in respect of the Raoraokauere pre-emption waiver (OLC 76) speaks to clear breaches in the Crown's Treaty obligations. Upon entering the initial transaction, tangata whenua and missionaries evidently had different expectations and understandings of the arrangement, as demonstrated by Māori repossessing land that the missionaries believed they had purchased. There is no evidence that the governor, in considering whether to waive Crown pre-emption, inquired into the original intentions of Māori sellers or examined the nature of customary rights in the affected lands. These omissions were carried over into subsequent considerations of the issue, and ultimately a Crown grant was awarded to the wms in 1862. The Crown thus permanently alienated Māori land without first establishing the intentions and rights of those Māori who transacted the whenua. This constituted a failure by the Crown to fulfil its duty to actively protect Te Rohe Pōtae Māori. The impact of this failure was compounded when the Crown awarded a significantly larger area of land than the wms had claimed.

We share the claimant Tangiwai King's confusion and frustration about the circumstances surrounding the alienation of Ōhau/Nathan's Point (OLC 400). It is not clear to us why an inquiry into the Ōhau transaction was not conducted under the Land Claims Ordinance 1841 or succeeding legislation. Nor is it clear how a Crown grant came to be awarded in the absence of such an inquiry. This underscores the inadequacy of the legislation in actively protecting Māori interests. We find the alienation of this land without any apparent investigation to be a further failure by the Crown to fulfil its duty to actively protect Māori land interests under article 2 of the Treaty.

We make no finding of Treaty breach in respect of Rangitahi (OLC 118). Edward Meurant may have held a valid customary claim to use of the land based on the interests of his high-born Ngāti Mahuta wife, Eliza Kenehuru. That use-right may well have passed to his descendants, whether through custom or legislative provision. There is simply not enough information on the record of inquiry to offer a firm conclusion on this matter.

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193. Submission 3.4.288, p 33.

#### 4.6.4 Prejudice

In consequence of these Treaty breaches, approximately 569 acres of Māori land was permanently alienated in the inquiry district.<sup>194</sup> The commissioners' inquiries into OLC 947 and OLC 948, awarded to the WMS on the shores of Kāwhia, resulted in Crown grants of 160 and four acres respectively, while 76 acres was awarded to the WMS at Whāingaroa in respect of OLC 946. A total of just over 118 acres was awarded to William Johnston for OLC 1040, and a 44-acre block of land at Pouewe was awarded to George Charleton's wife, Ann Charleton, following the commission's inquiry into OLC 1353. In the case of the Raoraokauere Mission Station site, the Crown issued the WMS with a grant for 167 acres of land on the shores of Aotea Harbour.

While small in the context of the inquiry district, the land was of a high quality. Due to the nature of the early Pākehā presence in Te Rohe Pōtae, these blocks all had harbour frontage and were positioned to accommodate arrivals from the sea. Speaking to the quality of Pouewe during his visit to Kāwhia in early 1883, for example, Minister of Native Affairs John Bryce reported that the anchorage near the government's land was very good and that there was 'no doubt' Pouewe was the 'best place that could be found on the whole harbour'.<sup>195</sup> The land granted to Pākehā through the land claims process and the Crown's pre-emption waivers was of considerable value in a seafaring society. Accordingly, we find that Te Rohe Pōtae Māori suffered prejudice as a result of these alienations.

The alienation of Pouewe was the cause of further prejudice to Māori in the inquiry district. During the hearings, we heard of the cultural practices associated with Pouewe prior to its alienation. Speaking of the puna (springs) from which the land was named, Jack Tepai Te Onehahau Cunningham told us that:

Enei puna i muri atu i te papara kauta o Kāwhia me to whare peke o Aotearoa o mua, kotahi te puna i te taha mau i te awa, kotahi puna i te taha katau. Enei puna mo nga wahine kua whanau hei horoi i a rātou, me o rātou pepe, me era mahi a te wahine. Kua paipatia te awa me nga puna. Kua ngaro nga wai e puta mai ana i nga hiwi kua kore e mohiatia he awa, he puna tapu i reira.<sup>196</sup>

These springs are behind the Kāwhia hotel and the old Bank of New Zealand, one on the left side of the river, another on the right. These springs were for women who have given birth, to wash themselves and their babies and that kind of activity for the women. The river and the springs have been piped. The water that comes from the hillsides is lost and the rivers and sacred springs are no longer known there.<sup>197</sup>

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194. The nature of the evidence makes it difficult to be more precise. This figure does not include the land at Te Kōpua and Ōhau that was later returned to Māori ownership, or the Rangitahi land.

195. Document A78 (Marr), p 729.

196. Document N38 (Cunningham), p 4.

197. Document N38(a) (Cunningham), pp 4-5.



The alienation of the land and resulting significant alterations to the site have damaged the relationship between Pouewe and tangata whenua, further aggravating the prejudice for those with a long and intimate association with the land.

#### 4.7 SUMMARY OF FINDINGS

In this section, we summarise our key conclusions and findings in this chapter.

On Māori understandings of pre-Treaty transactions:

- ▶ In the decades prior to the signing of the Treaty of Waitangi, tangata whenua of the inquiry district entered into a range of transactions over land with Europeans.
- ▶ Te Rohe Pōtae Māori entered into these transactions on the understanding that they were traditional arrangements established in accordance with Māori custom, whereby use-rights only were extended to Pākehā newcomers, conditional on their contribution to the community's collective welfare.

On the operation of the land claims commissions in Te Rohe Pōtae:

- ▶ The Crown, in establishing its legislative regime for investigating pre-Treaty transactions, failed to direct commissioners to ascertain Māori custom or tikanga and Māori understandings of the transactions, an omission for which the Crown is wholly responsible.
- ▶ The commissioners' inquiries took the English texts of the deeds of transactions at face value. They paid little or no regard to evidence in te reo Māori or to the cultural context within which the transactions were conducted.
- ▶ In all five old land claims for which the land claims commissions held hearings in Te Rohe Pōtae (OLC 946, OLC 947, OLC 948, OLC 1040, and OLC 1353), the commissioners recommended Crown grants be issued.
- ▶ In each case, Crown grants were duly awarded, thereby transforming pre-Treaty arrangements for conditional use-rights into full and final alienations.
- ▶ The alienation of these lands contradicted obligations placed on Crown officials to deal with Māori land in accordance with their laws and customs and thus constituted a failure by the Crown to fulfil its duty under article 2 of the Treaty to actively protect the rangatiratanga of Te Rohe Pōtae Māori over their lands.

On land granted through other mechanisms:

- ▶ In the case of the Raoraokauere Mission Station at Aotea Harbour (OLC 76), Governor FitzRoy paid little attention to Māori understandings of the transactions when considering the application to waive pre-emption in 1844. The subsequent alienation represented a failure by the Crown to fulfil its duty to actively protect Te Rohe Pōtae Māori interests. The impact of this failure was compounded when the Crown awarded a significantly larger area of land than the wms had claimed.
- ▶ In respect of Ōhaua/Nathan's Point (OLC 400), a Crown grant was awarded for land subject to a pre-Treaty transaction in the apparent absence of any form of inquiry under the land claims legislation, which was a further failure

by the Crown to fulfil its duty to actively protect Māori interests under article 2 of the Treaty.

In consequence of these Treaty breaches under article 2, approximately 569 acres of Māori land was permanently alienated, resulting in prejudice to Te Rohe Pōtae Māori.

## CHAPTER 5

### NGĀ WHAKAWHITI WHENUA I, 1840–65: CROWN PURCHASING, 1840–65

While he remained peacefully at home and sold no land he would be respected by all Europeans but directly he sold any land they would make a slave of him.

—Te Kaka and ‘grand committee’<sup>1</sup>

#### 5.1 INTRODUCTION

This chapter examines Crown purchases of Māori land in the inquiry district between 1840 and 1865. The use and ownership of land was a key area of engagement between iwi and hapū and the Crown after the signing of the Treaty of Waitangi. This included a process to investigate and confirm titles for pre-Treaty transactions, discussed in chapter 4. It also involved the transfer of customary Māori land to Crown ownership. The Crown’s right of pre-emption under the Treaty effectively gave it a monopoly over the purchase of Māori land. For the most part, Māori could not sell directly to settlers.<sup>2</sup>

The Crown’s effort to purchase Māori land in the Te Rohe Pōtae district was described by historian Leanne Boulton as ‘part of a concerted and organised programme of land acquisition undertaken in the 1850s to supply land for European immigrants who were arriving in the colony in increasing numbers.’<sup>3</sup> Negotiations with rangatira from the region began as early as 1842, when Governor William Hobson paid Pōtatau Te Wherowhero and his brother Kati £150 and other goods for their interests in Taranaki.<sup>4</sup> By the early 1850s, when purchasing began in the district, the Crown was under pressure to open up new lands for Pākehā settlement. In addition, the Crown wanted to open routes from the west coast into the interior of the North Island. Due to the difficulty of overland travel, land close to navigable harbours and river mouths was highly valued. The Crown was also attracted by reports of minerals on some of the lands it sought to purchase.<sup>5</sup>

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1. The message given to Taonui Hikaka by Te Kaka and the ‘grand committee’ of Ngāti Maniapoto rangatira who opposed land sales, at Te Paripari in May 1850: Louis Hetet to Donald McLean, 9 May 1850, McLean Papers, Ms-0032-0338 (doc A28, pp 47, 68).

2. With the partial exception of the pre-emption waiver period (1844–45), also discussed in chapter 4.

3. Document A70 (Boulton), p 442.

4. Document A23 (O’Malley), pp 98–99.

5. Document A28 (Thomas), pp 50–51.

Māori had complex motivations for offering land to the Crown. In some cases, transactions seem to have been conceived as assertions of mana rather than ‘sales’ in the European sense. When Te Wherowhero explained his 1842 arrangement with Hobson, he said his actions were in response to earlier payments to other Te Rohe Pōtae leaders for Taranaki: ‘all these Chiefs received payment but I have received none.’<sup>6</sup> Hapū and iwi of the inquiry district also sought to bring settlers and capital to their areas and so access the benefits of Pākehā settlement. By the 1850s, rangatira along the coastal and northern parts of the district had hosted traders and missionaries for several decades. Some, notably Tākerei Waitara and Wiremu Nera Te Awaitaia, sought a greater European presence. But not all Māori supported land sales. In Te Rohe Pōtae, the Crown’s efforts to purchase land met resistance from influential rangatira such as Taonui Hikaka. Nor was resistance to purchasing confined to this district. Throughout New Zealand, attempts to acquire land for the Crown after 1840 were often frustrated by opposition from Māori with rights to the lands in question. The Crown’s determination to continue its purchasing agenda in the face of such opposition was a major factor behind the outbreak of fighting in Taranaki and Waikato in the early 1860s, as discussed in chapter 6.

Between 1851 and 1864, the Crown acquired approximately 150,000<sup>7</sup> acres of Te Rohe Pōtae Māori land in the inquiry district (see table 5.1). Some 25 purchases were made, almost all involving land located on or near the coast (see map 5.1). In the south, near the Mōkau and Awakino river mouths, the Crown acquired four blocks between 1854 and 1857, comprising about 61,000 acres. In the north-west, between 1851 and 1857 the Crown acquired virtually all the land between the Whāingaroa and Aotea Harbours, as well as one block situated between Kāwhia Harbour and the Marokopa River, comprising about 67,000 acres. The Crown attempted, without success, to acquire further land in these areas. In the north of the inquiry district, the Crown acquired about 1,300 acres inland at Ōtāwhao and Rangiaowhia in a series of purchases during the 1850s. Most of this land was granted to Church organisations. Finally, in 1864, after a long series of negotiations, the Crown acquired the Waipa–Waitetuna block, approximately 21,000 acres of which lies within the inquiry district’s northern boundary, including the Pirongia parish extension.

The main sources of evidence addressing these events were reports by Leanne Boulton, Paul Thomas, Kesaia Walker, Vincent O’Malley, Bruce Stirling, and Brent Parker.<sup>8</sup> The chapter also makes use of the land data compiled by Tutahanga Douglas, Craig Innes, and James Mitchell, Innes’s collation of purchase deeds,

6. Document A23, p99.

7. The Tribunal received various estimates from parties on the total amount of land purchased in the inquiry district before 1865: see submission 3.4.130(h), p1 and submission 3.4.309(a), p2. The reasoning behind our estimate of 150,000 acres is set out in table 5.1.

8. Boulton, ‘Hapu and Iwi Land Transactions with the Crown and Europeans in Te Rohe Potae Inquiry District, c1840–1865’ (doc A70); Thomas, ‘The Crown and Maori in Mokau 1840–1911’ (doc A28); Walker, ‘History of pre-1865 Crown Purchase Reserves in Te Rohe Pōtae’ (doc A142); O’Malley, ‘Te Rohe Pōtae Political Engagement, 1840 – 1863’ (doc A23); Stirling, ‘Mokau ki Runga Claim Issues’ (doc A147(b)); evidence of Brent Parker on the Crown’s purchase of Oiōroa Block (doc A153).

Transactions	Block names	Purchase year	Total payment (£ s)	Approximate area (acres) <sup>1</sup>
Mōkau–Awakino	Awakino	1854	530 0	61,054 <sup>2</sup>
	Mokau	1854	100 0	
	Taumata Maire	1855	500 0	
	Rauroa	1857	400 0	
Western harbours	Horea	1850	50 0	67, 147 <sup>3</sup>
	Whaingaroa	1851	600 0	
	Karioi	1855	575 0	
	Ruapuke	1856	300 0	
	Wharauroa	1857	410 0	
	Wahatane	1857	40 0	
	Te Mata	1859	283 0	
	Harihari	1857	400 0	
	Oioroa	1854	100 0	
	Ngāti Raukawa	1856	60 0	
Ōtāwhao and Rangiaowhia	Ngāti Toa-rangatira	1858	240 0	1,305 <sup>4</sup>
	Ōtāwhao mission station lands	1850	£5 and goods of unknown value	
	Ōtāwhao school lands	1850	2 10	
	Awamutu pa	1850	3 0	
	Moeawha	1850	2 10	
	Rangiaowhia church lands	1854	Gift	
	Te Tomo	1855	20 0	
	Paiaka	1855	20 0	
	Te Taruna	1856	Gift	
	Kairanga-pai-hau	1857	Gift	
Waipa–Waitetuna	Waipa–Waitetuna	1864	1,500 0	20,840 <sup>5</sup>
Total approximate area purchased within the inquiry district				150, 346

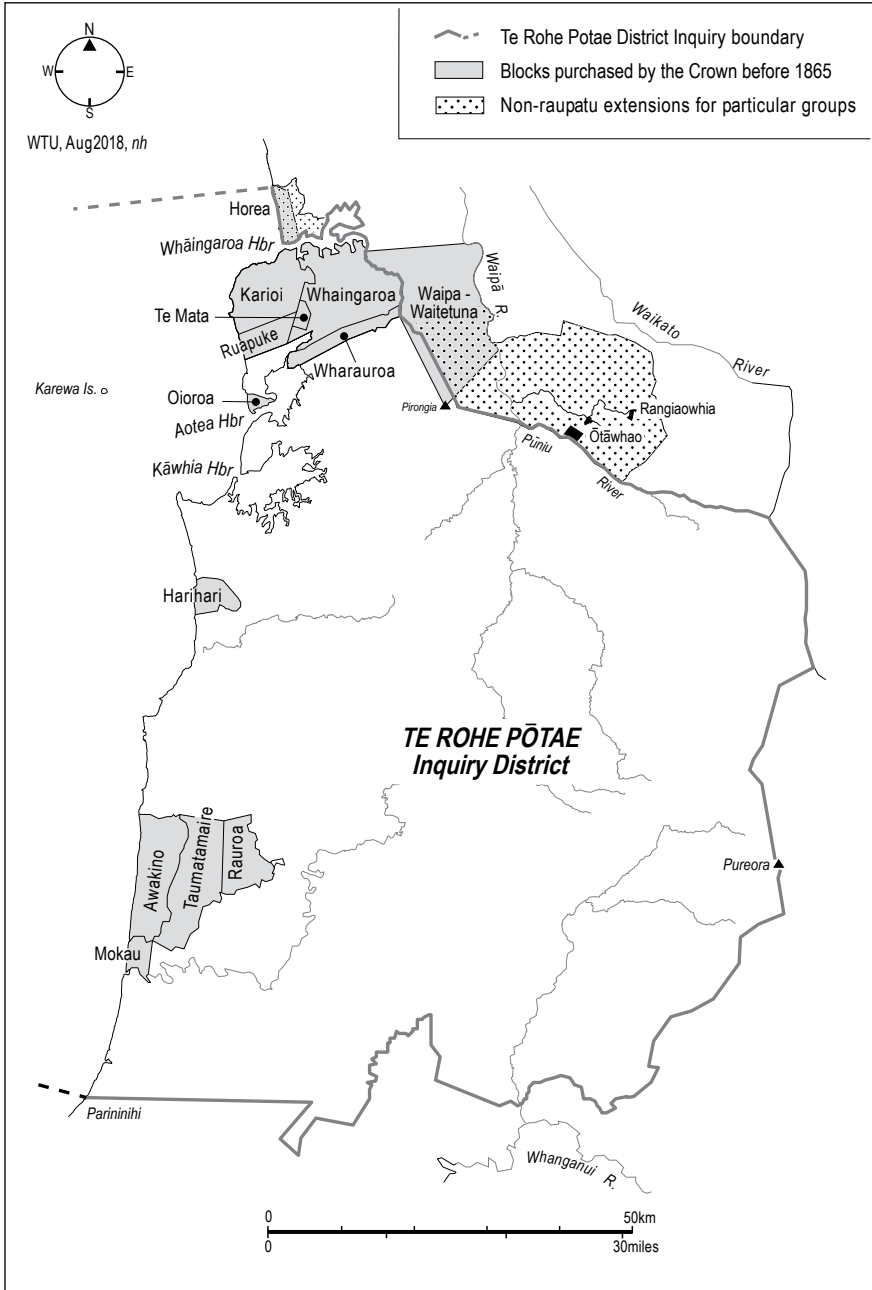
1. These figures are the Tribunal's estimate, based on either Crown survey or modern GIS calculation.

2. Document A21 (Douglas, Innes, and Mitchell), p 41.3. This figure does not include Horea (estimated at between 4,000 and 4,500 acres) as native title to that block was ultimately not extinguished. Nor does it include the 1,159-acre Te Mata block, as this was a reserve within the Whaingaroa purchase area. See doc A21, pp 26, 41; doc A141 (Innes), folder 3, p 80.

4. Document K16 (Maniapoto and Maniapoto), pp 15–29; doc A97 (Borell and Joseph), p 152.

5. According to figures calculated by the Tribunal's mapping officer, about 20,840 of the estimated 53,276 acres that made up the Waipa–Waitetuna block are located within the inquiry district. For further discussion, see section 5.6.

Table 5.1: Crown purchases in the inquiry district, 1851–64



Map 5.1: Crown purchasing in the inquiry district, 1840–65

as well as documents presented by claimant Harold Maniapoto relating to the Ōtāwhao and Rangiaowhia transactions.<sup>9</sup>

### 5.1.1 The purpose of this chapter

The main task of this chapter is to assess the Crown's conduct in purchasing Te Rohe Pōtae Māori land before 1865 against the guarantees in the Treaty of Waitangi and the statements made by Crown officials of the time.

It was British secretary of state for the colonies Lord Normanby who first established the basic standards for the purchase of Māori land (see chapter 3).<sup>10</sup> Normanby, in his August 1839 instructions to Hobson, ordered officials seeking to acquire land to first establish 'the free and intelligent consent of the Natives, expressed according to their established usages'.<sup>11</sup> All purchases were to be conducted with 'sincerity, justice and good faith'. Hobson was further instructed that Māori were not to 'be permitted to enter any contracts in which they might be the ignorant and unintentional authors of injuries to themselves', and that the Crown's acquisition of land 'must be confined to such districts as the natives can alienate, without distress or serious inconvenience to themselves'.<sup>12</sup>

As set out in previous chapters, Normanby's instructions formed the basis for article 2 of the Treaty of Waitangi, which affirmed to Māori 'te tino rangatira o o ratou wenua o ratou kainga me o ratou taonga katoa'. This phrase was rendered in the English text as 'full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties'.<sup>13</sup> Previous Tribunals have understood it to mean the 'highest chieftainship' over lands, homes, and all other things valued by Māori.<sup>14</sup>

Normanby's instructions were affirmed in 1845 by secretary of state Lord Stanley. Stanley told the British Parliament that the Treaty guaranteed to Māori their property according to their own law and custom. He declared:

these rights and titles the Crown is bound in honour to maintain, and the interpretation of the treaty of Waitangi, with regard to these rights is, that except in the case

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9. Douglas, Innes and Mitchell, 'Alienation of Māori land within Te Rohe Pōtae inquiry district 1840–2010: A quantitative study' (doc A21); Innes, 'Te Rohe Pōtae Crown Purchase Deed Document Bank' (doc A141); Brief of evidence and appendices to the evidence of Harold and Thomas Maniapoto (docs K16, K16(a)).

10. For Normanby's instructions, including the quoted passages, see doc A23, pp 60–63.

11. Document A23, p 61.

12. Document A23, p 63.

13. Waitangi Tribunal, *He Whakaputanga me te Tiriti: The Declaration and the Treaty* (Wellington: Legislation Direct, 2014), p 393.

14. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, 2nd ed (Wellington: Brooker and Friend, 1991), p 188; Waitangi Tribunal, *Report of the Waitangi Tribunal on the Motunui–Waitara Claim*, 2nd ed (Wellington: Government Printing Office, 1989), p 51; See also Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 346–347, 349–351.

of the intelligent consent of the natives, the Crown has no right to take possession of land . . .<sup>15</sup>

What did become a matter of contention for Crown officials, however, was whether all the land in New Zealand could be said to be subject to Māori customary law and thus protected under the Treaty. In 1846, Stanley's successor Earl Grey instructed Governor George Grey to acquire 'unoccupied' Māori land. Māori would be given title to occupied or cultivated lands, and the Crown would own the remainder.<sup>16</sup> This has since been referred to as the 'waste land theory'.<sup>17</sup> The resulting protest made clear to Governor Grey that Māori would resist the wholesale acquisition of unoccupied lands. In May 1848, he promoted instead what he termed a 'nearly allied principle'. As the Te Tau Ihu Tribunal described it:

Maori could be persuaded to sell their waste lands for a nominal sum – maybe even for no payment at all, so long as their mana was acknowledged – and then their titles to land in actual occupation would be registered as reserves, just as if that had been all they had ever owned.<sup>18</sup>

After acquiring large tracts of Māori land in a region for nominal prices, Grey suggested, the reserves set aside by the Crown would be the 'only admitted claims of the natives in that district'.<sup>19</sup> Although the British Government accepted Grey's advice, he was instructed to uphold the Treaty, which, he was told, secured to Māori 'a title to those lands which they possessed according to native usage (whether cultivated or not)'.<sup>20</sup>

Grey may have been the architect of the Crown's purchasing regime, but its application in this period relied on individual Crown purchase agents. Initially, the purchase of Māori land was overseen by the protector of Aborigines, but after 1849 it became the responsibility of the surveyor-general, at that time Charles Whybrow Ligar. In December 1849, Ligar received a general set of instructions from the colonial secretary, Andrew Sinclair. He was to purchase, with haste, blocks of land 'of the largest extent possible, and in position and in character adapted for the immediate wants of the Europeans'. Ligar was told that the Governor thought it essential to set aside 'good reserves' that were 'carefully agreed on and marked out before the purchase is completed'.<sup>21</sup> Acting on these instructions, Ligar began negotiations at Whāingaroa Harbour that led to the purchase of the Whāingaroa block.

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15. Stanley to Grey, 15 August 1845, quoted in Waitangi Tribunal, *Te Tau Ihu o Te Waka a Maui: Report on Northern South Island Claims*, 3 vols (Wellington: Legislation Direct, 2008), vol 1, p 295.

16. Document A23, p 89.

17. Waitangi Tribunal, *Te Tau Ihu o Te Waka a Maui*, vol 1, p 299.

18. Waitangi Tribunal, *Te Tau Ihu o Te Waka a Maui*, vol 1, p 300.

19. Waitangi Tribunal, *The Wairarapa Ki Tararua Report*, 3 vols (Wellington: Legislation Direct, 2010), vol 1, pp 54–58; doc A23, pp 88–89.

20. Waitangi Tribunal, *Te Tau Ihu o Te Waka a Maui*, vol 1, p 303.

21. Sinclair to Ligar, 13 December 1849 (doc A70, p 163).



Ligar was also involved in marking out the Te Mata reserve from that purchase, which was later alienated to the Crown.

Donald McLean became the central figure within the Crown's purchasing regime. McLean began purchasing land for the Crown while employed as inspector of police at New Plymouth. Between 1846 and 1851 he oversaw the purchase of almost one million acres of land in Hawkes Bay, Rangitikei, Whanganui, and Taranaki.<sup>22</sup> He later became chief commissioner of the Native Land Purchase Department, which was officially established in 1854, though it had operated informally since 1850.<sup>23</sup> McLean would become Native Minister in 1869. As head of the purchase department, McLean oversaw several district commissioners and other officers responsible for buying land in different regions of New Zealand. At Mōkau and Awakino, however, McLean himself led purchase negotiations in the 1850s, though he relied on his subordinates to work out the details. He also initiated the complex series of transactions that took place on the north-west coast of the inquiry district after 1854, but again left others finalise the purchases.

McLean's main assistant in the inquiry district was John Rogan, a former New Zealand Company surveyor. From 1845, Rogan was employed by the provincial government in New Plymouth, where he met McLean and became involved in early surveys and negotiations for the Awakino and Mokau blocks.<sup>24</sup> From 1854, he was a land purchase commissioner, in which capacity he took a lead role in completing purchases at Taumatamaire and Raoroa, and around the Whāingarōa, Aotea, and Kāwhia Harbours. In 1863, he was briefly involved in negotiations for the Waipa–Waitetuna block. In 1865, he was appointed one of the first Native Land Court judges. He later also became a judge of the compensation court established to compensate 'loyal' Māori after the Taranaki and Waikato wars.

Other Crown officials who were involved in land purchasing transactions during this period include William Searancke, John Grant Johnson, and Henry Tacy Kemp. Governor Grey himself conducted land purchases on behalf of missionary organisations at Ōtāwhao and Rangiaowhia in the 1850s. The task of finalising the 1864 Waipa–Waitetuna purchase fell to Henry Hanson Turton, a former Wesleyan missionary. Turton was also commissioner for the investigation of native titles at that time, another role that involved assessing compensation for Māori whose land had been confiscated (see chapter 6, section 6.9).

### 5.1.2 How the chapter is structured

This chapter examines Crown purchasing of Māori land in the inquiry district from 1840 until 1865. Section 5.2 establishes the issues for Tribunal determination. The chapter then assesses the transactions, organised geographically: first,

22. Document A70, p164; Ray Fargher, *The Best Man Who Ever Served the Crown? A Life of Donald McLean* (Wellington: Victoria University Press, 2007), p 58.

23. Fargher, *The Best Man Who Ever Served the Crown?*, pp130, 164; Alan Ward, 'Donald McLean', in *The Dictionary of New Zealand Biography*, ed WH Oliver (Wellington: Allen & Unwin; Department of Internal Affairs, 1990), vol 1, p 256.

24. 'The Late Judge Rogan', *Auckland Star*, 1 July 1899.

in section 5.3, the Mōkau–Awakino purchases are examined; then, in section 5.4, those around Whāingaroa Harbour and the north-west coast. The Ōtāwhao and Rangiaowhia transactions are addressed next in section 5.5, and finally the sale of the Waipa–Waitetuna block is discussed in section 5.6. Each section concludes with Treaty analysis and findings. The chapter ends with an assessment of prejudice in section 5.7 and a summary of findings, section 5.8.

## 5.2 ISSUES

This section establishes the issues for Tribunal determination. It looks at relevant findings of other Tribunals, the Crown's concessions and acknowledgements, and claimant and Crown arguments, before distilling a series of issue questions to focus our analysis of Crown purchasing in the inquiry district before 1865.

### 5.2.1 What other Tribunals have said

The Waitangi Tribunal has now considered Crown purchases prior to 1865 in a number of reports, including those arising from the Ngāi Tahu, Muriwhenua Land, Mohaka ki Ahuriri, Te Tau Ihu, and Wairarapa ki Tararua inquiries.

Past Tribunals have noted that, by signing the Treaty, Māori did not necessarily agree to sell their lands only to the Crown.<sup>25</sup> In the Māori text, pre-emption was translated as 'hokonga', understood to refer to buying, selling, or trading, but not denoting any exclusive right. Much, therefore, would have depended on how this clause was explained to the signatories in te reo.<sup>26</sup>

In any case, Tribunals have agreed that whenever the Crown granted itself exclusive purchasing rights, its obligation to protect Māori interests was heightened.<sup>27</sup> The Ngāi Tahu Tribunal found that the granting of a pre-emptive monopoly under article 2 of the Treaty imposed significant reciprocal obligations on the Crown. With Māori unable to find alternative buyers, the Crown was under a strong obligation to ensure that those with whom it was dealing did indeed wish to sell. It was likewise obliged to deal with the utmost good faith in such matters as the quantity of land purchased and the price paid. In Treaty terms, the Crown's duty of active protection obliged it, when exercising its right of pre-emption, to ensure that sellers fully understood the implications of selling their land and that each tribe was left with a sufficient endowment for its own present and future needs.<sup>28</sup> The

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25. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, pp 350–351; Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 1, pp 77–78.

26. There is no evidence of any specific discussion of the right of pre-emption with Te Rohe Pōtae signatories, though the missionary Robert Maunsell later said that Māori who signed at Waikato Heads did so on the understanding that 'they retained the rights over their lands but the Queen had power to make laws' (see chapter 3, section 3.3.3).

27. Waitangi Tribunal, *The Pouakani Report 1993* (Wellington: Brooker's Ltd, 1993), pp 240–242; Waitangi Tribunal, *Te Kāhui Maunga: The National Park District Inquiry Report*, 3 vols (Wellington: Legislation Direct, 2013), vol 2, pp 386–388, 418.

28. Waitangi Tribunal, *The Ngāi Tahu Report 1991*, 3 vols (Wellington: Brooke and Friend, 1991), vol 2, p 277, vol 3 pp 825–826, 832.

Wairarapa ki Tararua Tribunal went further, arguing that the Crown, by asserting pre-emptive purchasing powers, knowingly entered a fiduciary relationship. This obliged the Crown not only to actively protect Māori land interests, but also to act, as the British colonial under-secretary Herman Merivale put it in 1848, as a ‘trustee for the public good and more particularly as guardian of the native races.’<sup>29</sup>

Previous Tribunals have emphasised that the Crown understood the importance of following exacting standards of conduct when purchasing Māori land. The Te Tau Ihu Tribunal, for example, found that ‘the Crown, in the circumstances of the time, considered prior investigation of Maori customary rights, as determined by their own customary law, to be a vital pre-requisite to its acceptance of any decision to sell.’<sup>30</sup> The Wairarapa ki Tararua Tribunal found similarly that Crown purchase agents in that region were aware that there was a set of best practice standards which needed to be applied to ensure that Māori did not enter into bargains that were injurious to their wellbeing. To meet these standards, the Tribunal found, the Crown had to ensure that:

- ▶ the rightful owners were the ones selling the land;
- ▶ any disputes regarding rights were resolved before the transactions were completed;
- ▶ boundaries were clearly marked;
- ▶ the price was fair;
- ▶ consent was informed and freely given; and
- ▶ sufficient reserves had been set aside for the long-term interests of tangata whenua.<sup>31</sup>

The Mohaka ki Ahuriri Tribunal agreed that these standards were known to the agents conducting land purchases, and summarised the Crown’s obligations as follows:

In essence, in purchasing a block of land the Crown had to be sure at all times that all Maori who held rights were fully informed on the meaning and permanence of a sale, that they knew its full extent (from a survey or a walking of the boundaries or both), and that they readily assented to the sale, as evidenced by witnessed signatures or marks on the deed. Those who still opposed the sale after all of this were entitled to have their interests cut out of the block.<sup>32</sup>

Where land purchase agents failed to satisfy the Crown’s own standards, Tribunals have concluded that the Crown breached the principles and plain meaning of article 2 of the Treaty. After considering Donald McLean’s purchasing practices in the Wairarapa region, for example, the Wairarapa ki Tararua Tribunal concluded that the Crown failed to adequately investigate all potential right-holders

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29. Merivale to Beecham, 13 April 1848, quoted in Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 1, pp 78–79.

30. Waitangi Tribunal, *Te Tau Ihu o Te Waka a Maui*, vol 1, p 441.

31. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 1, pp 104–105.

32. Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, p 120.

and that it acquired land before establishing the shares, area, price, and boundaries of the affected areas. This meant that the Crown failed to fulfil its duty of good faith and breached its duty of active protection to Māori.<sup>33</sup>

On the issue of sufficiency, other Tribunals have emphasised the Crown's failure, when reserving land from pre-1865 purchases, to establish clear guidelines regarding the present and future needs of Māori. The Muriwhenua Land Tribunal, for example, suggested that, to establish the area of land that would have constituted 'ample reserves', the Crown should have ascertained the size of the Māori population and 'the quantity, quality, location, and tenure of land required for their future wellbeing'.<sup>34</sup>

Tribunals have similarly found that the Crown had a duty to protect reserved land from future alienation that risked further diminishing the land base of iwi and hapū. This duty was heightened where the Crown itself purchased land that had been previously reserved or excluded from sale. Discussing the purchasing of reserves immediately after setting the land aside, the Wairarapa ki Tararua Tribunal said:

in a land-based economy like New Zealand in the nineteenth century, Māori needed land if they were to foot it in the new settler dispensation. Quite simply, too little land was reserved. Under these circumstances for the Crown to buy up such reserves as it had seen fit to make – sometimes immediately after making them – was simply opportunistic. It militated against the likelihood that Māori would ever be able to engage in the new economy, and was therefore by definition inappropriate behaviour for the Crown.<sup>35</sup>

### 5.2.2 Crown concessions and acknowledgements

In this inquiry, the Crown did not ultimately concede any Treaty breaches in relation to Crown purchases before 1865. In opening submissions, the Crown did make one 'conditional' concession in relation to the sufficiency of its purchase reserves:

The Crown concedes that where it did not reserve sufficient land for the present and future needs of the iwi and hapū of the Rohe Pōtae when purchasing land from them before 1865, it failed to uphold its duty under the Treaty of Waitangi and its principles to actively protect the interests of the iwi and hapū of the Rohe Pōtae from whom it purchased land.<sup>36</sup>

In closing submissions, however, the Crown effectively withdrew this concession, submitting 'that there is no evidence on the record of inquiry that supports

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33. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 1, pp 185–186.

34. Waitangi Tribunal, *Muriwhenua Land Report* (Wellington: GP Publications, 1997), p 333.

35. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 1, p 262.

36. Statement 1.4.3, p 58.

the application of this concession to any of the pre-1865 transactions in the inquiry district.<sup>37</sup>

### 5.2.3 Claimant and Crown arguments

The Tribunal received around 30 specific claims related to the purchase of Māori land in the inquiry district before 1865.<sup>38</sup> The parties were largely in agreement about the standards that applied to the Crown's conduct when it purchased Māori land during this period. The claimants' overall submissions emphasised the Crown's Treaty duties of good faith and active protection.<sup>39</sup> The Crown, for its part, accepted that it was required 'to exercise its monopoly powers of purchase fairly and responsibly, and to apply high standards of good faith and fair dealing while the monopoly was in place'.<sup>40</sup>

The parties fundamentally disagreed, however, on the question of whether the Crown's actions in this inquiry district met the required standards. Indeed, they could hardly have been further apart. The claimants said that all of the land acquired by the Crown before 1865 was procured in breach of Treaty principles, whereas the Crown said 'there is no evidence before the Tribunal demonstrating that land was acquired by the Crown in the Rohe Pōtae in pre-1865 transactions in breach of the Treaty'.<sup>41</sup>

Broadly, the claimants' concerns were threefold.

- ▶ First, the claimants said the Crown pursued transactions in the rohe despite growing opposition from some of those who held customary rights to land. The Crown made inadequate attempts to identify all right holders, and instead repeatedly conducted land transactions with willing sellers only.<sup>42</sup>
- ▶ Secondly, the claimants said that the Crown failed to establish the free and informed consent of right holders. The Crown, claimants said, failed to ensure that Māori fully understood the nature of the alienations and used the promise of European settlement to promote its purchasing agenda.<sup>43</sup> The claimants said the Crown, after acquiring the land, sometimes held it back from sale to Pākehā settlers, leading some Māori to conclude that the purchases were not permanent alienations. To this end, counsel submitted that the Crown was 'reckless and manipulative' in making assurances to Te Rohe

37. Submission 3.4.289, p 11.

38. Wai 1469 (submission 3.4.228); Wai 2014 (submission 3.4.208); Wai 1500 (submission 3.4.160); Wai 1598; Wai 535 (submission 3.4.243(a)); Wai 691, Wai 788, Wai 2349 (submissions 3.4.246 and 3.4.246(a)); Wai 849 (submission 3.4.194); Wai 1747; Wai 426 (submission 3.4.146); Wai 827 (submission 3.4.245); Wai 1448, Wai 1495, Wai 1501, Wai 1502, Wai 1592, Wai 1804, Wai 1899, Wai 1900, Wai 2126, Wai 2135, Wai 2137, Wai 2183, Wai 2208 (submission 3.4.237); Wai 1588, Wai 1589, Wai 1590, Wai 1591 (submission 3.4.143); Wai 1897 (submission 3.4.148); Wai 125 (submission 3.4.210); Wai 1327 (submission 3.4.249(c)); Wai 2273 (submission 3.4.141).

39. Submission 3.4.105, p 5.

40. Submission 3.4.289, p 3.

41. Submission 3.4.105, p 46; submission 3.4.289, pp 24–25.

42. Submission 3.4.105(a), pp 19–20, 27, 32–33.

43. Submission 3.4.105, pp 38–42.

Pōtae Māori to induce them to sell, ‘when those assurances were not ultimately fulfilled’.<sup>44</sup> The claimants also pointed to what they said were ‘sharp’ or unethical practices employed by the Crown to promote its purchasing aims; the payment of unfairly low prices for some land; and a failure in some cases to adequately identify the extent of land to be alienated.<sup>45</sup>

- ▶ Thirdly, the claimants said the Crown failed to set aside and protect sufficient land from its purchases. They pointed to instances in which the Crown failed to deliver agreed reserves in a timely manner or in the correct location. The claimants alleged that in some cases the Crown allowed reserves to be purchased by settlers, and that the Crown itself purchased some reserved land, despite knowing it had been set aside to benefit Māori.<sup>46</sup>

Together, the claimants said, the three areas of Crown misconduct amounted to serious breaches of the Crown’s Treaty duties of good faith and active protection. As a result, Te Rohe Pōtae Māori were prejudiced ‘at an economic, cultural and spiritual level’. Moreover, claimants said, the extent of prejudice was greater for Māori opposed to land sales, and for those from whom the Crown purchased the most land.<sup>47</sup>

The Crown, for its part, denied that it breached Treaty principles by purchasing Māori land in this period. On the contrary, counsel said, ‘all pre-1865 transactions were entered into with willing sellers who had rights to the land, accepted the payments as adequate, and were not coerced into the transactions in any way’.<sup>48</sup> Where it encountered resistance from Māori to its purchasing activities, the Crown said, it did not ‘blindly’ accept offers but took a cautious approach including where there was opposition to sales or contests over ownership.<sup>49</sup>

The Crown acknowledged evidence that its purchasing methods in the inquiry district shifted over time. At first, the Crown said, it negotiated land sales on ‘a more collective basis, through the use of hui to reach agreement amongst the owners’. From the mid-1850s, though, the Crown’s strategy changed. Instead of large hui, the Crown ‘tended to seek out willing sellers, making initial payments to individuals or smaller groups for their interests in various lands with the hope of securing purchases of large blocks’.<sup>50</sup>

However, the Crown did not accept that either of these approaches necessarily breached Treaty principles or caused prejudice to Māori. The Crown rejected the proposition that its purchases were ‘generally undertaken in an underhanded or unfair way’.<sup>51</sup> The Crown submitted, further, that there was no evidence that Māori

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44. Submission 3.4.105, p 38.

45. Submission 3.4.105(a), pp 23–28.

46. Submission 3.4.105, pp 27–29; submission 3.4.105(a), pp 14–17.

47. Submission 3.4.105, pp 45–46; submission 3.4.105(a), pp 33–36.

48. Submission 3.4.289, p 3.

49. Submission 3.4.289, pp 4.

50. Submission 3.4.289, p 5.

51. Submission 3.4.289, p 5.

misunderstood the nature of the transactions, or were unhappy with payment, and little to suggest that purchase prices or other Crown actions relating to the purchases were in any way unfair.<sup>52</sup>

The Crown said it did not have a duty to create reserves in all pre-1865 transactions, and argued that all purchases in this period left Te Rohe Pōtae Māori with sufficient land ‘for their present and future needs’.<sup>53</sup> The Crown did, however, make a series of acknowledgements about its administration of reserved lands from pre-1865 purchases in the inquiry district. It noted that ‘some of these reserves were not protected from alienation’, and acknowledged evidence that the Crown itself purchased reserve land, including the 1,159-acre Te Mata block at Whāingaroa. The Crown further acknowledged that ‘in some instances it took a long time or was difficult for the owners to receive title to properly utilise the land’.<sup>54</sup>

The Crown therefore conceded the possibility that it ‘may have breached the Treaty where reserve land was on-sold by mistake, or where substituted land was inadequate to compensate for the intended purpose of the original reserve or for the cultural significance of the original reserve’.<sup>55</sup> Ultimately, however, the Crown argued that there was insufficient evidence available to properly establish any breach of Treaty principles or specific prejudice to Māori.<sup>56</sup>

#### 5.2.4 Issues for discussion

Having reviewed the Tribunal Statement of Issues for this inquiry<sup>57</sup> and briefly summarised the parties’ arguments, we now identify the issues for us to determine. Our questions are:

- ▶ Did the Crown fully investigate customary tenure to the land it sought to purchase, including by properly identifying all customary right holders with interests in the land?
- ▶ Did the Crown establish the free and informed consent of right holders, including by:
  - properly identifying the land it was seeking to purchase at the time of the transaction;
  - ensuring that right holders understood the nature of the transaction;
  - using fair negotiation tactics;
  - dealing fairly with opponents to the sale;
  - paying a fair market price; and
  - ensuring payment was distributed fairly?
- ▶ Did the Crown ensure right holders retained sufficient land for their present and future needs?

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52. Submission 3.4.289, p1.

53. Submission 3.4.289, pp 6–7.

54. Submission 3.4.289, p16.

55. Submission 3.4.310(d), p 25.

56. Submission 3.4.310(d), pp 25–26.

57. Statement 1.4.3, pp 57–59.

### 5.3 THE MŌKAU–AWAKINO TRANSACTIONS

The Crown began negotiating to purchase land at Mōkau, in the south-western corner of the inquiry district, in 1850. A sustained effort by Crown officials, between 1854 and 1857, resulted in four purchases totalling some 61,000 acres:

- ▶ The Awakino block, estimated at 16,000 acres but later found to be 23,000 acres, was purchased in March 1854.
- ▶ The Mokau block was purchased in May 1854. Nominally comprising 2,500 acres, the extent of the land actually acquired by the Crown was uncertain because opponents to the transaction withheld substantial and ill-defined areas from the sale. It has since been calculated at about 850 acres.
- ▶ The 26,700-acre Taumatamaire block was purchased in January 1855.
- ▶ The 10,200-acre Rauoa block was purchased in July 1857.<sup>58</sup>

The Mōkau area is of great significance to Māoridom. As the resting place of the anchor stone of the *Tainui*, which was placed in the mouth of the Mōkau River prior to the waka's final journey north to Kāwhia, it is especially important to the Tainui people (see chapter 2). The region's natural abundance, as well as the access afforded to the interior of the North Island via the Mōkau and Awakino Rivers, made Mōkau a highly-prized economic and strategic asset. In addition, the Mōkau region was part of a longstanding border zone between the peoples of Taranaki and Waikato-Maniapoto. The people of Mōkau played vital roles in the conflict, conquest, and peace-making of the 1820s and 1830s, discussed in chapter 2, section 2.5.2.8.<sup>59</sup>

The Mōkau–Awakino purchases of the mid-1850s were the first land transactions between the Crown and Ngāti Maniapoto. They emerged from a desire on the part of some Mōkau Māori for Pākehā settlement and access to European goods and capital. The Mōkau rangatira Tākerei Waitara had spearheaded successful efforts to foster trade with Europeans through the late 1840s. Inland Māori with interests at Mōkau, including the Ngāti Rōrā rangatira Taonui Hikaka, were also in favour of accessing European goods and had facilitated the settlement of French trader Louis Hetet for that purpose.<sup>60</sup>

The Crown's interest in Mōkau reflected increased settler demand for land, as well as the suitability of the area for European settlement and economic development. By 1850, settlers in Taranaki had become frustrated by growing Māori opposition to land sales around New Plymouth and began pressuring the Government to acquire land to the north, including around Mōkau.<sup>61</sup> The mouth of the Mōkau River was seen as a potential port, and there were reports of rich mineral deposits upriver, including coal said to resemble that of Newcastle-upon-Tyne, 'which makes the best coke in the world.'<sup>62</sup>

58. Document A70, p 256; doc A21 p 41; doc A147(b) (Stirling), pp 77–78.

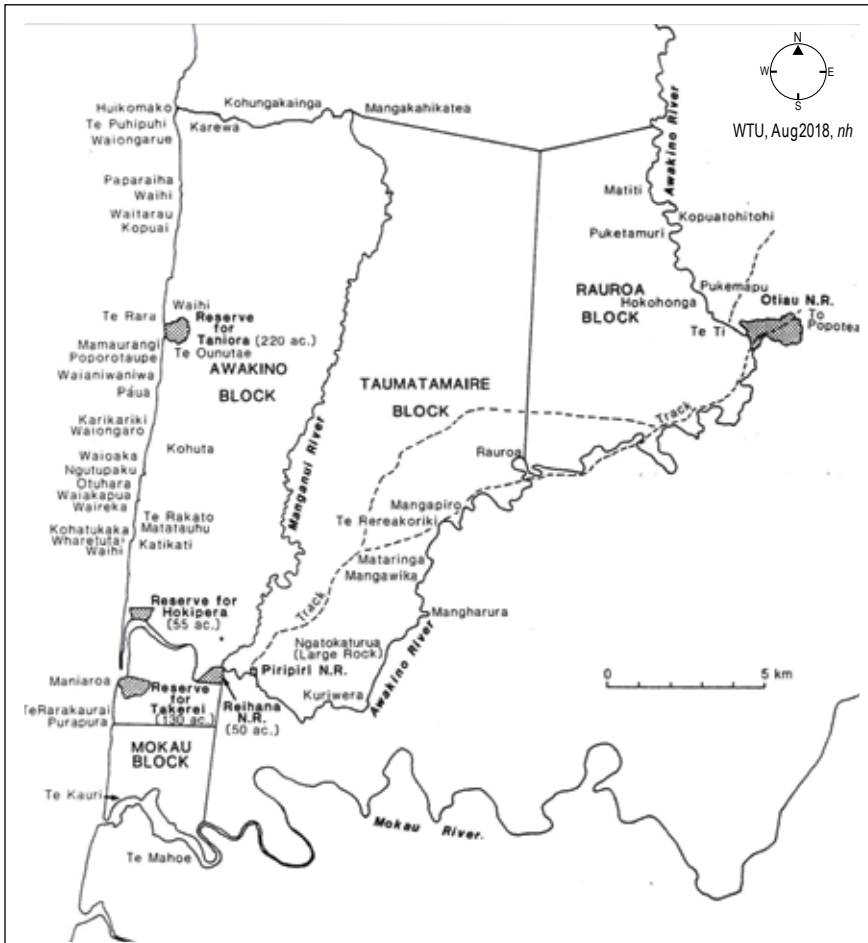
59. Document A28, pp 11–13; doc A70(b), p 9.

60. Document A28, pp 34–35; doc A70, pp 17–18, 157.

61. Document A70, p 159; doc A28, pp 50–51.

62. Document A70, p 159; doc A28, p 71.





Map 5.2: The Mōkau–Awakino transactions

While the Crown and some Māori were eager to engage in land transactions, others remained cautious. In the aftermath of the conflict between Waikato-Maniapoto and Taranaki in the early nineteenth century, and particularly as Taranaki Māori looked to return to the coastal districts south of Mōkau, some Ngāti Maniapoto leaders were concerned to control European access into the region. Taonui asserted his authority at Mōkau in the mid-1840s by placing a tapu on the Mōkau region. Worried by the effect that this would have on trade, Tākerei eventually persuaded Taonui to lift the tapu, on the assumption that they would be able to maintain control for their mutual benefit.<sup>63</sup> (For a more detailed account of these events, see chapter 3, section 3.4.3.3.)

63. Document A28, pp 37–39; doc A70, pp 179–180.

Tensions along the northern Taranaki coast eased further in April 1848, when Tākerei and other Ngāti Maniapoto hosted a large party of Te Ātiawa, led by Te Rangitake. Many were returning from years spent living in the Kapiti region. The result of the hui appears to have been agreement to establish a clear demarcation at Waikāramuramu, south of Parininihi and north of Pukearuhe (see chapter 6). However, the potential for discord was not altogether removed. Also in April 1848, the Taranaki rangatira Te Teira sent a letter to McLean offering to sell land along the Poutama coast north of Waikāramuramu, including Mōkau and Mohakatio. This was an area where Ngāti Maniapoto asserted substantial interests.<sup>64</sup> In this context, the Crown's return to the area to purchase land in the 1850 was significant. Relationships would need to be handled well.

### 5.3.1 The parties' positions

The Tribunal received several submissions relating specifically to the four Mōkau–Awakino transactions.<sup>65</sup>

In submissions on the Awakino purchase, claimants argued that the Crown failed to identify and establish the consent of all right holders and ignored ongoing opposition from some right holders.<sup>66</sup> The claimants suggested that the Crown used the promise of a European settlement at Mōkau to promote its purchasing agenda, and in doing so, made assurances to Tākerei and others that they would benefit economically from the transaction. This amounted to a failure to ensure that Māori fully understood the nature of the alienation. The claimants argued that, for Mōkau Māori, the sale of the land was conditional on the establishment of a European settlement. They also said this and the other Mōkau transactions were conducted in accordance with customary expectations that future generations would continue to benefit from their association with the land.<sup>67</sup> In addition, claimants said the Crown failed to pay a fair price for the land, and raised numerous issues regarding the Crown's administration of reserved lands.<sup>68</sup>

In submissions on the Mokau purchase, the claimants argued that the Crown failed to identify all customary right holders and continued to pursue its purchasing agenda despite significant opposition. They alleged that the Crown pressured some Māori to promote the sale of the land to other Māori; that the purchase price paid for the Mokau block was unfair; that the Crown used the provision of reserves to pacify opposition, allowing it to avoid determining the rights of those opposed to the land that would be sold; and that the Crown failed in its responsibility to protect land set aside from the transaction.<sup>69</sup>

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64. Document A28, pp 62–64.

65. Wai 535 (submission 3.4.243(a)); Wai 691, Wai 788, Wai 2349 (submissions 3.4.246 and 3.4.246(a)); Wai 849 (submission 3.4.194).

66. Submission 3.4.105, p 25; submission 3.4.243(a), p 12.

67. Submission 3.4.105, pp 38–42; submission 3.4.243(a), pp 9–12; submission 3.4.246(a), p 135.

68. Submission 3.4.246, pp 94–100.

69. Submission 3.4.105, pp 19–21, 33–38; submission 3.4.246, pp 85–89, 94–109; submission 3.4.246(a), pp 139–141.

In submissions on the Taumatamaire purchase, the claimants argued that the Crown failed to identify all right holders with interests in the land and that it completed the transaction in the face of ongoing opposition from some Mōkau Māori. The claimants alleged that the Crown failed to protect land set aside from the alienation.<sup>70</sup>

In submissions on the Rauroa transaction, the claimants said the Crown failed to identify all right holders before completing the transaction, paid an inadequate price for the land, and set aside inadequate reserves.<sup>71</sup> In addition, the claimants suggested that the Crown delayed surveying the Rauroa block in a deliberate move to impoverish Mōkau Māori and thereby promote further land sales.<sup>72</sup>

The Crown, for its part, cited the Awakino purchase in support of its position that pre-1865 Crown purchases were initiated by willing Māori sellers, who accepted the price as adequate and were in no way coerced. Crown counsel pointed to ‘the large amount of evidence concerning Takerei’s enthusiasm and persistence in seeking a sale to the Crown.’<sup>73</sup> Counsel also rejected claimant assertions that the Crown gave assurances that European settlement would follow any purchase, citing Boulton’s statement that ‘no specific representation to this effect was made by the Crown.’<sup>74</sup>

The Crown did not specifically address the circumstances of the Mokau block purchase. In closing submissions, the Crown said it was unaware of any pre-1865 transactions ‘that amounted to less than outright sales’, noting that ‘some purported sales were not completed, although some payments may have been made by the Crown with the intention of securing purchases.’<sup>75</sup> The Crown made no specific submissions on the Taumatamaire or Rauroa purchases.

The Crown did note issues with the later substitution of land for Weterē’s and Reihana’s 50-acre reserves in the Awakino block, and accepted there was ‘*prima facie* evidence of prejudice resulting from title delays and/or failure to protect reserves by survey or otherwise’. Ultimately, though, the Crown said there was no evidence of Māori protest or opposition to the substitutions, and no specific prejudice had been demonstrated.<sup>76</sup>

### 5.3.2 Background to the transactions

The Mōkau–Awakino transactions had their origins in Crown efforts to cement closer relationships with Mōkau hapū. In the late 1840s, Governor Grey and land purchase officer Donald McLean visited Mōkau several times. They sought to foster a relationship with Tākerei Waitara, a Ngāti Maniapoto rangatira who was known to be eager to take advantage of trade opportunities with Pākehā.<sup>77</sup> In 1847,

70. Submission 3.4.243(a), pp 11–14; submission 3.4.246(a), p 140.

71. Submission 3.4.105, pp 43; submission 3.4.246(a), p 135; submission 3.4.243(a), p 13.

72. Submission 3.4.105, pp 42–44.

73. Submission 3.4.289, p 4.

74. Submission 3.4.289, p 18.

75. Submission 3.4.289, p 14.

76. Submission 3.4.289, p 7; submission 3.4.310(d), p 25–26.

77. Document A110 (Joseph), p 458.

Tākerei Waitara visited Grey in Auckland in the hope that Grey could assist in securing the sailing ship *Hydrus*. He had purchased the vessel some years previously but was yet to take possession of it. Grey returned Tākerei's visit in 1849, personally delivering the *Hydrus* to Mōkau. It was then that Tākerei took Grey's name: Tā Kerei, or Sir Grey.<sup>78</sup>

In March 1850, Tākerei and other Mōkau Māori asked McLean to visit their home. He obliged by spending 13 days there. McLean recorded that he found the people there 'all favourable to the disposal of the Awakino tract of land, and expressing a desire to have many Europeans among them.'<sup>79</sup> Upon inspecting the land, however, McLean formed the view that the Crown would do better to purchase land on either side of the Mōkau River, to the south of the Awakino, and that the area included should extend some 25 miles upriver.<sup>80</sup> He therefore declined Tākerei's offer, on the grounds that it would not deliver a large block that suited the Crown's aims for settlement in the region. Boulton suggested that this decision may have also reflected McLean's growing awareness of divisions within Māori at Mōkau and elsewhere in the region over the merits of selling land.<sup>81</sup> We find this interpretation plausible.

Although these initial discussions had no concrete result, McLean's visit came to the attention of Taonui Hikaka. While his main pā was inland at Te Paripari (near modern-day Te Kūiti), Taonui also resided on the upper reaches of the Mōkau River.<sup>82</sup> Taonui's initial response to McLean's visit was reportedly to offer the same Awakino land for sale, apparently as an assertion of his own rights there. Taonui's stance towards land sales appears to have changed in May 1850, however, as the result of a hui held at Te Paripari. There, Te Kaka, a Ngāti Maniapoto rangatira whose lands bordered the Mōkau River, warned Taonui against selling land to the Crown. According to Louis Hetet, 'a grand committee' comprising Te Kaka and other opponents of land sales told Taonui that 'while he remained peacefully at home and sold no land he would be respected by all Europeans but directly he sold any land they would make a slave of him for he must go here and there where they bid him'. If he did choose to sell land, they warned, Taonui risked becoming

like the old Rauparaha [Te Rauparaha] and John Heki [Hone Heke] and others for when the white people had got all out of him and had no further [want] of him they would dispise [*sic*] him, but they say remain as he is at present and he will be respected by all Maories and white[s] . . .<sup>83</sup>

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78. Document A28, pp 54–56. The ship, renamed the *Parininihi*, was seized by the Government after the Taranaki war.

79. Document A28, p 57; doc A70, pp 183–184.

80. Document A28, p 58; doc A70, p 184.

81. Document A70, p 199, 248, 262, 452.

82. According to the French writer and artist George Angas, Taonui considered himself 'lord of all Mōkau' (doc S9(b), pp 2–3; doc A110, p 395; doc A28, p 66).

83. Document A28, pp 47, 68; doc A70, pp 188–189; see also Louis Hetet, Te Paripari, to Donald McLean, 9 May 1850, McLean Papers, Ms-0032–0338.

Taonui appears to have taken this advice to heart. From this point on, he did not contemplate offering to sell any Ngāti Maniapoto land north of the Mōkau River. At times, Taonui and his people appeared to be willing to allow Tākerei to transact in small areas of land, including the Awakino coastal strip, but they remained firmly opposed to the prospect of purchasing extending upriver.

Shortly after McLean's visit in 1850, Taonui did offer to sell land in Taranaki south of Pukearuhe-Waikāramuramu.<sup>84</sup> It is unclear whether this was a serious offer, or whether it was a response to counter Tākerei's offer at Mōkau (or indeed Te Teira's prior offer of April 1848). Historians Paul Thomas and Vincent O'Malley argued that early offers of land often represented assertions of customary rights and so were not necessarily intended as 'sales' in the European sense.<sup>85</sup> We find this persuasive, especially in respect of situations where those rights were subject to claim and counter-claim. This was undoubtedly the case along the Poutama coast south of Mōkau where both Ngāti Maniapoto and Taranaki returnees continued to assert rights to the land.

### 5.3.3 Negotiation and opposition, 1852–57

Although he was aware of the complex interplay of customary rights in the Mōkau region, McLean pressed ahead with his plans to purchase land. Crown officials returned to Mōkau in 1852, again seeking large areas of land suitable for European settlement. Negotiations commenced for what would eventually become the Awakino block, purchased in 1854, and the Mokau block, part of which the Crown purported to acquire in 1854, although that purchase remained incomplete. Later, the Crown purchased the Taumatamaire block, in 1855, and the Rauoro block, in 1857.

#### 5.3.3.1 Crown efforts to secure land on the Mōkau River, 1852

In 1852, after receiving further reports of coal seam outcrops along the Mōkau River, McLean sent surveyor John Rogan and purchase officer GS Cooper to Mōkau to progress negotiations. McLean and his agents paid special attention to land on either side of the river as far inland as 'Maungaharakeke' (Mangaharakeke Creek). McLean described this part of the valley as being 'most valuable . . . having a good navigable river . . . with abundance of coal, limestone, timber, and flax . . . together with several flats of rich land well adapted for agriculture.'<sup>86</sup>

To persuade the Mōkau hapū to sell their land, both McLean and Cooper raised the prospect of European settlement. Writing in his diary between March and April 1850, McLean explained how he had told Mōkau Māori he 'would see the land, and then talk about the purchase; that we desired the limestone and coal,

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84. Document A28, p 68.

85. Document A28, pp 48–49, 68–69; doc A23, p 167.

86. McLean to colonial secretary, 27 March 1850, *Turton's Epitome*, c.XIII, Aotea, Kawhia and Mokau, no 12 (doc A28, p 58); doc A70, p 184.

if they desired the Europeans.<sup>87</sup> Writing to Tākerei in December 1852, Cooper insisted:

Both sides of Mokau must be given up at one time, and then I will go down to Mokau and conclude the arrangements, that a town may be built at that place, that it may be cultivated by Europeans, so that the land may be improved, and that we all and our children may dwell together, and that we may grow and increase in wealth and strength as one people, and that our children may climb together to the summit of worldly prosperity.<sup>88</sup>

Despite these efforts, Mōkau Māori refused to make their valuable river lands available for sale. And reports of opposition increased. Some Mōkau rangatira sent letters to Taonui, warning him of the activities of Rogan and Cooper. Te Kaka, who had urged Taonui against land sales at Te Paripari in 1850, continued to express his opposition.<sup>89</sup> Apparently undeterred, Tākerei refused to let Rogan depart until Cooper, a more senior Crown official, arrived. Cooper reiterated McLean's earlier statement that the Crown would only purchase in the larger area. Cooper later said he had offered £2,000 in 1852 for the area inland to Maungaharakeke. But there was no support for this; even Tākerei refused.<sup>90</sup>

The first offer to sell what became the Mokau block on the northern bank of the Mōkau River came from Te Watihi (also known as Peketahi) and his brother Te Wētini Ngakahawai. Cooper replied that the purchase had to extend 25 miles upriver and refused their offer. Te Watihi and Te Wētini replied in turn that all the land in that area belonged to hapū who resided in the interior, represented by Te Kaka. However, Te Kaka was not prepared to allow any transactions further upriver until he was sure that the smaller Mōkau transaction proposed by Te Watihi and Te Wētini had proven to be a success.<sup>91</sup>

Crown officials resolved to meet with Taonui to break the impasse. They were also interested in discussing Taonui's prior offer to sell land to the Crown in the Poutama region, to the south of Mōkau. Te Kaka and his people refused to permit the officials to travel upriver. Cooper described the obstruction as 'extraordinary'.<sup>92</sup>

Unable to acquire the land they sought and unwilling to purchase the land on offer, the Crown's purchase agents left Mōkau late in 1852 with nothing to show for their efforts.

A year later, the Crown returned to the negotiating table with a renewed interest in the region. According to Thomas, by late 1853 the Crown had come to a view that the Mōkau purchase would be 'an important step towards acquiring the

87. Document A28, p 58; doc A70, p 184.

88. Document A28, pp 85–86.

89. Document A28, p 75.

90. Document A28, pp 58, 78, 81, 85, 89; doc A70, p 206.

91. Document A28, p 79.

92. Document A28, p 79.

strategically and economically valuable northern Taranaki region' and might also facilitate the Crown 'sweeping further north and into the interior'.<sup>93</sup>

### 5.3.3.2 *The Awakino purchase, March 1854*

The Awakino block lay adjacent to the coastline and included both the northern and southern sides of the Awakino River estuary. When it was purchased, the Crown estimated the block to cover 16,000 acres. On survey in the 1880s, the block was discovered to be 23,000 acres in extent.<sup>94</sup>

When Crown officials returned to Mōkau late in 1853, they were willing to agree to transactions that they had earlier declined. This included the land at Awakino that Tākerei had offered McLean in March 1850 to encourage Europeans to settle among his people. Previously, officials had considered the land too rugged and remote to be attractive to settlers. Now, in a letter to the colonial secretary, McLean explained that his renewed interest in Awakino was part of a broader strategy of initiating further purchases in the interior. He wrote, 'I am in hopes that the purchase of this land from an influential branch of the Waikato tribe will tend to the acquisition of a large extent of country extending inland from Awakino towards the Waipa district'.<sup>95</sup>

In late 1853 and early 1854, McLean wrote a series of letters encouraging chiefs in the region around Mōkau to enter into large-scale land sales. He also dispatched Rogan to make arrangements with willing sellers. But Rogan soon reported to McLean that all but one of the replies he had received expressed opposition to the proposal. The only offer, again, was from Tākerei and again in respect of the Awakino coastal strip. Rogan's assessment was that this land consisted of 'terrible mountains'.<sup>96</sup>

Nevertheless, Rogan proceeded to finalise arrangements for the purchase of land at Awakino. McLean's instructions were to survey off the block and reserves – there is no evidence that Rogan was advised to walk the boundaries with Māori to ensure their accuracy. A sketch map of the land was made based on physical boundaries, and the block's area was estimated at 16,000 acres.<sup>97</sup> On this basis, the Crown offered £500 to Tākerei and his supporters. Tākerei agreed that a further £30 to be paid to the Nelson-based hapū Ngāti Rarua, one of several groups living outside of Mōkau who claimed interests in the area.<sup>98</sup>

As mentioned, it was not until the 1880s, when the land was finally surveyed, that the Awakino block was discovered to be 23,000 acres in extent, nearly half

93. Document A28, p 87.

94. Document A147(b), p 35. Using GIS, Douglas, Innes, and Mitchell calculated the combined area of the Awakino and Mokau purchase blocks to be 24,082 acres: doc A21, p 41. This suggests that the 23,000-acre figure is broadly accurate, given that the Crown acquired some 850 acres through the Mokau purchase (see section 5.3.3.2).

95. Document A28, p 87; doc A70, pp 258–259.

96. Document A28, p 88.

97. Document A70, p 182; doc A28, p 94.

98. Thomas suggested that the inclusion of Ngāti Rarua may have been motivated by the Crown's desire to purchase land in the northern South Island. See doc A28, pp 82, 89.

as big again as originally estimated.<sup>99</sup> The Crown made no attempt to compensate the former owners for what was effectively a significant underpayment in terms of the price per acre. Whereas the £530 total payment would have represented about eight pence per acre if the block was 16,000 acres in size, for 23,000 acres the equivalent figure was less than sixpence per acre. The matter was later the subject of a petition and an inquiry by the Native Land Court (see sidebar).

The evidence suggests that the Crown's agents did not place a priority on ensuring that all potential right holders agreed to the Awakino transaction. Despite his awareness of the complexity of customary rights at Mōkau, McLean indicated that he would not be willing to entertain thoughts of paying Taranaki Māori for their interests in the land.<sup>100</sup> Moreover, when the Crown tried to purchase the Mokau block a short while later (see section 5.4.2.3), it was noted that some of those who opposed the transaction were Ngāti Maniapoto people who had been omitted from the Awakino purchase.<sup>101</sup>

This, too, was the assessment of Cort H Schnackenberg, the Wesleyan missionary stationed at Mōkau who, despite his role in assisting McLean's purchasing efforts, was on occasion critical of Crown actions towards Māori in the region. Early in 1854 Schnackenberg wrote to McLean, calling on him to heed the opposition from some Ngāti Maniapoto rangatira to land sales. While Schnackenberg had been visited by a group of Māori who wished to sell land, he warned McLean that important figures including Te Kaka, Taonui, and his son Te Kuri remained opposed. He suggested that McLean – and not Tākerei – was the best man to engage with the 'the opposition party', or else the chiefs 'must be allowed time to come forward with their offer'.<sup>102</sup>

In a later letter to a Wesleyan colleague, Schnackenberg questioned how the 70 names listed on the March 1854 Awakino purchase deed could represent the many hundreds of people who occupied the land. He said some 360 Māori lived in the affected area, adding that 'I do not think that I can be out 5 either way – I know all'.<sup>103</sup>

The £500 for the Awakino block was initially paid in January 1854.<sup>104</sup> Crown officials then requested that the money be returned so it could be presented to Tākerei in public. In March 1854, Tākerei's sons Wetere and Te Rangituataka (also known as Reihana) escorted McLean from New Plymouth. Arriving at Mōkau, McLean faced considerable disquiet from Māori about the price that had been paid. Many viewed it as a partial payment only, and when McLean insisted that no additional payments would be made, negotiations temporarily broke down.<sup>105</sup> After further discussion, the signing of the deed went ahead on 28 March, attended

99. Document A147(b), p 35.

100. Document A28, p 98.

101. Document A28, pp 81, 87–88.

102. Document A28, p 97; doc A70, p 203.

103. Document A28, p 96.

104. Document A70, pp 201–202; doc A28, p 89.

105. Document A28, p 89.



by McLean, Rogan, and Schnackenberg, among other Pākehā. Thomas concluded that Mōkau Māori understood the event, which, as Rogan noted, was conducted ‘in public, in presence of their own missionary’, as the commencement of a formal relationship with the Crown.<sup>106</sup> We think it likely that the ceremony accorded to the hui reflected the value that Tākerei and other supporters of land sales placed on attracting Europeans to the region, and their hopes for a township.

McLean handed the £500 to Tākerei ‘as he was the man of great consequence amongst them’. Tākerei then divided the money to ‘the heads of the hapus or families’.<sup>107</sup> After the signing, though, further disagreement erupted about the purchase price. In response to claims that the Crown had initially offered £2,000 for the land, Cooper clarified that his 1852 offer of £2,000 had been for land on the Mōkau River inland to Maungaharakeke, not for the Awakino block.<sup>108</sup>

Yet McLean boasted to the Colonial Treasurer that he had acquired the Awakino block for the lowest possible amount, while Cooper congratulated McLean on ‘obtaining Takerei’s land at so reasonable a price’.<sup>109</sup> Schnackenberg agreed that the price was low, writing to a colleague that the money, once divided among the ‘Mokau, Awakino, Waikawau, Ruakaka and Motueha folks’, would be ‘lost like a straw on the dry sand and not worth the time they have spent in commiti [sic] about it’.<sup>110</sup>

The purchase deed for Awakino was signed on 28 March 1854 by Tākerei, Te Haurua, Te Waka Wharau, Mihipeka, Rangiparea, Reihana Takarei, Aperehama te Ranipikitea and more than 60 others, and more than 60 others. The deed, in te reo Māori, indicated that the signatories also included five children between the ages of two and six. The deed declared that the signatories gave their ‘full and true consent . . . to entirely transfer a portion of our land or country to Victoria’ and her successors forever, and also consented to roads or highways through their reserves when required (‘Ko nga ara ruri nui o te Kuini e tukua e matou kia haere i nga wahi kua wakatapua mo matou i te wa e ruritia ai aua ara’).<sup>111</sup>

Payment for the land included £500 to be received on the day of signing, and a further £30 to ‘be reserved for the Ngatirua of Nelson which is to be handed to them by Takarei’: ‘Heoi rawa nga utu mo tenei whenua koia enei ko nga rau E rima £500 kua riro mai ki a matou i tenei ra E toru tonu tekau pauna £30 takitahi e toe ake nei mo nga tangata o Ngatirua kei Wakatu ma Takarei ano e homai ki a ratou.’<sup>112</sup>

Two further receipts record that the £30 was paid to Ngāti Rarua in 1856.<sup>113</sup> A further payment of £100 was made by the Crown on 1 August 1854 to chiefs

106. Document A28, p 93.

107. Document A28, p 93.

108. Document A28, p 89; doc A70, p 206.

109. Document A28, p 90; doc A70, p 206.

110. Document A28, p 90; doc A70, p 205.

111. HH Turton, *Maori Deeds of Old Private Land Purchases in New Zealand* (Wellington: Government Printer, 1883), pp 623–625 (doc A70(a), vol 1, pp 449–451).

112. Turton, *Maori Deeds*, pp 623–625 (doc A70(a), vol 1, pp 449–451).

113. Document A70(a), vol 1, pp 405–410.

from the Waikato iwi of Ngāti Hāua for a vague area described as ‘all our lands at Awakino at Papaitai and on to Taumata maire[sic]’<sup>114</sup>

The Crown set aside six areas of land from the Awakino transaction: the Ounutae, Rangitoto, Waikato, and Ketekarino reserves, and two blocks for Tākerei’s sons Wetera and Reihana.<sup>115</sup> The Crown’s subsequent administration of the reserves created numerous problems for Mōkau Māori, which are examined in section 5.3.4.1.

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114. Document A70(a), vol 1, pp 231–241. Thomas concluded that ‘McLean, in preparation for the planned purchase of more Awakino lands, had decided to alienate all Ngati Haua’s claimed interests in this area’: doc A28, pp 116–117.

115. Document A147(b), p 44.

### **Mōkau Māori Challenge the Awakino Block Purchase Price in the Twentieth Century**

In 1938, Mōkau Māori brought to the Crown’s attention their longstanding grievance about the inaccurate 1854 estimate of the size of the Awakino block. In a petition to Parliament that year, Rangirere Te Maenae and 58 others noted that, whereas the deed gave the area as 16,000 acres, the Crown obtained title to 23,000 acres. This had the effect of significantly reducing the price per acre Māori received for the block.

The petition was recommended to the Government for inquiry, and in turn referred to the Native Land Court. The court heard the matter in 1941 and Judge EW Beechey reported in 1942, finding in favour of the petitioners. Beechey found that the Crown, through its own error, acquired ‘a substantial area that it did not intend to acquire’ and that ‘if the Native owners had been aware that the block contained 23,000 acres, the purchase price of £530 would have been proportionately greater, and that they have lost the money equivalent since 1854 and that this sum compounded at 5 per cent is what they should receive’. Accordingly, Beechey ruled that ‘it is only equitable that the Crown should pay for what it got on the basis fixed by it’.<sup>1</sup>

However, Chief Judge GP Shepherd disagreed. In recommendations to the Native Minister that accompanied Beechey’s report, Shepherd suggested that the Awakino purchase ‘was not of an area defined with any regard to the niceties of survey, but of a tract of land lying within boundaries of which were determined by natural features. The description of the deed makes no mention of acreage.’ (Historian Bruce Stirling observed that, while Shepherd was correct that the text of the deed makes no reference to the acreage of the block, he neglected to note that the sketch plan

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1. Document A147(b), pp 38–39.

on the deed clearly does note the area as 16,000 acres.) Shepherd then reasoned that ‘the quantum of the purchase price certainly had no reference to a value calculated as on an acreage basis’ and suggested that, ‘in the face of the terms of the conveyance, any loss – and it is not suggested here that there was any loss – must lie where it fell.’<sup>2</sup>

Ultimately, the Native Minister accepted Shepherd’s recommendations and the petitioners were unsuccessful in their claim. As far as the Tribunal is aware, the Crown is yet to acknowledge the 7,000 acres of surplus it acquired without payment through its inaccurate 1854 estimate of the size of the Awakino block.

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2. Document A147(b), pp 39–41.

### 5.3.3.3 *The Mokau purchase, May 1854*

The Mokau block was situated adjacent to the coast, between the Awakino block and the northern bank of the Mōkau River. When the Crown sought to purchase the land in May 1854, it was estimated to contain 2,500 acres, although this figure included a substantial portion withheld by opponents to the sale, thought at the time by the missionary Schnackenberg to be about 500 acres.<sup>116</sup> According to Stirling, however, approximately 1,300 acres were ultimately removed from the block, roughly half of the original 2,500-acre estimate. On this basis, Stirling calculated the area the Crown purported to acquire in the Mokau purchase comprised only about 850 acres.<sup>117</sup>

With the Awakino transaction complete, McLean’s attention turned to the other parcel of land offered by Mōkau Māori in earlier negotiations. In March 1854, immediately after completing the Awakino purchase, McLean offered Te Wētini Ngakahawai and other Mōkau Māori £200 for the Mokau block. Te Wētini had been involved in Cooper’s attempt to purchase land in 1852. He and other right holders had refused to include some of the best lands on the Mōkau River, including sites of cultural significance and land that, if retained, would enable Māori to benefit economically from the arrival of Europeans.<sup>118</sup> When negotiations resumed, McLean refused either to offer more than £200 or to remove any land from the block (other than the land around the kāinga at Te Kauri). These initial attempts to finalise the transaction made little progress and, upon his departure from Mōkau, McLean left the matter in the hands of Rogan.<sup>119</sup>

Mr Thomas argued that the ‘Crown’s aim was evidently to tempt or pressure Te Wētini and others into a quick agreement and to gain land through creating

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116. Document A28, p 105; doc A70, pp 260–263.

117. Document A147(b), pp 77–78.

118. Document A28, p 78; doc A70, pp 259–260.

119. Document A28, pp 101–102.

competition between chiefs.<sup>120</sup> To this end, McLean left Rogan £300, of which £200 was to be made available to Te Wētini and others if they agreed to sell the Mokau block. If Te Wētini delayed, he risked allowing Rogan to use the money to pay Tākerei, with whom Rogan was now negotiating to obtain land to the east of the Awakino block. When Rogan temporarily left Mōkau, he left all £300 in the care of Tākerei and the pressure on Te Wētini appears to have intensified. Te Wētini soon asked Rogan to resume negotiations for the Mokau block.<sup>121</sup>

On his return, Rogan faced a markedly different scene than McLean had met earlier in the year. Te Kaka and Taonui's son Te Kuri were at Mōkau and had met with Schnackenberg in the preceding days to reassert their opposition. Rogan was now face-to-face with major opponents to the Crown's efforts to purchase land in the region.<sup>122</sup>

On 27 April 1854, Rogan met separately with supporters and opponents of the proposed purchase. At one hui, he suggested to Te Wētini and Hōne Pūmipi, who supported the deal, that he would pay them £100 and hold back the other £100 until the opponents could be induced to sell. Te Wētini and Pūmipi agreed to this proposal. The next day, an open hui was held to discuss the Mokau block transaction, attended by Rogan, Schnackenberg, and Māori from both camps.<sup>123</sup> At the hui, Rogan failed to convince the opponents to sell their interests in the Mokau block. As a result, he proposed an alternative approach to the transaction, suggesting that part of the block be purchased from the willing sellers, who would receive £100 of the purchase money. The remaining £100 would be available to the non-sellers, should they decide at a future stage to include their lands within the purchase area.<sup>124</sup> The fact that this amounted to 50 per cent of the purchase price suggests that Rogan estimated the interests of the non-sellers to equate to as much as half of the estimated 2,500 acres. This is a significant contrast with Schnackenberg's assessment of about 500 acres.

According to Rogan, his proposal met with general agreement from both parties. However, the subsequent actions of Te Kuri and Te Kaka suggest that Rogan either seriously misread or deliberately misrepresented the mood of the hui.<sup>125</sup> On the morning of 30 April, Te Kuri and Te Kaka made their way out to the Mōkau heads to place a tapu on the river 'kia tutakina te awa mo nga pakeha' (to close the river to the Pākehā).<sup>126</sup> In our view the tapu was a manifestation of their rangatiratanga and a clear expression of their refusal to permit the sale of Mōkau lands to the Crown. In placing a tapu on the Mōkau River, Te Kuri and Te Kaka were asserting their authority in a manner consistent with the actions of rangatira elsewhere during the early 1850s who applied tapu to protect land from being sold.<sup>127</sup>

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120. Document A28, p 102.

121. Document A28, p 102; doc A70, p 260.

122. Document A28, p 103.

123. Document A28, p 103; doc A70, p 261.

124. Document A28, pp 103–104; doc A70, p 261.

125. Document A28, p 103.

126. Document A28, p 104; doc A70, p 264.

127. Document A28, p 106.

Despite the actions of these rangatira, and despite proposing to pay only half of what had originally been offered, Rogan pursued what he understood at the time to be the alienation of virtually the whole Mokau block. On the following day – 1 May 1854 – a deed of sale for the block was signed by Te Wētini, Tarati Mahoro, Tiki Poti te Pukahu, Rawiri Ngarinui, Karorina Hemoata, Manihera Wairaweke, Pūmipi, Tawhao, Te Aka, Nuiton te Painui, Wereta Tipoka, Ruihia Huirangi, Kerei Pouwhero, and more than 50 others identified as ‘the chiefs and people of ngati maniapoto.’<sup>128</sup> The Crown signatory was Donald McLean, and the witnesses included Schnackenberg and Tākerei.

Payment for this land was £100, although the deed also referred to a further £100 ‘[t]he hundred pounds remaining is for the three places, which have not yet been agreed to’ (‘me te rau kotahi e toe ake nei mo nga wahi e toru tahi kahore ano i wakaetia’). The deed named these three ‘places which have not been agreed to by some of our people’ (‘[k]o nga wahi i roto o te rohe kahore ano i whakaetia e etahi atu tangata koia enei’), as Te Kauri, Te Waipuna, and Tokowhaiti. It then described the boundaries of Te Kauri and Tokowhaiti, however Te Waipuna was simply named in the deed, with no physical description.<sup>129</sup>

Mr Thomas suggested that these lands equated to what Rogan and Schnackenberg considered to be the interests of the non-sellers. We agree. Te Kauri aside, there is little suggestion that the exclusion of these lands reflected any direct consultation with the non-sellers. Importantly, the deed did not clearly establish the extent of the lands withheld from sale, nor whose interests they represented. These ambiguities would prove troublesome in years to come.<sup>130</sup>

Those who signed the deed received £100 for their interests, an amount Schnackenberg later described as ‘paltry’. He said that, on account of the low price, ‘nearly all the money was taken by children as the Natives said it is only “te kapa”, pennies or cooper [copper] coins.’<sup>131</sup> According to Thomas, Crown officials ‘were delighted’ that Rogan had secured the land for so little, given that it purported to transfer a strategic location at the mouth of the Mōkau River and contained land of considerably higher quality than the Awakino block.<sup>132</sup> Against this, however, must be weighed the fact that, when the reserves from the Mokau transaction were finalised many years later (see section 5.3.4), it would emerge that the Crown had actually acquired little more than 850 acres.<sup>133</sup> This meant the £100 represented approximately two shillings and fourpence per acre of land purchased.

After the deed was signed, officials continued their efforts to acquire the remaining Māori interests in the block. Throughout the rest of May 1854, McLean sent koha to Te Kaka, seeking to induce him to sell his interests, while Rogan held extended discussions with Te Kaka and Te Kuri, during which he doubled the

128. References to the Māori text and English translation of this deed are to Turton, *Maori Deeds*, pp 625–627 (doc A70(a), vol 1, pp 411–421).

129. Turton, *Maori Deeds*, pp 625–627 (doc A70(a), vol 1, pp 411–421).

130. Document A28, pp 104–105.

131. Document A28, p 105; doc A70, p 292.

132. Document A28, pp 105–106.

133. Document A147(b), pp 77–78.

Crown's offer for their interests from £100 to £200.<sup>134</sup> The rangatira were unswayed. Te Kaka and Te Kuri wrote to Crown officials 'warning them not to send a vessel there as the river was tapu'd. Meanwhile, hui were held at Kāwhia – reportedly attended by more than 100 Māori, including Taonui – with the goal of preventing additional land sales at Mōkau and beyond.<sup>135</sup> As a result of these hui, the rangatira Nuitone Te Pakarū placed a further tapu over a large land area stretching from Mōkau north to Harihari, near Kāwhia.<sup>136</sup>

Making little progress in finalising the transaction, Rogan turned his attention to identifying and surveying those portions of the Mokau block the Crown had acquired. Here, too, he found progress difficult. As noted above, the Crown set aside portions of the Mokau block for non-sellers prior to the deed signing. However, in doing so, its agents did not identify the respective interests of Mōkau Māori in the sale block. Subsequent efforts to do so ultimately proved to be a near impossible task.<sup>137</sup> Speaking to his efforts to survey the land throughout May 1854, Rogan said:

The natives who were willing to sell set about pointing out their individual claims, and with a view of obtaining the boundaries of the whole piece to be disposed of. The sum of their several claims forming the piece they would offer to the Government. In the attempt they differed among themselves as to their individual rights, and even when some of them had settled the boundaries and marked them on the ground, the parties adverse to the sale disputed the boundaries.<sup>138</sup>

Opponents of the sale also disputed the Crown's proposal to include the Te Māhoe mission station lands in its purchase. Schnackenberg had hoped thereby to acquire a Crown grant for approximately 200 acres for the Wesleyan mission.<sup>139</sup> In negotiations prior to signing the deed, the Mōkau rangatira Te Waru and Tamihana consistently expressed opposition to the sale of Te Māhoe and, as a result, neither signed the deed. When Schnackenberg attempted to give Te Waru £3 for his interests, he sent it back immediately. Nevertheless, Schnackenberg maintained that consent to the inclusion of Te Māhoe had been established because the deed did not explicitly exclude the land and 'most of the principal owners' had signed.<sup>140</sup>

Matters came to a head when Rogan attempted to survey the block in late May 1854. He was confronted by Te Waru, who led a party of men armed with spears. According to Rogan: 'I said to him, "Is this land yours?" He said "No," and then, moving the spear about half an inch "but this is mine. I am going to die here, and these people are prepared to do exactly as I tell them."<sup>141</sup>

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134. Document A28, pp108–109.

135. Document A28, p106; doc A70, p295.

136. Document A28, pp47–48; doc A70, p295.

137. Document A28, pp104, 109.

138. Document A28, p109.

139. Document A28, p109; doc A70, pp92–93.

140. Document A28, pp109–110.

141. Document A28, pp110–111.

Rogan was clearly frightened by the encounter and, having made little progress in his efforts to survey other portions of the block, he left Mōkau on the government's instruction in late May 1854. He told Schnackenberg that not only the Crown grant for Te Māhoe but the survey and purchase of the Mokau block generally would not be completed until the consent of all parties could be obtained.<sup>142</sup>

There is no evidence that formal negotiations for the Mokau block continued beyond this point. In 1855, Rogan reminded McLean that Mōkau 'is not ours yet'.<sup>143</sup> Rogan continued to try to put pressure on Te Kaka to sell his interests in the block throughout 1855, without success. In May 1855, Schnackenberg reported to McLean that Te Kuri 'and his party refuse to sell'.<sup>144</sup> Schnackenberg complained privately that Rogan was 'afraid' to deal with Mōkau Māori who continued to oppose the sale of land for the Te Māhoe mission station; yet Schnackenberg's own attempts to finalise acquisition of the land in 1855 were also unsuccessful.<sup>145</sup>

In 1857, the Crown appears to have acknowledged that its purchase of the Mokau block remained incomplete, when it extinguished native title over all land purchased at Mōkau and Awakino between 1854 and 1857, apart from the Mokau block. Thus, when the Crown returned to Mōkau during the 1880s and 1890s to assert its title (section 5.3.3.6), its claim to the Mokau block was therefore based on what, by its own admission in 1857, was an incomplete transaction. This uncertainty was also apparent from the ongoing confusion regarding the status of lands excluded or otherwise set aside from the Mokau purchase, several of which were surveyed in 1884, as discussed in section 5.3.4.2.

#### **5.3.3.4 The Taumatamaire purchase, January 1855**

The Taumatamaire block was located immediately inland from the Awakino purchase, and negotiations for its purchase commenced as soon as the latter was concluded in early 1854. At the time of the purchase it was estimated at 24,000 acres.<sup>146</sup> In December that year, Rogan returned to Mōkau to finalise the arrangement. A deed for the block was signed on 1 January 1855 in the names of Tākerei Waitara, his wife Hokiopera, his sons Wetere and Te Rangituataka, his daughter-in-law Mere Peka, and more than 40 others. The deed recorded a payment of £500.<sup>147</sup> A surviving receipt for Taumatamaire records the sellers' agreement that if other Māori came forward to claim rights to the land, the sellers would pay them part of the purchase moneys.<sup>148</sup>

142. Document A28, p 111; doc A70, p 93.

143. Document A28, p 125.

144. Document A28, pp 125–127.

145. Document A28, pp 125–127; doc A70, pp 94–95.

146. Using GIS, Douglas, Innes, and Mitchell calculated the combined area of the Taumatamaire and Rauroa purchase blocks to be 36,972 acres. Innes also used GIS to calculate the Rauroa block at 10,240 acres, which suggest that the actual size of Taumatamaire was some 26,732 acres: doc A21, p 41; doc A141, folder 3, p 80.

147. Document A28, pp 120–121; A70(a), vol 1, pp 422–434; doc A70, pp 273–276.

148. Document A70, pp 274, 459.

Between Rogan's departure from Mōkau in May 1854 and his return in December, opposition to land sales remained strong. Indeed, during his absence, rumours circulated that inland Ngāti Maniapoto planned to travel to the coast to take possession of the land as a move to prevent any additional sales. Schnackenberg recorded that Tākerei planned to visit the inland hapū in the spring of 1854. We do not know what happened at those meetings, but Tākerei's resolve to continue land transactions with the Crown was evidently shaken. According to Rogan, Tākerei told him that he would 'cease his entire control after the sale of the land, when the last-named piece is sold.' This was the Rauroa block, discussed in the next section. Rogan understood Tākerei's decision to withdraw support for land sales was 'not because the land is not his, nor that he could not sell if he presses it, but for the sake of peace with the Interior'.<sup>149</sup>

In these circumstances, Rogan moved quickly to confirm the alienation of the Taumatamaire block to the Crown. Once again, the Crown's representative appears to have made little effort to identify the respective interests of Mōkau hapū in the land. Thomas suggested that the transaction was finalised 'after minimal negotiations and following consultation with one group only'.<sup>150</sup> We agree with this characterisation. The sale, which Rogan later labelled an agreement with 'Ta Kerei and his tribe', took place within days of Rogan's return to Mōkau.<sup>151</sup> Soon afterwards, Māori from Waikawau, a coastal settlement to the north of the Awakino River, expressed concern that the land had been transacted without their knowledge or consent.<sup>152</sup>

The Crown paid £500 for 24,000 acres in the Taumatamaire block, or five pence per acre. This was lower than the minimum price later prescribed in McLean's July 1855 instructions to Rogan. McLean wrote that for the region 'from the Waikato to the Mokau, extending inland to the sources of those rivers', a price range of between sixpence per acre and one shilling and sixpence per acre would ensure the Crown's investment in purchasing Māori land was profitable.<sup>153</sup> Ms Boulton concluded that the low purchase prices for both Taumatamaire and Rauroa reflected their 'remote location and rugged topography'.<sup>154</sup> This seems likely.

Only one reserve of an indeterminate size was set aside from the Taumatamaire block. This was the canoe landing site Te Piripiri on the north bank of the Awakino River.<sup>155</sup> Although surveyed at 6 acres in the 1880s, the Native Land Court later found that the deed's description of boundaries and accompanying sketch map suggested a larger reserve of between 50 and 70 acres was warranted. In any case, it appears that this reserve was never granted (section 5.3.4.3).

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149. Document A28, pp 119–120; doc A70, p 281.

150. Document A28, p 120.

151. Document A28, pp 117, 120.

152. Document A28, pp 120–121; doc A70, p 277.

153. Document A70, p 341; doc A28, p 122.

154. Document A70(b), p 14.

155. Document A28, p 122; doc A70, pp 276–277.



### 5.3.3.5 *The Rauroa purchase, July 1857*

The Rauroa block was located alongside and further inland again from the Taumatamaire purchase. At the time of purchase, the block was estimated at 9,000 acres.<sup>156</sup> In his evidence, researcher Craig Innes calculated that the actual figure was more like 10,240 acres.<sup>157</sup>

Rogan secured agreement for the sale of the Rauroa block immediately after purchasing Taumatamaire in January 1855, although the transaction was not finalised until 1857.<sup>158</sup> On 30 July 1857, 30 Mōkau Māori signed a deed for 9,000 acres, for a payment of £400. Once again, they were led by Tākerei and his sons Wetere and Te Rangituataka.<sup>159</sup>

The negotiations for Rauroa shared many features with those for Taumatamaire. Once again, Rogan prioritised Tākerei's interests in the land, knowing that the ongoing opposition from inland Ngāti Maniapoto to land sales meant that this would be the last sale Tākerei participated in. Mr Thomas noted that Rogan described the deal as an arrangement with Tākerei and 'the Awakino Natives' and that, as with Taumatamaire, 'the Crown had once again sought the consent of only a very few Maori, and from one group only'.<sup>160</sup> We agree.

In February 1855, Rogan wrote to McLean reporting that he had arranged 'to traverse the North boundary of the last block [Rauroa] next spring and the payment is to be made in the summer'.<sup>161</sup> With reference to the purchase price paid for Taumatamaire, he calculated that by the summer the recipients 'will have expended the £500 and will be more anxious to urge their friends in the interior to sell the opposite side of the Awakino'.<sup>162</sup> This evidence suggests that Rogan timed his visits carefully, arranging surveys and purchase payments in a manner designed to encourage further sales.

In January 1857, McLean instructed district commissioner William Searancke to travel to Mōkau to survey the Rauroa block. Rogan then returned in July to finalise the transaction. The £400 paid to Mōkau Māori for Rauroa represented almost 11 pence per acre, which was within the acceptable range of sixpence to one shilling and sixpence per acre set by McLean in 1855 for land between Waikato and Mōkau.<sup>163</sup>

As with Taumatamaire, Rogan set aside only one reserve from the land acquired at Rauroa by the Crown, the 290-acre Otiao block (section 5.3.4.4).

### 5.3.3.6 *Delays in selling the land to settlers*

In May 1854, McLean wrote to Henry Halse, a New Plymouth police magistrate, expressing his reluctance to open the Awakino and Mokau blocks to selection by

156. Document A147(b), pp 43–44.

157. Document A141, folder 3, p 80.

158. Document A28, pp 128–129; doc A70, pp 279–280.

159. Document A70(a), vol 1, pp 457–458; doc A28, p 129; doc A70, p 280.

160. Document A28, p 129–130.

161. Document A70, p 280.

162. Document A70, p 146; doc A70, p 280.

163. Document A28, pp 128–129.

settlers. He feared that if Pākehā began settling the area, the land nearby would 'be enhanced in value by the immediate location of settlers on it'.<sup>164</sup> This would only encourage Māori to bargain for higher prices, hindering the Crown's goal of acquiring more land in the region. As mentioned, in 1857 the Crown proclaimed its ownership of the Awakino, Taumatamaire and Rauroa blocks, but not the Mokau block, presumably because the final payment of £100 had yet to be made.<sup>165</sup> But the Crown, having obtained title to at least three of these blocks, did little to follow up the purchases on the ground. This may have been for practical reasons. The three northern blocks were located on rugged terrain either side of the Awakino River and were thus unlikely to be immediately attractive to settlers. Moreover, to access the land, settlers and surveyors needed to use the more navigable Mōkau River, which was still controlled by Māori.<sup>166</sup>

The Crown's failure to take up its Mōkau lands may have further encouraged Māori misunderstanding about the nature of the transactions. As Boulton noted, 'it is unlikely that those residing on the land would have seen much immediate evidence that the Crown now considered that it owned the land'.<sup>167</sup> Mr Thomas agreed. In his view, the long delay gave Mōkau Māori grounds to believe the Crown had abandoned its claim, as sometimes happened when there was opposition and disputes over the right to sell. He found it significant that Crown officials 'do not seem to have even mentioned the transactions during the long course of post-war negotiations with local and regional chiefs'.<sup>168</sup> We return to the question of how Māori understood these purchases in section 5.3.5.2.

It was not until the mid-1880s, nearly three decades later, that the Crown returned to Mōkau to lay claim to its purchases. By this time the context was very different. War had intervened in 1860, followed by confiscation – including land in Taranaki as far north as Paraninihi, south of Mōkau. An aukati had been maintained for some 20 years, during which the Crown had no authority in the district. These events are discussed in chapters 6, 7, and 8. Mr Thomas suggested that when the Crown returned to Mōkau in the late nineteenth century to lay claim to its purchases, careful investigation and consultation was required. We agree. This was especially important in respect of the Mokau block, the status of which remained ambiguous, with uncertainty over the extent of lands excluded from the sale, and whose interests they represented.<sup>169</sup> However, no such precautions appear to have been taken.

Things began to change in 1882. In June, the Native Land Court sat at Waitara to investigate title to lands to the south and east of the Mōkau–Awakino purchase areas. At around the same time, the Crown renewed its efforts to negotiate the building of a railway line through the region, and opportunistic Pākehā like the Australian settler Joshua Jones began seeking to 'open' the land around Mōkau for

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164. Document A70, p 270.

165. Document A28, p 130.

166. Document A70(b), p 13.

167. Document A70(b), p 18.

168. Document A28, p 388.

169. Document A28, pp 130, 133.

mining and other commercial ventures. (For more on these events, see chapters 7, 8, and 9). In the wake of these developments, Native Minister John Bryce identified an opportunity to assert the Crown's interests in a region previously closed to Crown's authority. In a December 1882 letter in the *New Zealand Herald*, he reminded the Ngāti Maniapoto leader Wahanui Huatare that 'the Government owns large blocks of land near Mokau, and it is unreasonable to suppose that they will consent to be denied access to their own lands'.<sup>170</sup>

Te Rohe Pōtae Māori, however, appear to have taken a different view about the status of the purchases. This was reflected in the June 1883 petition to Parliament of Wahanui and over 400 others, and in a further statement to Parliament by Wahanui the following year. The 1883 petition's description of 'lands still remaining to us . . . upon which the European, to the best of our knowledge, has no legal claim' included the areas covered by the Mōkau–Awakino purchase (see chapter 8, section 8.4.5.1).<sup>171</sup> Wahanui repeated this position before the House of Representatives in October 1884, where he said:

the lands that I speak of are ancestral lands, and the hands of the Europeans have never touched them. No white man's foot has trodden upon those lands, nor has any European obtained authority over them, either by lease or otherwise. This is the reason why I say that we should have the administration of those lands; but afterwards I will ask this House to help me to devise a law for administering them.<sup>172</sup>

Mr Thomas suggested that the opposition and uncertainty surrounding the Mōkau–Awakino transactions of the 1850s meant that when the Crown returned to Mōkau in the late nineteenth century to lay claim to its purchases, careful investigation and consultation was required.<sup>173</sup> We agree. This was especially important considering Wahanui's statements, and the delicate state of the Crown's negotiations with Te Rohe Pōtae Māori at that time (see sections 8.6 and 8.7). In the event, no such precautions appear to have been taken. From late 1883 the Crown sent surveyors to mark out the Mokau-Awakino blocks, and made preliminary plans for a road and a bridge over the Mōkau River. Mr Thomas found no evidence that the surveyors discussed the significance or validity of the purchases with Māori; rather, they focused on drawing boundaries and marking out reserves.<sup>174</sup> Having said this, there is no suggestion that Māori protested or attempted to obstruct the survey.

In 1884, there were reports that the Government was preparing 'for the immediate opening up of the Mokau', and in 1886 plans were made to establish a township near the Mōkau river mouth.<sup>175</sup> But progress remained hampered by settler disinterest, again likely because of the rough and mountainous terrain of the Crown

170. Document A41 (Loveridge), pp 58–59.

171. Document A28, p 389.

172. Document A41, pp 155–156.

173. Document A28, pp 130, 133.

174. Document A28, p 390.

175. Document A28, pp 390–391.

purchase blocks. Finally, from 1888, the Crown began to sell or lease land from the four blocks. By early 1890 there were reports that around 25,000 acres (roughly half of the overall purchase area) had been acquired by Pākehā, yet even this was said to be mostly in the hands of absentee speculators, who did not occupy or improve the lands.<sup>176</sup> According to Thomas, almost all the Awakino block, now known to be 23,000 acres, was sold to settlers by 1890.<sup>177</sup> Importantly, this included two 50-acre reserves ostensibly set aside for Tākerei's sons Wetere and Te Rangituataka. The Crown's failure to protect these reserves were among the first of numerous issues regarding the Crown's delivery of title to lands set aside for Mōkau Māori.

#### 5.3.4 The administration of reserves

Historian Kesaia Walker identified three categories of land set aside by the Crown from its pre-1865 purchase reserves: Native reserves, lands excluded from sale, and re-purchased reserves.<sup>178</sup> Of these, the first two apply to the Mōkau–Awakino transactions of the 1850s.

In general terms, 'native reserves' were understood to be areas that should be specifically protected, including by the issuing of a separate Crown grant to the beneficiaries named in the purchase deed. Yet, as Dr Grant Phillipson has observed of lands designated native reserves in the Te Tau Ihu region, they were often 'left under de facto customary tenure but without a clear title in terms of British law' for many years after the sale took place.<sup>179</sup>

By contrast, land excluded from sale was treated as ordinary Māori customary land, with title to be determined by the Native Land Court, which would then draw up lists of owners. In his evidence to this inquiry, Mr Thomas highlighted a lack of clarity around the legal status of lands excluded from sale. In the case of the 1854 Mokau purchase, for example, it was not clear whether the excluded lands were intended as permanent reserves, or simply left out of the sale for the time being.<sup>180</sup>

As will be seen, however, the Crown and the court often confused these categories, and any measures intended to specifically protect reserve lands were at best unevenly applied.

As can be seen in table 5.2, of the 13 reserves set aside from the Mōkau purchases, seven were considered native reserves, and six were regarded as excluded from sale.

##### 5.3.4.1 Awakino block reserves

As mentioned, the Crown set aside six parcels of land from the 1854 Awakino transaction. These were the Ounutae, Rangitoto, Waikato and Ketekarino reserves,

176. Document A28, p 392.

177. Document A28, p 394.

178. Document A142 (Walker), p14.

179. Grant Phillipson, *The Northern South Island: Part 2*, Rangahaua Whanui series, Waitangi Tribunal, 1996, p 2.

180. Document A28, pp104–105.

Block	Purchase year	Reserves and land excluded from purchase							Percentage remaining (2013)
		Name	Status	Area reserved (acres)	Area granted (acres)	Year title awarded	Area remaining (2013) (acres) <sup>1</sup>		
Awakino <sup>2</sup>	1854	Rangitoto	Native reserve	55	51	1922	51.0	92.9	
		Waikato (Maniara)	Native reserve	130	125	1922	110.0	85.0	
		Ounutaē	Native reserve	220	110	1922	110.0	100.0	
		Ketekarino	Native reserve	50	7.5	1953	7.5	100.0	
		Reihana's reserve	Native reserve	50	50	1893*	0.0	0.0	
		Weter's reserve	Native reserve	50	50	1903*	0.0	0.0	
Mokau <sup>3</sup>	1854	Te Kauri (Hingarangi)	Excluded from sale	N/A	147	1897	18.4	12.5	
		Te Waipuna	Excluded	N/A	175	1897	93.0	53.1	
		Tokowhaiti (Purapura)	Excluded	N/A	884	1897	813.3	92.0	
		Te Mahoe (Tawari/ Tauwhare)	Excluded	N/A	76	1897	0.0	0.0	
		Te Māngeo	Excluded	N/A	6	Not awarded	0.0	0.0	
Taumatamaitre <sup>4</sup>	1855	Te Piripiri	Native reserve	6	6	Not awarded	0.0	0.0	
Rauroa <sup>5</sup>	1857	Otiao	Excluded	N/A	290	1901	242.5	84.0	

1. Figures based on the evidence of Bruce Stirling and Kesaia Walker: doc A147(b), doc A142.

2. Document A147(b), pp 44–69; doc A142, pp 61–83.

3. Document A147(b), pp 83–86; doc A142, pp 84–92.

4. Document A147(b), pp 69–76; doc A142, pp 93–97.

5. Document A147(b), pp 43–44; doc A142, pp 98–100.

Table 5.2: Land set aside from the Mōkau–Awakino purchases

\* Substituted

## 5.3.4.1.1

and two blocks for Tākerei's sons, Wetere and Reihana – totalling approximately 555 acres.<sup>181</sup>

## 5.3.4.1.1 RANGITOTO, WAIKATO, AND OUNUTAE

In the case of the Rangitoto and Waikato (also known as Maniaora) reserves, title to the land was not awarded until 1922 after repeated complaints by Māori.<sup>182</sup> The granting of the Ounutae reserve (also known as Taniora's reserve) was also delayed and, in this instance, when title to the land was awarded in 1922, Mōkau Māori received 110 acres, rather than the 220 acres specified on the deed. To explain this discrepancy, Crown agents suggested that the land purchase officer, John Rogan, had incorrectly calculated the area of land on the sketch plan and that the land reserved to Māori was in accordance with physical boundaries identified on the deed.<sup>183</sup> This was disputed by Māori. However, the death of Taniora Pararoa Wharau – a signatory to the deed who had assisted Rogan in conducting his rudimentary survey of the land – meant they too retained little knowledge of the original transaction, hampering their ability to successfully challenge the reduced award.<sup>184</sup>

## 5.3.4.1.2 KETEKARINO

The Crown appears to have lost all record of the Ketekarino reserve until the 1930s, when the matter was brought to its attention by Mae Taniora Wharau, who had recently worked through the papers of her late father. Ms Wharau contacted Crown officials seeking an explanation as to why Pākehā had occupied the land.<sup>185</sup> The Crown initially asserted that a substitute block had been awarded elsewhere in place of Ketekarino, though this was ultimately found to be inaccurate. The Ketekarino reserve was one of several issues raised by Rangirere Te Maenae and 58 others in a 1938 petition to parliament concerning the Crown's conduct in transacting lands at Mōkau.<sup>186</sup>

The matter of the Ketekarino reserve was heard by the Native Land Court in 1941 and, in reporting on the issue in 1942, Judge EW Beechey offered the government clear guidance on the matter. Ketekarino, Beechey wrote, was undoubtedly used as

a burial-ground and a pa reserve in the early days [and] . . . the claimants are entitled to have an area at Ketekarino set aside, as undertaken by the Crown [in 1854], and that the "small piece" should be similar in area to the other small pieces, about 50 acres for the old burial-site.<sup>187</sup>

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181. Document A147(b), p 44.

182. Document A147(b), pp 47–50.

183. Document A147(b), p 45.

184. Submission 3.4.246, p 95; doc A147(b), p 45. The Ounutae reserve was the subject of a specific claim by Wai 849 claimants (see submission 3.4.194).

185. Document A142, pp 79–83.

186. Document A147(b), pp 52–54.

187. Document A147(b), p 55.

Despite the court's recommendation that a reserve of 50 acres should be set aside for Mōkau Māori, the Crown made little progress towards honouring the deed in the following decade. Instead, the Crown's response prioritised the interests of the leaseholder, the Pioi Estate Company (a large Pākehā farming venture), over the interests of Māori. For example, when the leaseholder agreed to hand over 7 acres and 3 roods of the land – including the urupā – to tangata whenua, the Auckland commissioner of crown lands applauded this as a 'very reasonable attitude'. In contrast, he framed Māori insistence that the entire 50-acre block be set aside as an obstacle to an 'amicable settlement'.<sup>188</sup> This apparent favouritism continued in 1949 when the lease of the land came up for renewal. The Crown could have chosen to renegotiate the lease to remove the land that rightfully belonged to Mōkau Māori. Instead, the relevant Crown official suggested that 'we cannot force the Company to surrender the 50 acres' and that the only chance of settlement was 'to persuade the Maoris to reduce their claim'; that is, to accept the 7 acre 3 rood reserve and compensation for the balance.<sup>189</sup>

Ultimately it seems that Mōkau Māori had no choice but to agree to the Crown's proposal. This was the basis of the settlement that was approved by the Minister of Lands in 1953. Title to the Ketekarino reserve was finally issued in June 1858. In total, 7 acres, 2 roods and 20 perches were returned to Mōkau Māori, together with £60 compensation for the 42 acres and 1 rood retained by the Crown. This was less than the £70 given to the leaseholder for improvements to the land around the urupā.<sup>190</sup>

### 5.3.4.1.3 REIHANA'S AND WETERE'S RESERVES

The Crown's actions in respect of the two 50-acre reserves set aside for Tākerei's sons Te Rangituataka (known as Reihana) and Wetera Te Rerenga displayed the same pattern of administrative ineptitude and indifference. The land set aside for Reihana was sold to a settler shortly after it was surveyed in 1884, and officials mistakenly assumed the same had occurred in the case of Wetera's reserve.<sup>191</sup> In 1888, Wetera wrote to Crown officials requesting that title for his brother's land be issued. However, he died soon afterwards. Native Department officials located the survey plan but deferred action, commenting that 'Wetera now being dead the matter may rest for the present'.<sup>192</sup> Te Rangituataka and Kingi Wetera, the son of Wetera Te Rerenga, then took up the cause in a series of letters in the 1890s.

In both cases, when title was awarded the land was different from that originally promised. In 1893, title to the 50 acres for Reihana's reserve was awarded to Te Rangituataka on the opposite side of the Awakino River from the original block.<sup>193</sup> The location of the land may have been a factor in Te Rangituataka's decision to

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188. Document A147(b), pp 57–59.

189. Document A147(b), pp 60–62.

190. Document A147(b), pp 61–64.

191. Document A147(b), pp 64–67.

192. Document A147(b), pp 64–65.

193. Document A147(b), pp 66–69.

sell it to a private purchaser in 1894.<sup>194</sup> In 1902, 50 acres were awarded to Weterer's descendants at Mahoenui, south of Awakino. This land was included in the Mahoenui development scheme in 1930 and then incorporated into a larger block, which was sold in 1979.<sup>195</sup>

#### 5.3.4.2 *Mokau block reserves*

As described earlier, the 1854 Mokau purchase deed named Te Kauri, Te Waipuna, and Tokowhaiti as areas 'which have not been agreed to'.<sup>196</sup> Although not listed on the deed, when the Crown returned to survey its Mōkau–Awakino purchases in 1884, Māori also sought to exclude two further areas from the sale, Te Mahoe (also known as Tawari/Tauwhare), and Te Mangeo. These five areas were then included in a schedule of reserves prepared in 1896 in response to concerns raised by Mōkau Māori over the Crown's administration of reserved lands.<sup>197</sup>

Māori also raised issues in the twentieth century over the inclusion in the Mokau purchase of two wāhi tapu located at the mouth of the Mōkau River. These were the 38-acre Te Naunau sandspit and 1-acre Motutawa Island, neither of which was listed in the deed or raised by Māori at the time the land was surveyed in the 1880s.<sup>198</sup> The Crown's actions in relation to these areas will be considered in a future chapter of our report.

##### 5.3.4.2.1 TE KAURI, TE WAIPUNA, AND TOKOWHAITI

As land excluded from sale rather than native reserves, Te Kauri (also known as Hingarangi), Te Waipuna, and Tokowhaiti (or Purapura) were treated as ordinary Māori land. Title was issued by the Native Land Court in the 1890s. The Crown then showed interest in purchasing some of the land, despite being aware of what the surveyor-general called 'the larger question' of whether Māori should be encouraged to part with land had been set aside for their long-term benefit.<sup>199</sup> At that time Māori were opposed to selling, but much of the land was later alienated from Māori ownership through processes that often targeted those lands closest to the river. Most of the Te Kauri block, for example, was alienated by a mixture of private purchases, public works takings and Europeanisation (a process by which collective Māori title was converted to individual European title).<sup>200</sup>

##### 5.3.4.2.2 TE MAHOE AND TE MANGEO

The 76-acre Te Mahoe block was awarded to Māori in 1899.<sup>201</sup> However, the entire block was alienated in 1912 through scenic reserve takings under the Public Works Act, a process that will be discussed in a future chapter of our report.

194. Document A142, p 73.

195. Document A142, pp 77–79.

196. Document A70(a) vol 1, pp 411–421, 453–455.

197. Document A147(b), pp 76–79.

198. Document A147(b), pp 99–119.

199. Document A147(b), p 80.

200. Document A142, pp 84–86, 91–92.

201. Document A147(b), p 95.



The six-acre Te Mangleo block was investigated by the court in 1897, but according to Mr Stirling the process was never completed, and it is no longer customary Māori land today.<sup>202</sup> As will be seen, in the twentieth century Crown officials repeatedly confused this land with the Te Piripiri reserve from the Taumatamaire block.

### 5.3.4.3 *The Piripiri reserve (Taumatamaire block)*

The Crown set aside one reserve from the 1855 Taumatamaire purchase, ‘a landing place for the canoes of the people of the interior’ known as Te Piripiri.<sup>203</sup> It was surveyed in 1884 to be about six acres, yet Rogan’s 1855 sketch plan of the Taumatamaire deed indicates a ‘considerably larger area.’<sup>204</sup> It was later found by the Native Land Court to be between 50 and 70 acres. According to Mr Stirling, the reserve is yet to be honoured.<sup>205</sup>

The Piripiri reserve was the subject of numerous complaints by Mōkau Māori, in part due to a series of misunderstandings by Crown officials. When first confronted by Māori over the reserve’s status in the late nineteenth century, the Crown maintained that its officials had included the Te Piripiri reserve within the boundaries of the replacement block issued in 1893 for Reihana’s reserve from the Awakino purchase. As Mr Stirling observed, these lands were adjacent, but they did not overlap.<sup>206</sup> Further confusion when the Crown’s 1896 schedule of reserved lands, Piripiri was identified as Native Reserve Section 12 Block I Awakino North Survey District. This land was in fact the Te Mangleo reserve set aside from the Mōkau block, mentioned earlier. Yet the error persisted. In 1938, the Crown responded to concerns raised by Mōkau Māori about Te Piripiri and other reserves by suggesting that Te Mangleo was likely a replacement block for the Te Piripiri reserve.<sup>207</sup>

In 1941 the Native Land Court was charged with inquiring into reserves set aside from the Mōkau–Awakino transactions in response to the 1938 petition by Rangirere Te Maenae and others. In his 1942 report Judge Beechey concluded that, contrary to previous statements by officials, Piripiri was not alienated along with the rest of Reihana’s reserve, and found further that the court ‘was “not at all satisfied that [Te Mangleo] had any relation to the Piri Piri reserve’. In his view, Māori had substantiated their claim, and rather than the six acres mentioned in the Taumatamaire deed, 50 to 70 acres ‘should have been set apart between the Maungakawakawa Stream and the Awakino River.’<sup>208</sup>

Responding to this inquiry, the Crown proposed to offer other land to Mōkau Māori as a replacement for Te Piripiri. Mōkau Māori declined that offer. As an alternative to Te Piripiri, efforts were made to seek the return of Reihana’s

202. Document A147(b), pp 94–95.

203. Document A70(a), vol 1, pp 422–434.

204. Document A147(b), pp 69–70.

205. Document A147(b), pp 69–76.

206. Document A147(b), p 72.

207. Document A147(b), pp 72–73.

208. Document A147(b), pp 74–75.

replacement reserve, which had been sold in 1894 but was now in the control of the Public Trustee. However, the Lands Department declared it unavailable in 1947. Mr Stirling could find no further archival references to Te Piripiri and concluded that ‘the Piripiri reserve has yet to be made.’<sup>209</sup>

#### 5.3.4.4 *The Otiao reserve (Rauroa block)*

One reserve of 290 acres, known as Otiao, was set aside from the 1857 Rauroa purchase. The purchase deed made no mention of reserves, leading officials to regard Otiao as land excluded from the sale. Mr Stirling, however, noted that Otiao was clearly marked as ‘Native reserve’ on the sketch plan that accompanied the deed.<sup>210</sup> We see this as further evidence of the Crown’s confusion about these matters. Title to Otiao was awarded by the land court in 1901, and the land remains largely in Māori ownership.<sup>211</sup>

#### 5.3.5 Treaty analysis and findings

During the early 1850s, the Crown sought to acquire land in the Mōkau region. Between 1850 and 1852, land purchase officers visited the area to negotiate with Mōkau Māori. In doing so, they discovered very different opinions amongst tangata whenua as to the wisdom of entering land transactions with the Crown.

Crown purchase agents in the early 1850s should have been familiar with the standards required when purchasing Māori land. These were clear from the guarantees in the Treaty and associated public statements. In this section, we measure the Crown’s conduct in the Mōkau–Awakino purchases against those standards. We address three questions:

- ▶ Did the Crown fully investigate customary tenure to the land it sought to purchase?
- ▶ Did the Crown then establish the free and informed consent of the sellers?
- ▶ Did the Crown ensure Māori retained sufficient land for their present and future needs?

##### 5.3.5.1 *Did the Crown fully investigate customary tenure?*

To ensure that the Crown was buying from the right people, and to maximise the chance that all concerned understood the nature of the transactions, its purchase processes had to be public and transparent.<sup>212</sup> In this respect, Donald McLean’s initial visit to Mōkau in 1850 represented a positive first step on the Crown’s part. He remained there for 13 days and held a large hui with Tākerei and his people. In the event, the Crown declined to purchase, as it could not secure a large block that suited its aims for settlement in the region, although this may also have been due to McLean becoming aware of divisions within the communities at Mōkau and further inland over the merits of land sales.

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209. Document A147(b), pp 75–76.

210. Document A147(b), pp 43–44.

211. Document A142, p 99.

212. Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, vol 1, p 120.

When the Crown returned to Mōkau in 1852 to resume purchase negotiations, it took a different approach. In Boulton's words, the Crown 'relied on purchasing the interests of those who agreed to sell and waiting or putting pressure on those who were unwilling.'<sup>213</sup> As will be seen, this approach was to characterise Crown conduct in purchasing Māori land in the inquiry district for much of the 1850s and 1860s. In each of the four Mōkau–Awakino transactions, the Crown did not ensure that all those with rights were willing to sell. Instead, as Ms Boulton observes, 'Protests seem to have become, by default, the principal means of identifying those with intersecting interests in land under offer.'<sup>214</sup> Even then, however, Crown officials ignored opposition, and pressed ahead despite knowledge of it. An example was the receipt for Taumatamaire, which explicitly anticipated that sellers would pay off any disputes with other land.

There is good evidence that the Mōkau and Awakino communities were seriously divided over the issue of land sales, and that the divisions grew during the 1850s as each purchase was completed. This would have been clear to Crown agents from the well-documented objections of Ngati Maniapoto in the interior to the land-selling activities of coastal Māori, and especially from events surrounding the tapu placed on the Mōkau River by Te Kuri and Te Kaka, alongside other acts of resistance to the 1854 Mokau purchase. As the Mohaka ki Ahuriri Tribunal found, the Crown was entitled to cut the interests of those who opposed sale out of the purchase block, provided it had conducted a fair and transparent negotiations process, in which (among other things) all right holders were fully informed on what the sale meant, including its full extent.<sup>215</sup> This was not, however, the case at Mōkau.

We find that the Crown, in conducting the Awakino, Mokau, Taumatamaire, and Rauroa transactions, made insufficient efforts to identify all customary right holders. Instead, it conducted the purchases in the knowledge that there was opposition, but refused to act on that opposition. This was a breach of the Treaty principle of partnership, the guarantee of tino rangatiratanga, and the duty of active protection.

### **5.3.5.2 Did the Crown establish free and informed consent?**

In addition to properly identifying all customary right holders, the Crown to establish the free and informed consent of right holders through a fair negotiation process. This required the Crown to properly identify the land at the time of the transaction, to ensure that right holders understood the nature of the transaction, to use fair negotiation tactics – including by dealing fairly with opposition – and to pay a fair market price for the land.<sup>216</sup>

As mentioned, McLean's instructions to Rogan for the 1854 Awakino purchase were to survey the block and reserves. There is little evidence in any of these

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213. Document A70, p 291.

214. Document A70, p 291.

215. Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, vol 1, p 120.

216. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 1, pp 104–105.

purchases of attempts by Crown officials to walk the boundaries with Māori to ensure their accuracy. External boundaries of all four blocks were defined by survey before the purchases were completed. However, the total area of land was estimated rather than calculated. As a result, four purchases were later found to differ markedly compared to the initial estimate. For Awakino this effectively resulted in a significant underpayment in terms of the price per acre, yet when this was discovered in the 1880s the Crown made no attempt to compensate the former owners, despite Māori raising the matter again in the twentieth century.

In addition, Rogan failed to complete the survey of the 1854 Mokau purchase boundaries, due to the difficulties created by opposition to the transaction. When the Crown returned to lay claim to the purchase in the 1880s there was no attempt to rectify these issues by accurately defining the interests of sellers and non-sellers, or their successors. Deficiencies in the definition and survey of the purchase areas were, in addition, a major cause of the subsequent problems of getting title to defined reserves, which is discussed below.

It is not clear whether Mōkau Māori fully realised the nature of the Mōkau–Awakino transactions. As Ms Boulton and Mr Thomas both pointed out, their understandings were not tested by settlement until the 1880s, when the context was very different.<sup>217</sup> In some ways, the serious opposition to selling expressed at Mōkau and further inland seems to suggest that some Māori at least had a good grasp of the potential consequences. Having said this, we are not satisfied that the Crown did enough to assure itself that Māori understood the effect of the purchases on their future relationships with the land.

Māori who supported the sale of Mōkau–Awakino land did so, above all, because they thought that Pākehā trade and settlement would bring benefits for their people. This is what Tākerei and his supporters told McLean during his 1850 visit and repeated in several letters.<sup>218</sup> As noted, in the initial period of negotiations, Crown officials encouraged these expectations, holding out the prospect of settlement as a way of encouraging land sales to extend inland along the Mōkau River. If Mōkau Māori agreed to give up their best lands, they could expect a township and perhaps even a port to be established, improvement and cultivation of the lands, and general prosperity for both races. These hopes, however, were to be disappointed. The Crown failed to secure the land and minerals it sought, and what land it did buy was not onsold to settlers until the 1880s and 1890s.

We have, however, seen no evidence of the Crown promising Māori that specific actions or benefits would follow their signing any of the Mokau purchase deed. McLean and his subordinates made clear that their interest was primarily in the land upriver from Mōkau, because of its value for both minerals and settlement. Officials also made it plain that the land they did buy was mountainous

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217. Document A70, p 449; doc A28, p388.

218. Document A70(b), p13.

and inaccessible, and expectations of large scale rural settlement should thus have been dampened. On the other hand, it seems reasonable for supporters of land sales to have expected a township and port to be established at Mōkau, given the location of the purchased land at the Mōkau rivermouth and along the coast to Awakino. Upon returning to Mōkau in 1854, the Crown continued to allow Māori to understand it was acquiring land for the settlement of Europeans, even while McLean recorded his intention to deliberately hold the land back from settlers to keep purchase prices for adjacent land as low as possible. This was not the behaviour of a Treaty partner acting in good faith.

The Crown's tactics in negotiating the four Mōkau–Awakino purchases showed further evidence of bad faith. Rather than allow negotiations to proceed at their own pace, the Crown manipulated Mōkau Māori into agreeing to purchase, and did not provide sufficient time for opposition and disputes to be resolved through tikanga.

In this regard, we view McLean and Rogan's leaving of £300 in the care of Takerei in 1854 for Te Wētini and others to acquire if they agreed to sell the Mokau block as a cynical tactic that appears to have succeeded in hastening the eventual purchase. Rogan's 1855 calculation that by the summer the sellers of the Taumatamaire block would have expended the £500 and would then be more willing to put pressure on neighbouring Māori to sell their lands was equally opportunistic, and again was not the action of a good faith partner.

Under pre-emption, the Crown effectively had a monopoly over the purchase of Māori land; there was no 'market' aside from that through which the Crown sold the land on to settlers. The Crown's express philosophy was to buy at a low price from Māori and sell at a higher price to settlers. Doubtless it would have taken the same approach with the Mōkau–Awakino blocks. However, as mentioned, they were not gazetted for settlement until the 1880s, which makes it impossible to compare like prices for like.

What we do know is that the prices for the Awakino and Mokau blocks were considered low by the missionary, Schnakenberg. We can also say that based on the estimated areas at the time, the prices per acre were broadly within the band of acceptability laid down by McLean in 1855, given that much of the land was very remote and rugged. We therefore make no findings of Treaty breach on the issue of price for these transactions.

Overall, we find that the Crown did not pursue its negotiations with Mōkau Māori in the utmost good faith. Together, these actions constituted a breach of the Treaty principles of partnership and good faith, and the duty of active protection.

### **5.3.5.3 *Did the Crown ensure Māori retained sufficient land?***

In purchasing Māori land, the Crown had to ensure that right holders retained enough land for their present and future needs. This required the Crown to investigate the extent and quality of land remaining to right holders, set aside reserves

of sufficient size and quality, provide the agreed reserves in a timely manner and in the correct location, and if necessary, act to protect those reserves from subsequent alienation.<sup>219</sup>

There is no evidence that the Crown sought to ensure the adequacy of the reserves it set aside from the four Mōkau–Awakino purchases by, for example, assessing the size of the Māori population at Mōkau or the extent of their remaining landholdings.

The Crown's administration of land reserved or otherwise set aside from the Mokau-Awakino transactions created numerous difficulties for Mōkau Māori. Title was not issued for many decades, during which time the Crown sold some of the land to settlers. Uncertainty over the legal status of the land was a major source of the Crown's confusion and resulting delays. When they complained about the delays, Māori were often dismissed, misinformed, or told to apply to the Native Land Court, where they faced further legal complications, including succession issues. For the most part, it took until well into the twentieth century for titles to be confirmed, and in all but a few cases this only occurred after sustained pressure on the Government by Māori. And when the land was finally granted, it was often different to that promised in the 1850s, including at least two cases where a reserve is still yet to be created.

We find these Crown failures to be in breach of the Treaty principles of good faith and redress, as well as the plain meaning of article 2, which provided for Māori to retain possession of their lands, including wāhi tapu, for as long as they so desired.

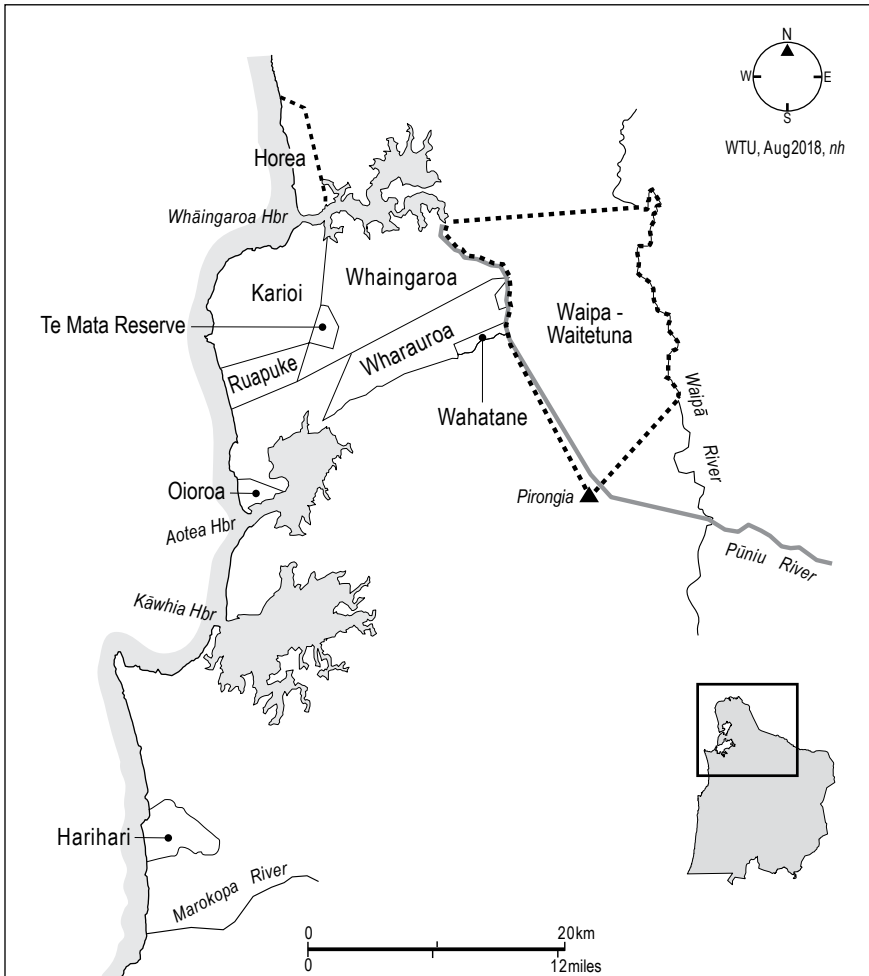
#### 5.4 THE WESTERN HARBOURS TRANSACTIONS

Another major set of early Crown purchases in this inquiry district occurred in and around the three harbours of the district's north-west coast: Whāingaroa, Aotea, and Kāwhia. The transactions occurred in two phases:

- ▶ The first phase was conducted by surveyor-general Charles Ligar, and involved land adjacent to Whāingaroa Harbour, on the north side at Horea in May 1850 and on the southern shore in March 1851.
- ▶ The second phase was initiated by Donald McLean and mainly completed by John Rogan, and involved a series of negotiations for land around the Whāingaroa, Aotea, and Kāwhia Harbours.
- ▶ The second phase began in 1854, when McLean initiated at least 24 separate arrangements with Māori for land in the area. Most were negotiated by McLean during visits to the rohe, but some were conducted with chiefs he hosted in Auckland. McLean then instructed Rogan and others to finalise the transactions, and surveys were completed. Between November 1855 and June 1859, the Crown succeeded in securing seven further purchases on and around the western harbours. As a result, the Crown acquired almost all the

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219. Waitangi Tribunal, *Muriwhenua Land Report*, p 333; Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 1, p 262.



Map 5.3: The western harbours transactions

coastal land between Whāingaroa and Aotea, as well as land further south between Kāwhia and Marokopa. Several further attempts to acquire land on the coast failed.

In addition, the Crown made two ‘blanket’ purchases from particular iwi, which purported to extinguish all their interests in the lands covered by these purchases.

The western harbours are large tidal inlets, sheltered from the western ocean and separated from the inland Waipā valley by steep hill country. Karioi maunga stands just south of Whāingaroa, and Pirongia maunga is east of Aotea and Kāwhia. The harbours are of immense value to Māori and are intimately connected to Tainui traditions. Whāingaroa, meaning ‘the long pursuit’, was named by the *Tainui* crew and reflects their long search for a place to settle, while the

waka itself was buried at Kāwhia at the end of their journey (see chapter 2). These early arrivals soon established kāinga, taking advantage of the area's abundant kai-moana and the opportunities for travel inland and along the coast to other parts of the region.

The lands surrounding the western harbours later became some of the most heavily contested in the region as several Tainui groups vied for control of the area. In the 1700s, a series of battles broke out around Kāwhia, drawing in groups from throughout Waikato and Taranaki, and redrawing the tribal landscape of the region. An uneasy peace, punctuated by periods of conflict, continued into the 1800s as groups continued to contest dominance over the area and looked to settle unresolved grievances. In 1820, at the Battle of Kāwhia, a coalition of Waikato, Ngāti Maniapoto, and Ngāti Hikairo forces drove Ngāti Toa-rangatira from the region. Many Ngāti Koata, who had fought with Te Rauparaha, also chose to depart to the south. Further disruption came in the 1820s, as Waikato and Ngāti Maniapoto faced a series of conflicts with heavily armed Ngāpuhi. These events are set out more fully in chapter 2, section 2.5.

By the late 1840s and early 1850s, when the Crown began seeking to purchase land around the western harbours, the region remained in a state of flux, with several distinct but related iwi and hapū occupying various areas and continuing rivalries over rights to land and resources. As previous chapters have set out, the tribal dynamic had been further altered in the late 1820s by the arrival of European traders, and in the 1830s by the establishment of Wesleyan and Anglican missionaries at Kāwhia, Whāingaroa, and Aotea. Māori largely retained control over these relationships, which they valued in large part because they allowed iwi and hapū to engage successfully with the early colonial economy.

Several early European visitors published reports of journeys in the 1840s through the west coast harbours and inland Waikato (see chapter 3). In April 1840, the German naturalist Ernst Dieffenbach visited the west coast of the district, where he was impressed by the progress of the Wesleyan missionaries and Māori knowledge of English laws and systems of government. Dieffenbach thought Whāingaroa an ideal location for European settlement, with good access to quality agricultural and forest land on the Waikato and Waipā plains. He reported limestone at Aotea and thought Kāwhia 'almost the best harbour on the western coast'.<sup>220</sup> In 1844, the English writer and artist George Angas travelled through the Waikato and down the west coast. Angas, too, considered the region suitable for settlement. He described avid competition between Pōtatau Te Wherowhero in southern Waikato and Te Awaitaia and others at Whāingaroa for European settlers. Angas described the Waikato rangatira Te Wherowhero as:

having lately proffered a request to the Governor to allow Europeans to settle on the Waikato, being anxious to have pakehas amongst his people, to purchase their

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220. Document A23, p 39.



produce, and give them European articles in exchange; and he had offered certain lands for sale to the British Government for that purpose.<sup>221</sup>

According to Angas, Te Wherowhero had also referred to a rival offer by ‘the chiefs Wiremu Nera [Te Awaitaia], Paratene, and others at Waingaroa on the west coast, for settlers to come amongst them’. To this, Te Wherowhero reportedly said, ‘Tell the Kawana [Governor] that he must not neglect the elder brother for the sake of the younger.’<sup>222</sup>

This, then, was the context in which the Crown began efforts to purchase land around the district’s western harbours. In many ways, the situation resembled that at Mōkau in the late 1840s. Customary rights to land along the northwest coast had changed significantly in preceding decades and were by no means settled. Here, too, rangatira such as Wiremu Nera Te Awaitaia of Ngāti Māhanga sought a closer relationship with the Crown in the hope that it would encourage more Europeans to settle and peace and prosperity for his people. And just as at Mōkau, the 1850s saw growing opposition to land sales in the district.

#### 5.4.1 The parties’ positions

The Tribunal received several submissions relating specifically to the western harbours transactions.<sup>223</sup>

In submissions on the Horea purchase, the claimants said the Crown took advantage of conflict between Ngāti Mahuta, on the one hand, and Ngāti Tahinga and Tainui hapū on the other, to acquire the lands at Horea. The claimants said that missionaries exerted considerable pressure on Ngāti Mahuta to sell.<sup>224</sup> Claimants further argued that, while the Crown negotiated a deed with Te Wherowhero and Ngāti Mahuta, ‘there was no deed signalling an extinguishment of Ngāti Tahinga-Tainui interests in the land.’<sup>225</sup>

On the Whaingaroa purchase, claimants submitted that the Crown failed to clearly explain the nature and extent of the transaction to Māori sellers. Ngāti Māhanga claimants emphasised a gulf between how their tūpuna understood the Whaingaroa block transaction and the Crown’s expectations. The claimants suggested that the approach of their tūpuna to the transaction was regulated by manaakitanga, whereby Ngāti Māhanga encouraged Pākehā to settle in their rohe by sharing their lands and resources in exchange for koha, though the iwi retained mana over the land. In conducting the transactions with their tūpuna, the claimants argued, the Crown failed to understand manaakitanga and simply assumed

221. Document A23, p 40.

222. Document A23, pp 40–41.

223. Wai 125 (submission 3.4.210); Wai 1327 (submission 3.4.249(c)); Wai 2273 (submission 3.4.141); Wai 1448, Wai 1495, Wai 1501, Wai 1502, Wai 1592, Wai 1804, Wai 1899, Wai 1900, Wai 2125, Wai 2126, Wai 2135, Wai 2137, Wai 2183, Wai 2208 (submission 3.4.237); Wai 1588, Wai 1589, Wai 1590, Wai 1591 (submission 3.4.143); Wai 827 (submission 3.4.245).

224. Submission 3.4.210, p 21.

225. Submission 3.4.210, p 25.

that the transaction represented a permanent alienation. The claimants further submitted that the Crown failed to set aside sufficient reserves for their present and future needs.<sup>226</sup>

Karioi maunga, which rises above the coast south of Whāingaroa, was alienated as a result of the Karioi purchase. The claimants highlighted the significance of this maunga and ‘dispute that this land was ever sold.’<sup>227</sup> Further, they raised concerns relating to lands reserved or excluded from the transaction.<sup>228</sup>

In submissions on the Ruapuke purchase, claimants argued that the Crown pressured Ngāti Whakamarurangi to agree to the sale. As a result, they submitted, the sellers ‘were forced to accept a purchase price which was much less than what they originally wanted for the block’. Although reserves were set aside from the sale, they have since been alienated.<sup>229</sup>

In submissions on the Wharauoa purchase, claimants submitted that ‘the Crown did not act honourably, reasonably and in good faith’. Rather than transacting with all people with interests in the land, they said, they Crown dealt with only a small number of rangatira, resulting in complaints that the block had been sold to the wrong people and demands for additional payments.<sup>230</sup>

The claimants submitted that, although the Te Mata block was set aside in 1851 as a reserve from the Whaingaroa purchase, by June 1859 the Crown had purchased the entire block. In their view, this denied Māori commercial opportunities and reduced ‘their long term ability to participate in, and benefit from, the developing colonial economy.’<sup>231</sup>

In submissions on the Harihari purchase, claimants argued that the Crown neither properly consulted all right holders, nor ensured that Māori understood the nature of the transaction, nor verified the area of land being transacted. In the claimants’ submission, the Crown failed to pay the full purchase price for the block and failed to ensure the sellers ‘received adequate compensation for the land sold.’<sup>232</sup>

The claimants argued that the Crown failed to ensure it dealt with the right owners when it conducted the Oioroa purchase, and that it failed to ensure that Māori understood the nature of the transaction. Counsel submitted ‘the fact that Te Haho Kewene continued to live on the Oiōroa block after the Crown had acquired it, is enough to support a finding that, the setting in which this transaction was carried out, was one of Māori customary practice and reciprocal benefits.’<sup>233</sup>

226. Submission 3.4.249(c), pp 27–30, 34–36.

227. Submission 3.4.210, p 25.

228. Submission 3.4.210, pp 26–27.

229. Submission 3.4.141, pp 10–12.

230. Submission 3.4.237, pp 81–83.

231. Submission 3.4.105, pp 27–28.

232. Submission 3.4.143, pp 34–35; submission 3.4.160, pp 44–45.

233. Submission 3.4.141, p 9; submission 3.4.148, pp 4.

In the claimants' view, this meant that the rangatira who entered into the transaction 'did not understand the European concept of a "forever sale"'.<sup>234</sup> Ngāti Te Wehi claimants submitted that their tūpuna never consented to the sale and that the sale was therefore invalid.<sup>235</sup>

The Crown did not make specific submissions on all of these transactions. Crown counsel cited Horea as an example of proposed sales that were never completed, even though 'payments may have been made by the Crown with the intention of securing purchase'.<sup>236</sup> In respect of Te Mata, the Crown submitted that, after it was alienated, 'there were still three other reserves not alienated from the wider Whaingaroa block, comprising a total of around 1,120 acres, as well as 4,000 acres of reserves in the wider Whāingaroa area'.<sup>237</sup>

In respect of Harihari, the Crown submitted that the circumstances surrounding the reduction in price are unclear, as is the extent to which Māori consented to that reduction. The Crown argued that it was reasonable to reduce the price given the block was smaller than originally thought, and that subsequent confusion over the distribution of payments 'may be primarily an issue between the various Māori owners of the block, rather than an issue between the Crown and Māori'.<sup>238</sup> As for the lack of reserves created at Harihari, it was not 'incumbent on the Crown to make reserves for Māori in the course of pre-Native Land Court transactions unless it was, or can be, demonstrated that Māori residing in the block at the time did not retain sufficient other land for their continued wellbeing'. This was not the case at Harihari, the Crown said.<sup>239</sup>

#### 5.4.2 Background to the transactions

The 1850s marked the beginning of a new phase of Pākehā settlement in New Zealand. Previously, according to Boulton, Europeans arrivals had tended to be 'single men who had come alone or as crews of traders and married into Maori communities'. Increasingly, these men 'were being replaced by planned, large-scale immigration of British men and women, many of whom had families or would go on to marry other European settlers'. These organised settlers were initially concentrated at the New Zealand Company towns of Port Nicholson, Wanganui and New Plymouth, and in the growing settlement at Auckland. By the mid-1850s, however, 'the flow of immigrants arriving at Auckland expecting to be able to purchase land was putting pressure on the Government to purchase more Maori land'. This placed attention on areas like Whāingaroa, Aotea, and Kāwhia, which appeared attractive to settlers, not least because the harbours provided 'access by ship to bring people and regular supplies to sustain a European population'.

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234. Submission 3.4.141, p 9-; submission 3.4.148, pp 4.

235. Submission 3.4.245, p 4.

236. Submission 3.4.289, pp 14, 14 n

237. Submission 3.4.289, p 7.

238. Submission 3.4.310(d), pp 18–19.

239. Submission 3.4.310(d), p 23.

Settlers also hoped to use coastal access to transport coal, limestone, and timber from the inland Waikato and Waipā areas to Auckland.<sup>240</sup>

These were also periods during which Māori on the west coast and in southern Waikato made highly successful efforts to engage with the early colonial economy. Crown officials and other European visitors in this period made regular comment on Māori economic growth, particularly the enthusiasm to grow wheat, to build mills to process it into flour, and to acquire ships to transport it to markets in New Zealand and overseas. In part, this reflected the influence of missionaries such as John Morgan and John Whiteley, who placed a high value on encouraging Māori agriculture, especially wheat production, as a route to prosperity and 'civilisation'.<sup>241</sup> In this they were supported by Governor Grey, who provided loans for the purchase of livestock, tools, flour mills and ships, part of his so-called 'flour and sugar' policy for Māori technological advancement.<sup>242</sup> Māori, however, had their own motivations for economic expansion.

Surveyor-general Charles Ligar observed these developments among iwi and hapū at Whāingaroa in the early 1850s, and their increasing economic self-confidence:

They have now dispensed with the formerly all-important European character, once so indispensable among them, and to be seen in every village, "The Native Trader". He has been for the last three or four years unknown among them, being unable to make a profit by his trading transactions.<sup>243</sup>

Ligar noted that Whāingaroa iwi and hapū were deeply invested and engaged in these new economic pursuits:

The old persons may be seen in groups round the evening fire, chatting about the appearance of crops, and all subjects relating to them; the women being busily employed in making baskets to carry grain and potatoes, or in plaiting leg ropes for driving their pigs to market. All other pursuits seemed merged into the habits of thrift; and the most engrossing subject that can be broached, is the relative merits of two mill sites, over or undershot wheels, and the best means of raising £200 or £300 for the purpose of building a mill which shall grind more than one erected by a rival tribe.<sup>244</sup>

The Ngāti Māhanga and Ngāti Hourua rangatira Te Awaitaia was a key figure behind economic expansion at Whāingaroa. He was born inland at Waipā, but lived at Whāingaroa for most of his adult life (chapter 2, section 2.7.4). He

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240. Document A70, p158–159.

241. Document A26 (Francis), pp34–38; doc A70, pp148–151; doc A23, pp11–12, 123–128.

242. Document A23, pp91–92.

243. Document A70, p225.

244. Document A70, p225.

played a prominent role alongside his relative Te Wherowhero in the campaign against Ngāti Toa-rangatira and in the Waikato-Maniapoto conquest of northern Taranaki. He converted to Christianity in the early 1830s and supported the establishment of a Wesleyan mission station at Nihinihi, Whāingaroa. In 1836 he was baptised, taking the name Wiremu Nera after the missionary William Naylor, and in 1840 he signed the Treaty at Waikato Heads.<sup>245</sup>

Te Awaitaia considered himself a friend of the Queen and the Governor.<sup>246</sup> He played an important part in promoting land transactions with the Crown from the late 1840s until well into the 1860s. The same cannot be said of other leading rangatira of the region, such as Te Wherowhero, who would revise their attitudes towards inviting Pākehā settlement during the 1850s.<sup>247</sup>

### 5.4.3 The Horea and Whaingaroa purchases

Two transactions took place early in the 1850s:

- ▶ In May 1850, the Crown intervened in an internal dispute over land at Horea, on the northern side of Whāingaroa Harbour, by ‘purchasing’ the land from one of the parties involved in the dispute. The sale was never confirmed.
- ▶ In March 1851, the Crown purchased the Whaingaroa block, to the southeast of the harbour. A deed was signed, and payment was made in instalments, though Crown officials later made several additional payments after difficulties arose when the land was surveyed for on-sale to settlers.

Both the Horea and Whaingaroa transactions were conducted by surveyor-general Charles Ligar, who held formal responsibility for the purchase of Māori land from 1849 until 1854. The instructions given to Ligar in December 1849 by the colonial secretary Andrew Sinclair on behalf of Governor Grey bear repeating, as they formed a general policy for Crown purchases in this period. Ligar was ordered ‘without the least delay to purchase from the Natives a large extent of land’ in ‘position and in character adapted for the immediate wants of the Europeans’. He was further instructed to arrange payment in instalments over several years, and that the governor wished him to set aside ‘good reserves’ that were ‘carefully agreed on and marked out’ before the purchase was completed.<sup>248</sup>

#### 5.4.3.1 *The Crown’s intervention at Horea, May 1850*

Horea sits on the northern side of the Whāingaroa Harbour. It had been the subject of contest between different kin groups in pre-Treaty times, and further dispute over the land was still evident after 1840. An extant signed deed suggests that the Crown acquired the block on 25 May 1850. As will be seen, however, the transaction had aspects that were unusual, and it is not typical of other Crown purchases in the area at this time.

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245. Document A23, p 66–67.

246. Submission 3.4.249(c), pp 3–4.

247. Document A23, pp 165–171.

248. Document A70, pp 163, 223.

It was at Horea, in 1835, that Wesleyan James Wallis first established a missionary base. He seems to have stayed for only a few months before shifting to Whāingaroa, but remained involved in events there in subsequent years.<sup>249</sup>

The area had earlier been the subject of customary transactions between Ngāti Koata (also sometimes referred to just as Tainui) and Ngāti Tahinga. Over the years, they had become closely interconnected and it appears they assisted each other in matters of defence. By 1840, there was also a Ngāti Mahuta presence, under the leadership of Pōtatau Te Wherowhero. This led to disputes about rights between, on the one hand, Ngāti Koata/Tainui and Ngāti Tahinga and, on the other, Ngāti Mahuta, each side asserting primacy.<sup>250</sup>

The disputes continued throughout the decade, causing local missionaries to intervene in an attempt to calm the tensions. In January 1849, the Anglican missionary Benjamin Ashwell attended a meeting between the two groups at which there was 'much angry discussion'. At the end of the meeting, 'the Ngatimahuta at the instigation of Te Wherowhero' apparently agreed to 'refer the matter to the Governor'. Whether this was spontaneous, or in response to a suggestion by Ashwell, is not clear.<sup>251</sup> In the event, Governor Grey met with a large group of Ngāti Mahuta in mid-February at Ngahokowhitu (on the banks of the Waipā), accompanied by Ashwell. At the time, Grey did not investigate the causes of the dispute over Horea, but simply called on Ngāti Mahuta to refrain from hostilities.<sup>252</sup> Subsequently, he reported to London that he intended to refer the question of the disputed ownership of the land to 'persons appointed for that purpose by the Government'.<sup>253</sup>

In September 1849, tensions once again rose to the surface: according to Ashwell, 'a large party from the Ngatimahuta Tribe' was preparing 'to proceed to Waingaroa [*sic*] respecting the disputed land between them and the Ngatitahinga'.<sup>254</sup> As a result, Ashwell and the Wesleyan James Wallis (now based in Whāingaroa) travelled to Horea in a further attempt to calm tensions. Some chiefs expressed a willingness to make peace, but the conflict was not entirely resolved. Ashwell afterwards wrote that he hoped the dispute would be settled by the Governor.<sup>255</sup>

By early 1850, however, each side had built a fighting pā, and matters came to a head. In early January, Ngāti Mahuta, apparently with reinforcements from Waikato, attacked the stronghold of Ngāti Koata/Tainui, and Ngāti Tahinga came to the assistance of the defenders.<sup>256</sup> In an article published on 16 January 1850, the *New Zealander* reported:

249. Document A70, p 69; doc M24(e) (Greensill), para 9.

250. Document A22, pp 521–522 (O'Malley); doc M24(e), para 24.

251. Document A70, pp 211–212.

252. Document A70, pp 213; doc A70(a), vol 3, p 1210.

253. Document A70, pp 213–214.

254. Document A70, pp 214–215.

255. Document A70, p 215; doc A70(a), vol 3, p 1224.

256. Document A70, pp 211–212, 216; doc M24(e), para 24.

about ten days ago, a party of Ngatimahuta went from Waikato, travelling by night and concealing themselves among the high dock [a large-leaved plant] that surrounds the Pah of Ngatitahinga at Horea until the people were gone to their cultivations. They then crawled through the dock, entered the Pah . . . turned out two old men and two old women, and set fire to the Pah.<sup>257</sup>

The article continued that it was believed that the Government was willing to do what it could by way of mediation, and ‘it is probable Te Wherowhero and the contending parties may be visited this week.’<sup>258</sup>

It was at around this point that missionaries and Crown officials began to promote the acquisition of the contested land as way to address the dispute, which in turn prompted the involvement of Charles Ligar, the surveyor-general.<sup>259</sup>

The Governor had instructed Ligar, just three months earlier, to begin buying large areas of land for European settlement, and by February 1850 he was already in the district negotiating with Ngāti Māhanga for what would become the Whaingaroa purchase, discussed in the next section. The precise instructions given to Ligar with respect to Horea are unknown. In a later letter to a friend, though, Ashwell suggested that Ligar was ‘commissioned by the Governor to purchase the Land, and thus put an end to the dispute.’ Ligar, Ashwell continued, ‘called upon me, and requested me to accompany him to use what influence I had to bring the matter to a peaceable termination.’<sup>260</sup>

To this end, Ligar and Ashwell travelled to Horea, arriving on 14 March. The two men began by visiting Ngāti Mahuta at their pā and sought to induce them to sell their interests in the disputed land. Ashwell recalled informing them, at Ligar’s request, ‘that the Governor wished to purchase the land in order to prevent bloodshed’. He then ‘begged of them to accede to this proposition’, and they agreed to consider it, ‘and give a final answer the following day.’<sup>261</sup>

At a church service that evening, Ashwell then berated those Ngāti Mahuta who had previously been baptised, for ‘trampling under foot their baptismal vows’. What they were doing, he asserted, was ‘wrong in the sight of God and man’: ‘Therefore – we their Missionaries . . . blamed them. The Governor and all good men blamed them. The Church of God blamed them, and above God the Holy Spirit was grieved, and blamed them.’<sup>262</sup>

Present, too, was the Wesleyan missionary James Wallis, mentioned earlier. Before leaving the pā, he sought to record in writing an agreement that the chiefs there would ‘leave it with Te Wherowhero the principal Chief of Waikato, and the Governor-in-Chief, Sir Geo. Grey, to settle’. In the end, when the matter was put to

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257. *The New Zealander*, 16 January 1850, p 3; see also document A70, p 215.

258. *The New Zealander*, 16 January 1850, p 3.

259. Document A70, pp 211–212, 215–216.

260. Document A70, p 216; doc A70(a), vol 3, p 1229.

261. Document A70, pp 216–217.

262. Document A70, p 217.

the assembled group on 16 March, '400 Armed Natives answered with one Voice Ae Ae.'<sup>263</sup>

The missionaries and Ligar then proceeded to the 'Waingaroa Pa  $\frac{3}{4}$  of a mile distant' (presumably meaning the pā defended by Ngāti Koata and Ngāti Tahinga). There, they met with a rather different response. In his journal, Ashwell commented that at this pā 'they did not seem so well pleased with the arrangement'. His translation of the words of one chief was: 'Let the Thunder and rain pass by . . . then *perhaps* we may consent' (emphasis in original).<sup>264</sup> This suggests that although the question of selling land to the Crown might have been broached with Ngāti Koata/Ngāti Tahinga, they were not willing even to discuss the matter at that point: their prime objective was to get through their present troubles and secure a measure of peace.

Ashwell concluded his account by saying:

After much persuasion and constantly going to both parties The arrangement agreed to was, that . . . all the Waikato Natives shd. remove to Waipa, and then after some little time had elapsed The Waingaroa [*sic*] Natives wd. in all probability also remove and sell their claim to the Governor . . . but Waikato was to receive the first payment[.]<sup>265</sup>

Two days later, on 18 March 1851, Ngāti Mahuta left Horea, and so too did Ligar and Ashwell (and presumably Wallis). Ashwell recorded before their departure: 'Mr Ligar closed the Waikato Pa himself and told the Natives we should consider it Government property.'<sup>266</sup>

Several weeks passed and then, in May, a formal deed for Horea was drawn up. It gave no indication of the number of acres involved in the transaction but it described the land as being bounded:

On the West by the sea on the South the mouth of Whaingaroa on the East the Marataka stream from the mouth to the commencement, thence to Waima at te Tauterei thence across the stream to Whakapaetai[,] the little stream[,] thence the boundary follows the coast line. Horea is the name of the place.<sup>267</sup>

By taking that description and the sketch plan attached to the deed, and then checking the geographical reference points against a modern topographical map, it can be ascertained that the area involved was probably between 4,000 and 4,500 acres.<sup>268</sup>

The same month, the colonial secretary wrote to Ligar concerning his application for £100 to enable him to 'purchase the block . . . as a means of settling the

263. Document A70(a), vol 3, pp 1233, 1234

264. Document A70(a), vol 3, pp 1233, 1234–1235

265. Document A70(a), vol 3, p 1235; doc A70, p 219.

266. Document A70, p 219.

267. Document A70, p 220; doc A70(a), vol 1, pp 153–164, 441.

268. Document A70(a), vol 1, p 164. Estimate by the Tribunal's mapping officer.



serious and long-pending disputes between the Nga te Mahuta and Nga te tepa Tribes [*sic*]. He informed Ligar that the auditor-general would make the money available.<sup>269</sup>

On 25 March 1850, Te Wherowhero affixed his mark to the deed, which said, in translation: ‘I and also those persons of the Ngatimahuta hapu agree to sell this land to Queen Victoria’. The transaction was witnessed by Tamati Ngapora and Takiwaru, along with James Baber, a clerk of the Survey Office. The deed, however, records the payment as having been £50, not £100.<sup>270</sup> If the area was indeed over 6,000 acres, that works out at less than 2d an acre. Had it been for an outright purchase (even of only, say, half the interests), that figure seems remarkably low. Also to be considered is newspaper report of the time referring to Te Wherowhero as having ‘received a sum of £50 from the government, on the understanding that his people should not visit Horea again with hostile intentions.’<sup>271</sup>

In the end, it seems that the Crown’s intervention at Horea changed very little. There is no evidence to suggest that Ngāti Tahinga and/or Ngāti Koata ever signed a similar deed. In August 1850, seemingly regardless of whatever the Crown may have understood as being achieved by the transaction, Ngāti Mahuta reoccupied their position at Horea. Alongside that is the fact that no proclamation was ever issued declaring that Native title over the Horea block had been extinguished.<sup>272</sup>

Ultimately, Horea became part of the Te Akau block which was confiscated under the New Zealand Settlements Act 1863.<sup>273</sup> The subsequent history of the land, as part of the Te Akau block, will be considered in a future chapter of our report.

### 5.4.3.2 *The Whaingaroa purchase, March 1851*

At roughly the same time as becoming involved at Horea, the Crown entered negotiations for the purchase of the Whaingaroa block, on the southern shores of Whāingaroa Harbour.

#### 5.4.3.2.1 THE PURCHASE NEGOTIATIONS

Surveyor-general Charles Ligar appears to have begun discussing the sale of the Whaingaroa block with Wiremu Nera Te Awaitaia and other Ngāti Māhanga in early 1850. By early February, he reported considerable progress, to which Sinclair replied, conveying Grey’s opinion that:

the whole of the arrangements which you propose to carry out for the purpose of completing the purchase of a block of land situated near Waingaroa [*sic*] from William Naylor and the Ngatimahanga tribe are extremely judicious and that it is His Excellency’s wish that these arrangements should be completed and the first

269. Document A70, p 220; doc A70(a), vol 2, pp 550–551.

270. Document A70, p 220; doc A70(a), vol 1, pp 153–164, 441.

271. Document A70, p 221; see also *New Zealander*, 28 August 1850, p 3.

272. Document A70, pp 220–221.

273. Document A70, p 221.

instalment paid with the least practicable delay . . . the price paid for the land, the periods at which the instalments are to be paid and the extent of the reserves all appear judicious and good.<sup>274</sup>

Little more is known about the negotiations for this purchase, other than the fact that a deed for the land was signed on 22 March 1851. The deed was signed by ‘Wiremu Nero [*sic*]’ (Te Awaitaia), Te Waka and 11 other ‘chiefs of Ngatimahanga and of Nga Te Hourua’. The deed, written in te reo Māori, declared that the Māori signatories ‘and their whole tribes consent to sell this piece of Land to Queen Victoria’ (‘na ka whakaae nei ratou ko o ratou hapu katoa ki te hoko i tenei whenua ki a Kuini Victoria’).<sup>275</sup> The sketch map accompanying the deed showed that the block included most of the southern shoreline of Whāingaroa Harbour. In return, the Crown agreed to pay £400, over three instalments.<sup>276</sup> The block’s size was not mentioned but was later thought to contain 8,000 acres. In fact, according to GIS calculations by Innes, the total area of the Whāingaroa block is 25,091 acres.<sup>277</sup>

The evidence suggests that an initial payment of £200 was paid on 22 March 1851, the day the deed was signed. According to Ms Boulton, portions of this payment and of the next £100 instalment were passed on by Te Awaitaia and his people to what Ligar referred to in April 1852 as ‘distant tribes’. Recipients in 1853 included Ngāti Māhanga at Whaikohai and Ngāti Te Ata, as well as the rangatira William Nga Waro and Hori Tauroa. An additional £10 was paid to another chief, Kiwi, in December 1853.<sup>278</sup> The issue of prices and payment is revisited in the next section.

Visiting the Whāingaroa area again in April 1852, Ligar observed the keen desire of Māori to engage with new economic opportunities, including by using the capital acquired from the 1851 purchase. He recorded that those involved in the sale had used part of their purchase money to buy ‘implements of agriculture and horses’, and had ‘otherwise placed themselves in circumstances to commence the cultivation of wheat on a large scale’.<sup>279</sup>

Ligar also set aside four reserves, identified in the deed as ‘ka waiho tonu hei kainga mo nga tangata i te whenua’ (reserved as places of abode for the owners). These were named as Te Mata, Takapaunui, Ohiapopoko and Te Uku. Although not mentioned in the deed, Ms Boulton noted that fifth area, which came to be known as ‘Te Rape’, also appears to have been excluded from the sale. Together, these reserve lands were later found to contain some 2,300 acres.<sup>280</sup>

After 1854, the Crown made a series of payments to Māori for land in the Te Mata block, part of a later sequence of western harbours transactions conducted

274. Document A70, p 223.

275. Document A141, ‘AUC 142 Whāingaroa’; Turton, *Maori Deeds*, pp 596–597 (doc A70(a), vol 1, pp 134–151).

276. Document A70, p 226; doc A70(a), vol 1, pp 134–151; doc A141, ‘AUC 142 Whāingaroa’.

277. Document A141, p 72.

278. Document A70, p 226.

279. Document A70, p 224.

280. Document A70, p 238–241.

by McLean and Rogan, among others. At 1,159 acres, Te Mata was the largest single area of land set aside from pre-Native Land Court transactions in the inquiry district, and represented half of the land reserved from the Whaingaroa purchase. By 1858, the Crown had acquired the whole of Te Mata block. We consider the Crown's actions in acquiring Te Mata at section 5.4.4.2.5 and the later history of the Whaingaroa reserves at section 5.4.5.1.<sup>281</sup>

#### 5.4.3.2.2 CROWN SALES TO SETTLERS: DISPUTES AND FURTHER PAYMENTS

The Whaingaroa purchase – and parts of the Karioi purchase (see section 5.4.4.2) – were the only pre-1865 transactions in the district where Māori understandings of what had been agreed were tested by the arrival of European settlers to take up occupation soon after the sale had occurred.<sup>282</sup> After the deed was signed in 1851, small plots of land at Whaingaroa were advertised for purchase as early as June 1852, including one area that became the European township of Raglan (named after a British commander in the Crimean war) on the south side of the harbour.<sup>283</sup>

In December 1853, Captain John Campbell Johnstone purchased a 1,600-acre block, known as Te Haroto, at public auction.<sup>284</sup> This land was located between Hauroto Bay and the mouth of the Waitetuna River. In size, it was one-fifth of the Whaingaroa block, though Johnstone paid £1,460 at auction, more than three times the £400 initially paid to Māori for the whole 8,000 acres. However, when Johnston attempted to take up the land at Te Haroto he encountered considerable resistance from Māori. It was not until April 1855, 16 months after purchasing the land, that Johnstone finally took possession of the block. He later attributed this delay to the government 'selling the land before they had bought it'.<sup>285</sup>

In January 1854, Johnstone arranged for a team of surveyors to commence work at Te Haroto. They were 'soon interrupted by "Watini" [Watene Waitepuna] who turned us off'.<sup>286</sup> Johnstone informed Ligar of the situation and was given 'written authority' to complete the Crown's purchase of the land. Johnstone's efforts to acquire remaining Māori interests in Te Haroto met with little success. This did not, however, prevent the Crown from attempting to accept Johnstone's payment for the land in early 1854, though Johnstone delayed paying until July of that year, out of caution due to Māori opposition.<sup>287</sup>

Eventually, that opposition forced the Crown to return to the negotiating table. On 3 May 1854, Donald McLean, now chief land purchase commissioner, signed a deed recording payment of £100 to Taniora, E Ruini and 25 others 'for all places within the land purchased by Mr Ligar formerly'.<sup>288</sup> McLean then made a further payment of £100 on 25 August 1854, when Watene Waitepuna, Nikorima Ratu,

281. Document A70, pp 325–326.

282. Document A70, p 227.

283. Document A70, pp 243–244 transcript 4.1.16 (Verna Tūteao, hearing week 6, Aramiro), p 1336.

284. Document A70, p 229.

285. Document A70, pp 229, 231–232.

286. Document A70, p 229.

287. Document A70, pp 229–231.

288. Document A141, 'AUC 138 Te Haroto'; A70(a), vol 1, pp 88–101.

Taniora and Hemi signed a second deed in Auckland. The deed was described as ‘the final payment for Te Haroto’, and recorded that Māori would move off the land ‘when the wheat crop now growing upon the land is ripe, and has been reaped.’<sup>289</sup>

#### 5.4.3.2.3 REOCCUPATION BY NGĀTI MĀHANGA

Johnstone finally took possession of Te Haroto in April 1855 and subsequently sought compensation from the government for the expense and delay in taking possession of the land. After a lengthy process, he was awarded just over £560 for financial damages in 1864.<sup>290</sup> However, by the early 1860s, Ngāti Māhanga had returned to reoccupy part of the land at Te Haroto. Johnstone later recalled that Te Awaitaia:

expressed a wish to purchase a piece of land on the harbour belonging to me, and near the Native reserve, which latter has no water frontage, and I gave him permission to live on it *pro tem.*, which he did, cultivating the land, and using it for a pig run. A year ago he located a member of his tribe on the land.<sup>291</sup>

According to Johnstone, when he asked Te Awaitaia and his people to move off the land, the rangatira ‘gave me filthy abuse, and threatened to burn down my house.’ Despite Johnstone’s complaints to the colonial secretary, Ngāti Māhanga remained on the land and refused to pay rent.<sup>292</sup> It is unclear from the evidence how long this situation continued.

#### 5.4.3.2.4 LATER INQUIRIES OVER PAYMENT

In later years, Māori questioned whether the agreed price for the Whaingaroa block was ever paid in full. This may have been partly because portions of money were distributed to several Māori groups with interests in the land, a situation that Ms Boulton said was common, especially when payment was made in instalments.<sup>293</sup> In addition, as mentioned, from 1854 the Crown made several additional payments to assist Johnstone, as well as multiple payments for Te Mata reserve within the Whaingaroa block.

On 14 June 1913, the Native Department received an inquiry from Tema Pouwhare, writing from the office of a firm of Auckland solicitors, enclosing a copy of the 1851 Whaingaroa purchase deed, advising that ‘the vendors stated that the purchase money is not yet being [*sic*] fully paid.’<sup>294</sup> He asked the Department to provide information on how much had been paid, and how much was still owing.

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289. Document A141, ‘AUC 149 Te Haroto’; A70(a), vol 1, pp207–210. Another payment of £35 was made on 12 April 1854 to Noah Te Ngaru, Ekau Waingaro and others for land known as Te Koao within the Whaingaroa block. According to Ms Boulton, the circumstances around this payment are not clear: doc A70, p 234.

290. Document A70, pp 232–235.

291. Document A70, pp 235–236.

292. Document A70, p 236.

293. Document A70, pp 226–227.

294. Document A70, p 236.

When officials replied referring Pouwhare to *Turton's Deeds*, a collection of early land purchase documents, he responded that those records suggested that £200 of the £400 purchase price remained outstanding. The same complaint was made in September 1913 by the Auckland lawyer A H Te Mete.<sup>295</sup>

Thomas Fisher, under-secretary of the Native Department, asked one of his staff, Patrick Sheridan, to investigate these complaints. Using *Turton's Deeds*, Sheridan located deeds and receipts totalling £602 for 'Whaingaroa'. Ms Boulton, however, noted that only £310 of the listed payments can be confirmed as payment for Whaingaroa block, the remainder relating either to the Te Mata reserve or to poorly defined land elsewhere in the district. Sheridan concluded that 'a great deal more' than £400 purchase price had been paid, and noted that, in any case, 'the statute of limitations is a sufficient answer in this case especially as the old file perished in the fire at the Parliament Building in 1908'. Fisher duly communicated the outcome of Sheridan's investigations to Mr Te Mete.<sup>296</sup>

The issue of payment for the Whaingaroa block was raised again in 1914 in a letter to the Native Minister by Te Awarutu Te Awaitaia, the son of Wiremu Nera Te Awaitaia, who subsequently also made a petition to Parliament on the subject. Te Awarutu had seen Fisher's reply to his lawyer, Mr Te Mete, and disagreed with its contents. According to his own research, Te Awarutu calculated that £342 of the £400 had been paid, leaving £58 still owing. He was especially incensed by the suggestion that a statute of limitations should apply, which he found to be an insult to the mana of his late father:

This seems to me to be a rather questionable tactic to use against the Son of the loyal Native – a Native who stood loyally by Her Majesty Queen Victoria in the Darkest hour of New Zealand history: - Wiremu Te Awaitaia, who could, had he so desired, have been "King" in place of Potatau.<sup>297</sup>

Te Awarutu's petition was received by the Native Affairs committee with a report from Under-Secretary Fisher setting out the payments as investigated by Sheridan. Ms Boulton found no evidence as to how or whether it was resolved.<sup>298</sup>

#### **5.4.4 Further purchases in the north-west after 1854**

Beginning in April 1854, the chief commissioner of the recently established Land Purchase Department, Donald McLean, commenced negotiations for several areas of land in the western and north-western reaches of the inquiry district. In July 1855, McLean charged John Rogan, the district commissioner, with completing this series of transactions. As a result, over the following years the Crown acquired:

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295. Document A70, p 236–237.

296. Document A70, p 237.

297. Document A70, p 238.

298. Document A70, p 238.

- ▶ the entire Te Mata native reserve (set aside from the 1851 Whaingaroa block and discussed in section 5.4.3.2, above);
- ▶ the 1,249-acre Oioroa block;
- ▶ the 4,840-acre Harihari block;
- ▶ approximately 36,000 acres across the Karioi, Ruapuke, Wharauora, and Wahatane blocks; and
- ▶ the interests of Ngāti Raukawa and Ngāti Toa-rangatira across the above-mentioned lands.

#### 5.4.4.1 *McLean's initial payments*

Throughout 1854, McLean – with the assistance, on occasion, of sub-commissioners of the Land Purchase Department – entered 24 known arrangements across the Whāingaroa, Aotea, and Kāwhia districts.<sup>299</sup> Ms Boulton acknowledged the paucity of evidence concerning McLean's initial negotiations for these transactions, but suggested that the material that has survived presents the arrangements as 'confusing and chaotic'.<sup>300</sup> The receipts and deeds of the initial transactions indicate that McLean visited the region on a handful of occasions throughout 1854, at which time he negotiated with Māori in 'intense, rapid bursts'.<sup>301</sup> Almost all the transactions occurred between April and July 1854 and, in one instance, McLean made payments for six areas of land across just four days.<sup>302</sup>

In entering these arrangements, McLean appears to have negotiated with individuals or small groups of owners, rather than seeking the consent of the wider community. There is an absence of documentation concerning the hosting of hui to establish communal consent, despite the fact that, as Dr O'Malley has suggested, Crown officials had 'every incentive to forward details of these meetings to the Government . . . to provide . . . evidence as to the careful and scrupulous manner in which they had proceeded with their negotiations'.<sup>303</sup> Instead, the surviving documentation indicates McLean's willingness to commence negotiations for land transactions without establishing communal consent. In several cases across Whāingaroa, for instance, deeds were signed by individuals or small groups of owners.<sup>304</sup>

McLean's approach to paying for the land and identifying the affected areas was similarly haphazard. In his subsequent instructions to Rogan – discussed below – McLean described his initial payments to Māori sellers as 'advances' on the land.<sup>305</sup> In some instances, the payments appear to be more akin to loans, as Māori were expected to pay the money back to the Crown once they had received payment for their interests in lands subsequently alienated.<sup>306</sup> The land affected by these

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299. Document A70, p 300.

300. Document A70, p 362; doc A70(b), p 16.

301. Document A70, pp 300, 317, 319.

302. Document A70, p 317.

303. Vincent O'Malley, Wai 1040 RO1, doc A6, pp 478–479 (doc A70, pp 375–376).

304. Document A70, pp 334–335.

305. Document A70, pp 303, 315.

306. Document A70, p 321.

early arrangements, meanwhile, was usually ill-defined. None of the lands were surveyed prior to the signings of the 1854 deeds and neither the deeds nor the receipts specified the acreage affected by the arrangements. Instead, the documents usually defined the affected lands by way of place names and landmarks, though on occasion even this detail was absent.<sup>307</sup> In some instances McLean paid Māori sellers for all their interests across wide areas of land, such as the ‘Whaingaroa district’ or, in a handful of cases, the ‘Kawhia, Aotea, Te Akau and Waikato’ regions.<sup>308</sup>

In mid-1855, McLean called upon John Rogan, the district commissioner of the Land Purchase Department, to bring a semblance of cohesion to these early arrangements. On 13 July, McLean formally informed Rogan:

Several advances have been made to the Natives of Waikato, Whaingaroa, and Aotea, on account of tracts of land which they have agreed to dispose of to the government. Copies of the receipts, twenty seven (27) in number, have been already furnished to you at Auckland, together with sketches made by the claimants of the lands they agree to cede.<sup>309</sup>

With reference to these lands, McLean instructed Rogan to ascertain the ‘extent, position, description, and quality of these blocks’ and make ‘final arrangements’ for the Crown’s acquisition of these areas.<sup>310</sup>

McLean emphasised that the finalisation of the earlier arrangements was ‘of urgent importance, now that the Whaingaroa district is being settled by Europeans.’<sup>311</sup> As noted in section 5.4.3.2, settlers had begun purchasing lands acquired by the Crown under the 1851 Whaingaroa block purchase by late 1853. McLean was concerned that Māori would become aware of the prices at which the Crown was on-selling their land to settlers and that, as a result, Crown agents would ‘be compelled to pay an enormously high price’ for additional lands.<sup>312</sup>

On the matter of specifics, McLean was willing to defer much of the detail to Rogan, suggesting that he use his ‘experience in adjusting such questions with the Natives’ in establishing the best way to proceed.<sup>313</sup> However, on the matter of purchase price and native reserves, he issued clear instructions. To ensure a profitable investment for the Crown, McLean called on Rogan to pay between sixpence and one shilling and sixpence per acre for the lands acquired.<sup>314</sup> McLean also instructed Rogan to set aside ‘ample reserves’ for Māori sellers. He described these lands as blocks ‘excepted by the Natives, for their own use and subsistence, within the tracts of land they have ceded to the Crown for colonization.’ McLean added that reserves should be ‘sufficiently extensive to provide for their present and

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307. Document A70, pp 454–455.

308. Document A70, p 319.

309. McLean to Rogan, 13 July 1855 (doc A70, p 341).

310. McLean to Rogan, 13 July 1855 (doc A70, p 341).

311. McLean to Rogan, 13 July 1855 (doc A70, p 344).

312. McLean to colonial secretary, 30 August 1855 (doc A70, p 344).

313. McLean to Rogan, 13 July 1855 (doc A70, p 341).

314. Document A70, p 341; doc A28, p 122.

future wants' and noted that 'there has been a district understanding that [Māori sellers] should not at any time be called upon to alienate any lands so reserved.'<sup>315</sup>

#### 5.4.4.2 Further purchases around Whāingaroa Harbour

- ▶ Between November 1855 and June 1859, Rogan and others completed seven further purchases on and around the western harbours. The Crown thereby acquired nearly all the land along the coast from Whāingaroa and Aotea, as well one block further south between Kāwhia and Marokopa. The Crown also purported to alienate the entire interests of Ngāti Raukawa and Ngāti Toa-rangatira in the land already transacted in this region.

##### 5.4.4.2.1 THE KARIOI PURCHASE, NOVEMBER 1855

The 17,849-acre Karioi block is located at the southern mouth of Whāingaroa Harbour, reaching down the coast towards Aotea Harbour and bounded on the east by the 1851 Whāingaroa block.<sup>316</sup> The block is significant as the site of Karioi maunga. James Rickard stated: 'we've never really moved away from the mountain. The reason why we talk about Karioi Te Maunga is because it provided us with the essence of life, fresh water, and so we lived on those slopes all our lives, or the thousand years that we arrived here.'<sup>317</sup>

The transaction of the Karioi block began on 12 April 1854, when McLean made the first of two £50 payments for land known as Te Hutuwai.<sup>318</sup> This payment was made to Kereopa, Wetini Mahikai, and 16 others, on the understanding that it was an advance of the £200 purchase price for Te Hutuwai. The second £50 advance was made in July of the same year to Wetini and six others. As far as can be determined, the outstanding £100 owed on Te Hutuwai was never paid to Māori sellers. Instead, the money received by Wetini and others came to constitute an advance on the larger Karioi block.<sup>319</sup>

Following McLean's initial negotiations for Te Hutuwai, Rogan travelled to the Whāingaroa district to survey the land that became the Karioi block. He completed the survey in August 1855.<sup>320</sup> The available evidence does not offer detail of the negotiations conducted during this period, though it appears that the purchase price served to delay the execution of the Crown's acquisition of the land. Shortly after the block was surveyed, Rogan wrote to McLean reporting that he had offered £475 (in addition to the £100 already advanced) for the Karioi block, though the sellers 'unanimously declined this offer, and requested me to refer the

315. McLean to colonial secretary, 29 July 1854 (doc A70, pp 341–342).

316. At the time of purchase, the block was estimated to be 12,000 acres. Innes calculated it to be 17,849 acres using GIS: doc A141, p 72.

317. Transcript 4.1.16, p 303 (James Rickard, hearing week 6, Aramiro marae, 10 September 2013).

318. Document A70, p 348. While the land was held to constitute 12,000 acres at the time of sale, recent Geographic Information System estimates suggest that the block's area is 17,849 acres: doc A141 (Innes), p 72.

319. Document A141, 'AUC 730 Te Hutuwai Whaingaroa', 'AUC Karioi'.

320. Document A70, p 348.



question for your consideration.<sup>321</sup> McLean was not willing to raise the price and Māori ultimately accepted the additional £475 initially offered.

The deed for the Karioi block was executed on 5 November 1855. It was signed by Rogan on behalf of the Crown and by Remi, Heta, and more than 50 others described as ‘the Chiefs and people of Whaingaroa’, including 11 identified as children. A further payment of £475 was made on the signing of the deed, bringing the total sale price for Karioi to £575.<sup>322</sup> The plan attached to the deed stated that the block was ‘about 12,000 acres’ and identified one native reserve, of approximately 600 acres in size.<sup>323</sup> The reserve was subsequently known as the Karioi Native Reserve, or Whaanga.<sup>324</sup>

There is little evidence about the understandings of Māori sellers in transacting the Karioi block with the Crown. However, the surviving evidence reveals some irregularities in the Crown’s acquisition of the land. The deed of sale appears to have been signed by a number of people with no authority to transact the land, including children and captives.<sup>325</sup> During our hearing week at Aramiro Marae, Heather Thompson explained that during ‘the 1887 hearing of the Manuaitu-Aotea block a Ngāti Tuirangi chief brought it to the attention of the Court that there were at least three names of slaves included in the sale of the Karioi Block, who clearly had no entitlement to the land.’<sup>326</sup>

The claimants also noted that the Whāingaroa rangatira Hounuku – whose lands were affected by the transactions – was not party to the deed.<sup>327</sup> In light of this record, Marleina Te Kanawa described the Crown’s acquisition of the Karioi block as ‘a dubious sale.’<sup>328</sup>

Alongside the Whaanga native reserve, the sellers excluded three areas of land from the sale block when Rogan surveyed the area in August 1855. In correspondence to McLean at the time, Rogan explained:

The Natives decided on retaining the whole of the water frontage, from the entrance of the Harbour inland to the proposed township, and following Mr Ligar’s boundary for about two miles, which compromises nearly the whole of the available land in this block.<sup>329</sup>

According to Ms Boulton, the lands excluded from the Karioi block were likely the Rakaunui, Te Kopua, and Papahua blocks. These blocks constituted much of

321. Rogan to McLean, 9 August 1855 (doc A70, p 349).

322. Document A70, pp 348–349; doc A70(a) (Boulton document bank), vol 1, pp 71–86).

323. Document A70, p 348.

324. Document A70, p 325.

325. Document A70, p 349; doc A99 (Tainui researchers), p 105.

326. Transcript 4.1.16, p 1228 (Heather Thompson, hearing week 6, Aramiro marae, 13 September 2013).

327. Document A70, p 349; transcript 4.1.16, p 333 (Marleina Te Kanawa, hearing week 6, Aramiro marae, 10 September 2013).

328. Transcript 4.1.16, p 333 (Marleina Te Kanawa, hearing week 6, Aramiro marae, 10 September 2013).

329. Rogan to McLean, 9 August 1855 (doc A70, p 351).

the southern shoreline of Whāingaroa Harbour not already acquired by the Crown as part of the 1851 Whaingaroa block purchase.<sup>330</sup>

In addition, according to the claimants, the Crown set aside a 228-acre area of land along the coast for a pilot and signal station reserve in 1861. When Crown officials sought to survey the land in 1869, Kereopa Honehono resisted such efforts, and it was not until 1877 that the land was finally surveyed.<sup>331</sup> In Rogan's sketch plan and description of the block, the disputed land was clearly included within the Karioi block. However, Marleina Te Kanawa told us that as far as the sellers were concerned 'it was originally part of the Te Kōpua block' that was excluded from the sale, which 'eased into Te Whaanga' further down the coast.<sup>332</sup>

Speaking to the significance of this land, Te Kanawa explained that the area included the pā Te Pae Akarōa and a place called Pokopoko, 'where there are burial grounds'.<sup>333</sup> The Tainui Oral and Traditional Historical Report describes Te Pae Akarōa as 'a long promontory between Iwitahi and Te Kōpua overlooking Ngarunui beach' where – despite the Crown's claim of ownership – '[h]apu gathered annually up until the 1960s to catch the seasonal migratory influx of mango and other species'. Reflecting upon the Crown's claim of ownership to these highly significant sites, Te Kanawa questioned why Māori sellers would 'want to sell their tūpuna, or why would they agree to it?'<sup>334</sup>

In 1915, the land was vested in local government and over the following decades portions of the block were set aside for roads, while various leasing options were applied to the land.<sup>335</sup> In 1989, meanwhile, local government proposed the development of the site and, as the claimants explained, this proposal served as 'the catalyst' for the Wai 125 claim.<sup>336</sup>

#### 5.4.4.2.2 THE RUAPUKE PURCHASE, FEBRUARY 1856

The Crown also acquired the 4,413-acre Ruapuke block between April 1854 and the summer of 1855 and 1856.<sup>337</sup> Ruapuke is located immediately south of Karioi, and includes a stretch of coastline north of the mouth of Aotea Harbour. The Crown's transaction of the land commenced on 14 April 1854, when McLean made a payment of £10 to Hemi Matini and Hetaraka for land referred to as 'Paparata Aotea'. The receipt of payment for Paparata Aotea identified 'Pumipi' as 'the principal person – or elder – who consents to the sale of this land', while the signatories

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330. Document A70, p351.

331. Document A99, pp109–110.

332. Document A141, 'Karioi'; transcript 4.1.16, p334 (Marleina Te Kanawa, hearing week 6, Aramiro marae, 10 September 2013).

333. Transcript 4.1.16, p333 (Marleina Te Kanawa, hearing week 6, Aramiro marae, 10 September 2013).

334. Transcript 4.1.16, p333 (Marleina Te Kanawa, hearing week 6, Aramiro marae, 10 September 2013); doc A99, p108.

335. Document A99, pp110–111.

336. Document A99, p111; transcript 4.1.16, p336 (Marleina Te Kanawa, hearing week 6, Aramiro marae, 10 September 2013).

337. While the land was thought to be 6,000 acres at the time of sale, Innes calculated its area as 4,413 acres using GIS: doc A141, p72.

were identified as ‘his children; wherefore we also consent to the sale, and affix our names hereunto.’<sup>338</sup> The receipt identified the block with reference to physical boundaries and noted that ‘the total amount of payment . . . for this land shall be decided upon hereafter.’<sup>339</sup>

In mid-1855, Rogan travelled to Ruapuke to finalise McLean’s earlier arrangement. In correspondence with McLean, he explained that ‘the Chief Wiremu Nera and some of the Aotea Natives’ had offered to sell a 6,000-acre block, for which he offered them £300.<sup>340</sup> However, the offer was ‘unanimously declined’ by the prospective sellers, who were unwilling to accept anything less than £700. In light of this impasse, and in accordance with a request from the land owners, Rogan referred the question of price to McLean for his consideration.<sup>341</sup>

As with the Karioi block transaction, McLean was unwilling to increase the price offered to Māori. Over the following months, meanwhile, he pressured the sellers to accept the initial offer. Precisely what happened between August and October 1855 is not clear from the available evidence. In a letter dated 1 October, Rogan explained to McLean that ‘your timely letter to Chapman of Aotea, has settled the question between the Natives and I, they are all agreeable to take the £300 previously offered.’<sup>342</sup> Ms Boulton suggested that Chapman might have been ‘one of the Maori who was involved in the negotiations or . . . a European who was asked to exert his influence with Maori to persuade them to take the lower amount.’<sup>343</sup> We note that Chapman signed the eventual deed, so was likely one of the Māori owners of the land.<sup>344</sup> It is clear is that his influence was used to promote the Crown’s purchasing agenda. As a result of his involvement, the owners of Ruapuke agreed to accept less than half the purchase price that, just two months earlier, they had stated was the lowest price they would accept.

In the wake of these underhand tactics, the deed of sale for Ruapuke was signed on 2 February 1856. John Rogan signed the document on behalf of the Crown, while the Māori signatories were listed as Wiremu Nera Awaitaia, Hetaraka, Te Waka, Hemi, Chapman, Hapati, and almost 80 others, described as ‘the chiefs and people of Aotea and Whaingaroa.’<sup>345</sup> Rogan subsequently described the signatories as ‘Ngatinaho and Ngatimahanga natives.’ Upon signing the deed they received £290, bringing the total purchase price to £300.<sup>346</sup>

Two native reserves totalling 396 acres were set aside from the 6,000-acre block: the 86-acre Toroanui block, reserved for ‘Kewene Paia’, and the 310-acre Horokawau block, set aside ‘for Hone te Apa.’<sup>347</sup>

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338. Document A70, pp 356–357; doc A141, ‘AUC 726 Paparata Aotea’.

339. Document A141, ‘AUC 726 Paparata Aotea’.

340. Document A70, p 356.

341. McLean to Rogan, 12 September 1855 (doc A70, p 356).

342. Document A70, p 356.

343. Document A70, pp 356–357.

344. Document A141, ‘AUC 136 Ruapuke’.

345. Document A70, p 357; doc A141, ‘AUC 136 Ruapuke’.

346. Rogan to McLean, 4 February 1856 (doc A70, p 357).

347. Document A70, p 358; doc A140, p 47.

**5.4.4.2.3 THE WHARAUROA PURCHASE, DECEMBER 1857**

In April 1854, alongside the Karioi and Ruapuke blocks, McLean also entered arrangements for land within what would ultimately become the 12,891-acre Wharauroa sale block.<sup>348</sup> Bounded at the west by Aotea Harbour, Wharauroa is a thin rectangular block located along the southern boundary of the 1851 Whaingaroa purchase. Between the commencement of McLean's payments in 1854 and the Crown's subsequent acquisition of the Wharauroa block three years later, three different Crown agents made a total of six payments for the land.

McLean made the first payment on 11 April 1854, when he paid £50 to Hemi Watini, Wiremu Nera (Te Awaitaia), and four others for land referred to as 'Hui Pokohuka'. The deed of sale identified the block by physical boundaries and stated that 'when the land has been surveyed and the boundaries perambulated, the total amount of payment will be decided upon.'<sup>349</sup> McLean then made an additional £50 payment the following day for land identified as 'Tutaenui/Waikarakia' to Rupene Rapatahi, Hakopa, Wiremu Nera, and 11 others.<sup>350</sup>

HT Kemp, sub-commissioner of the Native Land Purchase Department, made the third payment on 5 May 1854 for land identified as 'Tureakina'. The deed was signed by Te Tana, Hamiora, and five others described as 'the Chiefs and people belonging to the Ngatimahanga Tribe, and of Waikato.'<sup>351</sup> At the time of the deed signing, the signatories received £100 and the deed identified Tureakina with reference to physical boundaries. As was the case with Hui Pokohuka, the document noted that 'The remaining payment of the land will be finally arranged whensoever the land is examined, and laid down by the Surveyor.'<sup>352</sup>

Two additional payments were made in 1855 and 1856. On 11 September 1855, McLean made a payment of £10 to 'Puhata' for an 'unsold portion of land named Te Wharauroa in the Whaingaroa District.'<sup>353</sup> The receipt stated that 'This is the only and final payment for the above named portion of land.'<sup>354</sup> Just over a year later, on 10 October 1856, a payment of £30 was made to Māori sellers. This payment only appears in the final deed of sale for the Wharauroa block, which lists all the preceding payments made for the affected lands. It is not clear who the payment was made to or for what area of land.<sup>355</sup>

The final deed of sale for Wharauroa was signed on 2 December 1857 by Rogan and Te Tana, Hemi, Aperahama, Hone, Hakopa, and others identified as 'the Chiefs and people of the tribe of Ngatitewehi.'<sup>356</sup> This deed identified the block by physical boundaries and, upon signing the deed, the signatories received

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348. At the time of sale the block was estimated to be 8,000 acres. Using GIS, Douglas, Innes, and Mitchell calculated it to be 12,891 acres.

349. Document A70, p 359; doc A141, 'AUC 724 Hui Pokohuka'.

350. Document A70, pp 340, 359; doc A141, 'AUC 723 Waikarakia'.

351. Document A70, p 359; doc A141, 'AUC 145 Tureikina'.

352. Document A70, p 359; doc A141, 'AUC 145 Tureikina'.

353. Document A70, pp 359–360; doc A141, 'AUC 144 Te Wharauroa'.

354. Document A70, pp 359–360; doc A141, 'AUC 144 Te Wharauroa'.

355. Document A141, 'AUC 132 Wharauroa'.

356. Document A70, p 360; doc A141, 'AUC 132 Wharauroa'.

a £170 payment for the land.<sup>357</sup> In total, the Crown paid £410 for the 8,000-acre Wharauoa block. Two blocks – Te Rape and Mowhiti – totalling 474 acres were retained by the sellers.<sup>358</sup>

The Crown's acquisition of Wharauoa was the most complex transaction of its pre-Native Land Court purchases across the Whāingaroa, Aotea, and Kāwhia districts. Ms Boulton suggested that the piecemeal nature of the purchase strongly indicates that the Crown was 'unable to negotiate a single transaction with publicly reached consensus amongst . . . those who held interests in the block'.<sup>359</sup> While this specific assessment cannot be corroborated by concrete evidence, the stream of complaints that emerged in the wake of the Crown's acquisition of the land supports Ms Boulton's broad assessment that there were serious issues with the Crown's consultative efforts.

Between 1886 and 1900, the Native Affairs Department received several letters seeking unpaid monies from the sale of the Wharauoa block. On 24 August 1886, lawyer ET Dufaur of Auckland wrote to the under-secretary for the department on behalf of former owners of the land seeking £150 of unpaid monies. The department informed Dufaur that no money was outstanding on the Wharauoa block. This prompted him to request detail, on behalf of his client, concerning the date and location of the payments made and the names of those who had received a portion of the purchase price. However, the under-secretary for the department, P Sheridan, considered that Dufaur had 'no right to expect this information respecting a purchase made 30 years ago'. As such, the Crown refused to divulge additional information to him.<sup>360</sup>

Similar queries were lodged with the department in 1895 and 1900. On 7 March 1895, Hone Waitere Te Ngana wrote to the Native Minister, Richard Seddon, requesting the payment of outstanding monies owed on the Wharauoa block. Commenting on this correspondence, the under-secretary noted that 'there is nothing due on this purchase and the Natives have been repeatedly so informed'.<sup>361</sup> Evidently, Hone Waitere did not agree. In October, his son, Te Mahara Hone Waitere, wrote to the department, once again requesting the payment of the outstanding purchase price. As a result, department officials sought confirmation that no money was owed. Following consultation with Rogan, Hone Waitere was told that 'there are no grounds whatever for supposing that there is still a balance due'.<sup>362</sup> Five years later, in 1900, John St Clair wrote to the land purchase officer, George Wilkinson, on behalf of Hone Waitere and other sellers – including Paora Pomare, Pita Mahu, and Hapoka Pikiwai – seeking to make a time when the balance owing to the sellers could be paid. In response, Wilkinson wrote that he was unaware of any balance owing on the purchase.<sup>363</sup>

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357. Document A141, 'AUC 132 Wharauoa'.

358. Document A70, p 360; doc A142 (Walker), pp 54–57.

359. Document A70, p 362.

360. Sheridan to Lewis, 20 October 1886 (doc A70, p 363).

361. Sheridan, minute, 14 August 1895 (doc A70, p 366).

362. Sheridan, minute, 30 December 1895 (doc A70, pp 366–367).

363. Document A70, p 367.

The Crown also received correspondence during the late nineteenth century that suggests its agents had not established the consent of all right holders for the alienation of Wharaurua. On 15 November 1890, Kanga Kihirini Te Kanawa wrote to the Native Minister, Edwin Mitchelson, explaining that he had not sold the land and that the sellers were ‘my younger brothers (relatives) we came from a common ancestor. Our ancestor was thus from whom we claim this land.’<sup>364</sup> Te Kanawa included the whakapapa of ‘our ancestor’ down to Aperahama Karu, who was presumably the ‘Aperahama’ whose name appeared on the December 1857 deed of sale.<sup>365</sup>

After some investigation into the transaction, the under-secretary for the department dismissed Te Kanawa’s claim to the land, suggesting:

It cannot be supposed if the writer had any claims that he would have allowed his younger relatives to sell the land without looking after his own interests. In any case it is clearly impossible to admit any claim at this date and I recommend that applicant be informed that the question of a purchase which was completed so many years ago cannot be reopened.<sup>366</sup>

A response to this effect was subsequently sent to Te Kanawa. Evidently unsatisfied with the Crown’s position, he wrote again on 21 June 1894, referring specifically to land known as Kainamunamu. He explained that, at the time of the sale, he had ‘belonged to the King party’ and, as such, had opposed selling the land. He was now, however, ‘willing to accept’ his portion of the purchase price, ‘having withdrawn from the King Party.’<sup>367</sup> On this occasion, George Wilkinson dismissed the credibility of Te Kanawa by describing him as ‘a shingle short.’<sup>368</sup> Te Kanawa was informed that ‘the Government has now no money in hand belonging to the persons who sold that land.’<sup>369</sup>

#### 5.4.4.2.4 THE WAHATANE PURCHASE, AUGUST 1857

The Wahatane block is located at the south-eastern corner of the Wharaurua block, inland from Aotea and Whāingaroa Harbours. In contrast to the other blocks acquired by the Crown throughout this series of transactions, Rogan alone commenced and completed the purchase of Wahatane in 1857.<sup>370</sup>

There is no detail concerning the negotiations that preceded the purchase. Hemi Matini and Hariata signed the deed of sale on 24 August 1857. On this date, they received two payments of £20, bringing the total purchase price for the land to £40.<sup>371</sup> The deed estimated the unsurveyed block to be 500 acres. A geographic

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364. Document A70, p 364.

365. Document A70, p 364.

366. Lewis to Native Minister, 26 November 1890 (doc A70, p 365).

367. Document A70, p 365.

368. Wilkinson to Sheridan, 14 July 1894 (doc A70, p 365).

369. Sheridan to Davis, 29 August 1894 (doc A70, p 366).

370. Document A70, p 369.

371. Document A141, ‘AUC 135 Wahatane’; doc A70, p 369.

information system estimate, however, suggests that the land is 815 acres.<sup>372</sup> Rogan did not set aside any reserves for the sellers of Wahatane.<sup>373</sup>

#### 5.4.4.2.5 THE TE MATA PURCHASE, JUNE 1859

Between 1854 and 1859, the Crown made a number of small purchases of land in Te Mata, an area originally designated as a reserve in the Whaingaroa purchase of 1851. The Crown ultimately acquired the entire 1,159-acre<sup>374</sup> block – around half the land reserved in the Whaingaroa block – for a total of £283.

The first £30 payment for land in Te Mata reserve was made on 11 January 1854 to Kiwi Hone Warena, Apera, Kereopa, and others. The area was unsurveyed, and the deed did not give an acreage. It appears that Ligar – who had negotiated the Whaingaroa purchase and marked out its reserves, including Te Mata – was responsible for this purchase.<sup>375</sup> We note that this payment was made just 12 days after the final payment for Whaingaroa.<sup>376</sup>

Two further payments were made in May 1854. McLean made the first payment of £35 to Wiremu Nera, Waka Te Ruke, and Hetaraka on 6 May. This was followed on 31 May by a payment of £72 to Hemi Matini, likely made by Commissioner Johnson.<sup>377</sup> Later in 1854, Rogan indicated these payments were for around 450 acres ‘within the Native reserve called the Mata’, though the evidence is unclear.<sup>378</sup> Just a month later he reported that he had surveyed one block of 450 acres within the reserve, but did not note any payments for it, and another of 180 acres. He said £107 had been paid for the latter block, with £25 more owing.<sup>379</sup> An additional £5 payment in respect of this land was made to Te Waka on 4 September 1857, following a request from him two years earlier.<sup>380</sup>

A further payment of £20 was made on 20 August 1857 to Paratene and Kamariera for a narrow 180-acre area along the southern edge of Te Mata. Finally, in June 1858, Rogan made ‘an arrangement’ with Te Waka to purchase the remainder of the block for £100. The deed, signed on 15 June 1858, was signed by Te Waka, Nikorima, and others described as ‘the chiefs and people of Ngatimahanga’. A sketch plan was attached to the deed, but no acreage was provided.<sup>381</sup>

Although Rogan characterised the June 1858 purchase as encompassing the remaining area of Te Mata, he also paid a further £21 to Heteraka in June 1859 for 42 acres of land at Te Mata. It is not clear if this area had been part of the reserve.<sup>382</sup>

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372. Document A141, p 72.

373. Document A141, ‘AUC 135 Wahatane’; doc A70, p 369.

374. Document A70, p 325.

375. Document A70, pp 323, 326–327; doc A141, ‘AUC 134 Te Mata’.

376. Document A70, p 323.

377. Document A70, pp 323, 327; doc A141 ‘AUC 134 Te Mata’.

378. Rogan to McLean, 8 October 1855 (doc A70, p 327)

379. Document A70, p 327. This came to a total of £132, but it appears that £137 had been paid for Te Mata by the end of 1854.

380. Document A70, p 329.

381. Document A70, p 329; doc A141, ‘AUC 134 Te Mata’.

382. Document A70, p 330.

**5.4.4.3 Purchases near Kāwhia and Aotea**

Alongside its purchases in Whāingaroa during this period, the Crown also purchased two blocks – Harihari and Oioroa – in Kāwhia and Aotea. Unlike in Whāingaroa, both McLean and Rogan were involved in the Crown's initial negotiations in these areas during 1854. While the Crown ultimately purchased only two blocks in Kāwhia and Aotea, McLean made payments on several other areas in 1854. In May, for instance, he made a payment of £5 for 'Kawhia', followed in July by £64 for 'land at Kawhia'.<sup>383</sup> Due to growing opposition to land sales in the area, however, the purchases were never finalised.

In the immediate wake of the Crown's acquisition of the Mokau block on 1 May 1854, Māori across the western parts of the inquiry district held hui in Kāwhia to discuss land sales with the Crown. According to Ms Boulton, Rogan attended these hui. While opposition to land sales was the over-riding theme of these discussions, consenting opinions were heard. In his account of these hui, the trader Samuel Joseph recorded the views of a Kāwhia-based Māori that he identified as 'William'. William spoke against the absolute anti-selling stance of some rangatira and objected 'to the old people who cling to their Maori customs to the exclusion of European enlightenment'.<sup>384</sup> He pointed to the desire of some for the purchase money from sales, but emphasised his interest in promoting European settlement on his lands. 'I only want some European neighbours,' he explained, 'let the others have the money to make them content'.<sup>385</sup> In response, the Ngāti Maniapoto rangatira Taonui Hikaka suggested that William could make a small piece of land available to Pākehā, but warned the hui against large-scale land alienations as 'although a few Europeans might be advantageous, a great many might be dangerous'.<sup>386</sup>

Despite such warnings, William was not alone in his support for land sales. In October 1855, when Rogan was in the Kāwhia and Aotea regions seeking to finalise McLean's 1854 arrangements, he complained at the amount of work piling up before him. 'The work instead of diminishing, is gaining on me,' explained Rogan. Every 'piece of land I survey is increased by new land offered. Aotea and Kawhia will keep me occupied for 6 mos [months]'.<sup>387</sup>

While some Māori across Kāwhia and Aotea were enthusiastic for land sales, many continued to oppose land sales with the Crown. This opposition appears to have been muted during McLean's 1854 arrangements, which likely reflects the fact that his negotiations primarily targeted willing sellers.

When Rogan appeared in the district and began the far more visible task of surveying the land, however, the opposition of many Māori to land sales quickly became apparent. In December 1855, for example, the Reverend John Morgan of the Ōtāwhao mission station wrote to the Government, suggesting:

383. Document A70, p 299.

384. Joseph to McLean, 6 May 1854 (doc A70, p 295).

385. Joseph to McLean, 6 May 1854 (doc A70, p 296).

386. Joseph to McLean, 6 May 1854 (doc A70, p 296).

387. Rogan to McLean, 1 October 1855 (doc A70, p 343).



Considerable excitement exists at the present time amongst the Maori tribes of Kawhia Rangiaowhia, Mohoanui [Mahoenui] & Mokau, in consequence of a report current amongst the aborigines that it is the intention of HM Government to purchase the Kawhia district *from the Waikato tribes*, a purchase which the Ngatimaniapoto and other tribes have determined to resist. [Emphasis in original.]<sup>388</sup>

Morgan urged the Government to abandon land purchasing in the region, suggesting that failure to do so would likely provoke a ‘Maori war . . . in which many tribes would become involved’.<sup>389</sup>

Rogan nonetheless pursued the Crown’s purchasing agenda until such an approach became untenable. This occurred in early 1856. Rogan’s presence in the region created such disquiet that, in March of that year, the colonial secretary, Andrew Sinclair, was forced to intervene. In a letter to McLean, Sinclair told the land purchase commissioner that ‘great excitement seems to exist amongst the Natives at Kawhia, relative to the Government purchasing and surveying land in that district’ and McLean was instructed to ‘withdraw all surveys being carried on under your department from that district’.<sup>390</sup> As a result of this directive, the Crown’s purchasing efforts around the Kāwhia and Aotea districts were limited to the Harihari and Oioroa blocks.

#### 5.4.4.3.1 THE HARIHARI PURCHASE, AUGUST 1857

The purchase of the 4,840-acre Harihari block, located on the coast between Marokopa and Kāwhia, commenced in 1854 and concluded three years later in August 1857. The Crown paid a total of £400 for the block.<sup>391</sup>

On 6 May 1854, in the immediate wake of the above-mentioned Kāwhia hui, the rangatira Waitere Pūmipi asked the trader Samuel Joseph to write to McLean on his behalf. In this correspondence, McLean was informed that Pūmipi was planning on travelling to Auckland ‘to get part of the payment for Hari Hari’. With reference to the Kāwhia hui, Joseph explained that Pūmipi ‘had a large meeting with Nuitone [Te Pakarū] etc. and that seeing he was determined [to sell] they said no more; that he wishes to have part payment at once and to receive it in Auckland’.<sup>392</sup> There is no detail relating to the location of the deed signing or the negotiations that preceded the arrangement.

Waitere Pūmipi, John Hobbs Tamaha, and eight others identified as ‘the chiefs and freemen of Ngatimaniapoto’ ultimately signed a deed of sale for Harihari on 4 July 1854. The deed, written in te reo Māori, declared that the Māori signatories ‘transfer[red] for ever a certain portion’ of land to Queen Victoria and her

388. Morgan to Sinclair, 5 December 1855 (doc A70, p 298).

389. Morgan to Sinclair, 5 December 1855 (doc A70, p 298).

390. Colonial secretary to McLean, 6 March 1856 (doc A70, p 300).

391. The block was estimated to be 4,000 acres at the time of purchase, and 4,400 acres when set apart for leasing in 1890. Using GIS, Douglas, Innes, and Mitchell calculated it to be 4,840 acres: doc A70, pp 309, 314; doc A21, p 41.

392. Joseph to McLean, 6 May 1854 (doc A70, p 307).

successors ('kia tino tukua rawatia tetahi wahi o to matou kainga ki a Wikitoria te Kuini o Ingarani ki nga Kingi Kuini ranei o muri iho i a ia ake tonu atu').<sup>393</sup> Donald McLean signed the document on behalf of the Crown and handed over an advance of £200 to the signatories, with the understanding that an additional £300 would be paid 'when the survey has been completed'. The deed simply identified the Harihari block with reference to physical boundaries.<sup>394</sup>

In early 1856, Rogan travelled to the area to finalise the transaction. However, when perambulating the boundaries of the block, Rogan discovered that the land's area was smaller than initially estimated. As the acreage was not specified on the deed, we can only assume that there was some oral estimation of the block's size. Writing to McLean on 23 January 1857, Rogan explained that 'the quantity of land which the Natives represented to have sold to the Government, on the execution of [the deed], was much in excess of the actual quantity, which is nearly 4,000 acres'. In turn, he told McLean that he and the sellers had reached a new agreement 'for the final alienation of their claims to this land', which saw the Crown's final instalment of the purchase price reduced from £300 to £200.<sup>395</sup>

On this basis, on 10 August 1857 Hōne Pūmipi and 27 others, including one boy, signed documentation finalising the sale of the Harihari block and received the remaining £200 of the purchase price.<sup>396</sup> Rogan ultimately paid slightly less than 2 shillings per acre for the block and neglected to set aside any reserves for the sellers, in contradiction to McLean's instructions and the Crown's purchasing standards.<sup>397</sup>

The Crown's approach to purchasing Harihari resulted in long-term confusion and disquiet amongst many who claimed interests in the block. As early as October 1855, Rogan informed McLean of letters, received from 'Harihari natives', in which they 'complain bitterly of Hone Pumipi's tikanga which seems to nail the entire sum for himself alone'.<sup>398</sup> There is no evidence of whether or how the Crown responded to these concerns, but they appear to have remained unresolved almost two decades later. In February 1874, Horo Hawea wrote to Native Minister Donald McLean requesting his share of the Harihari purchase price, 'as I did not get any of the money when it was sold'.<sup>399</sup> McLean was advised that Hawea's concerns were just, as he was an original owner of the land. Despite this, McLean considered that Hawea should approach Pūmipi and not the Government for his share of the purchase price. Openly dismissing the Crown's responsibility to consult with all right holders, McLean wrote that 'if Pumipi sold the land to a Pakeha surely it is

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393. Document A141, 'AUC 581 Harihari'; Turton, *Maori Deeds*, p 621 (doc A70(a), vol 1, pp 242–260).

394. Document A141, 'AUC 581 Harehare'.

395. Document A70, pp 308–309; doc A141, 'AUC 391 Harihari'.

396. Document A70, p 309; doc A141, 'AUC 391 Harihari'.

397. Document A70, p 309.

398. Rogan to McLean, 1 October 1855 (doc A70, p 308).

399. Horo Hawea to McLean, 11 February 1874 (doc A70, p 309).

not intended that the Government should make it good. I should say Haere ki a Pūmipi.<sup>400</sup>

Māori also made a number of complaints in the decades after the transaction about outstanding payments, suggesting that many sellers did not consent to or know about Rogan's reduction of the final payment from £300 to £200.<sup>401</sup> The first such complaint was received by the Crown in late 1883, when Rawenata Haki wrote to George Wilkinson, the land purchase officer, on behalf of himself and Pūmipi's daughter requesting 'the balance of the money due' on the Harihari block.<sup>402</sup> This correspondence was followed by a request from Hetaraka Warihi to the under-secretary of the Native Department, on 16 July 1885, also seeking the outstanding £100 owing on the Harihari purchase. Wahanui Huatare and Haupōkia Te Pakarū made similar requests to the Native Minister in May 1889 and June 1890 respectively. Wahanui also raised the issue with Wilkinson in person in April 1891.<sup>403</sup> In responding to these requests, Crown agents initially faced some confusion as to the arrangements reached by McLean and Rogan. Once this confusion was clarified, however, the correspondents were all told that the purchase price for the Harihari block had been paid in full.<sup>404</sup>

Ultimately, the Crown did not assume control of Harihari until 30 October 1890, when it set apart the block for leasing as a grazing run, under sections 198 to 219 of part seven of the Land Act 1885.<sup>405</sup> At this time, it seems that at least one Māori owner was still living on the land. In the months immediately prior to the Crown's leasing of the land, Haupōkia Te Pakarū informed the Native Minister that Nuitone Te Pakarū, who had opposed land sales at the time of the Harihari block transaction, 'was one of the old people who had a very strong claim to that block and it has ever since been in occupation by him and then by me.'<sup>406</sup>

Throughout the course of the inquiry, Ngāti Mahuta claimants also spoke to the alienation of their interests at Harihari without their consent. As John Moncur Te Uaanehu Forbes told us, the Ngāti Mahuta rangatira Kiwi gifted the Harihari lands to Pūmipi following the marriage of Pūmipi's sister to Kiwi's son.<sup>407</sup> This arrangement, claimant counsel submitted, was akin to a *tuku whenua*, whereby Pūmipi had been gifted rights to the land, while Ngāti Mahuta retained their interests in the same.<sup>408</sup> Despite this, in purchasing the land between 1854 and 1857, the Crown neither identified nor acquired the interests of Ngāti Mahuta in Harihari.

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400. McLean, minute, 21 February 1874 (doc A70, p 310).

401. Document A70, pp 308–310.

402. Rawenata Haki to Wilkinson, 18 December 1883 (doc A70, p 310).

403. Document A70, pp 312–313.

404. Document A70, pp 309–313.

405. Document A70, p 314.

406. Haupōkia Te Pakarū to Native Minister, 19 June 1890 (doc A70, p 314).

407. Document 115 (Forbes), p 5.

408. Submission 3.4.143, pp 34–35; submission 3.4.338, pp 3–5.

**5.4.4.3.2 THE OIOROA PURCHASE, 1855**

The Crown's purchase of the 1,249-acre<sup>409</sup> Oioroa block in late-1855 was the result of an earlier arrangement conducted in Auckland on 6 June 1854 for a much larger area of land. On this date, McLean made a £100 down-payment for an area of land identified as the Aotea block, which stretched from Aotea in the south to Ruapuke in the north.<sup>410</sup> The deed was signed by Te Aho, Taukawe, Te Kewene, Hetaraka, and others identified as 'Chiefs and people of Aotea', and specified that 'final or complete payment' would 'be made when the land is gone over and surveyed'.<sup>411</sup>

As with the Harihari purchase, the Crown relied on the signatories of the Aotea deed to distribute the purchase money to other right holders. Commenting on these efforts before the Native Land Court's 1887 title investigation into the Manuaitu-Aotea block, Te Kewene's son, Te Manihera Pouwharetapu, explained:

Kewene kept £65 and gave £25 to Te Aho Moana, giving Wi Kumiti £10 between them [*sic*]. They returned [home] by way of the Coast, and presented portions of the money to Taraho and Paorapiipi, which however was declined. At Mataiwhitu they presented some money to Tikapa who also refused to accept it. The same thing took place at Whaingaroa with the Tainuis [*sic*].<sup>412</sup>

A number of right holders thus refused to accept their portion of the purchase price for the Aotea block.

According to Ms Boulton, it appears that when Rogan sought to finalise McLean's earlier transaction he was unable to complete the Crown's acquisition of the land.<sup>413</sup> As a result, those who agreed to sell the Aotea block offered Oioroa as a replacement block to satisfy the money already received. In November 1855, Rogan wrote to McLean explaining that he had surveyed land to satisfy the £100 advance and that 'Oioroa, situated on the north side of Aotea Harbour' contained

about 1,300 acres, the whole of which, except about two hundred acres of fern land, consists of sand hills. An instalment of One hundred pounds (£100) had been paid to Kewene and Te Aho for this and other land. The Natives wished me to consider this land equivalent to the amount paid; but I declined concluding any arrangement with them until you were acquainted with the character of the land.<sup>414</sup>

McLean's response to Rogan has not been located, though he clearly agreed with the proposal as the purchase subsequently went ahead.

The Crown thus acquired Oioroa on the basis of an initial advance paid to a handful of rangatira for a much larger area of land. According to historian Brent

409. In 1883, the land was surveyed at 1,236 acres. Douglas, Innes, and Mitchell calculated it to be 1,249 acres using GIS: doc A153 (Parker), p 18, doc A21, p 41.

410. Document A70, pp 303–304.

411. Document A141, 'AUC 415 Oioroa'.

412. Document A70, pp 303–304; Te Manihera Pouwhare evidence, 25 April 1887 (doc A153, p 8).

413. Document A70, p 304.

414. Rogan to McLean, 15 November 1855 (doc A153, p 21).

Parker, many of the signatories to the Aotea deed were of Ngāti Naho descent.<sup>415</sup> Wiremu Taka of Ngāti Naho – whose father was party to the sale – explained that ‘[w]hen Te Oioroa was sold Ngati Naho were the principal consenting parties.’<sup>416</sup> Ngāti Whakamarurangi and Ngāti Tūirirangi claimants also identified their tūpuna as signatories to the original document for Aotea.<sup>417</sup>

As was heard throughout the course of this inquiry, however, these arrangements were established without the consent of all who claimed interests in the land. Despite their long association with Oiōroa, Ngāti Te Wehi were not party to the transaction and, in turn, their interests in the land were alienated without their consent. As Diane Bradshaw explained, ‘The area is significant as an ancient waka landing place, in particular the *Aotea* waka to which we, the tangata whenua – Ngāti Te Wehi – whakapapa, and which is said to be buried under the sand of Oiōroa.’ Bradshaw added that ‘The relationship of the tangata whenua to Oiōroa is also marked by the numerous burial sites of Ngāti Te Wehi’s forebears, many of which pre-date the arrival of the drifting sand.’<sup>418</sup>

It also appears that the Crown did not ensure that all those party to the arrangement understood that the transaction represented the full and final alienation of their rights. Heather Taruke Thomson of Ngāti Whakamarurangi acknowledged that her tūpuna, Te Aho Moana and Te Haho Kewene, had entered the transaction with the Crown. She explained, however, that Te Haho Kewene continued to live at Oiōroa and the adjoining Rauiri block following the sale of the land.<sup>419</sup> This does not conclusively prove that the transaction was conducted in a Māori customary framework. However, it does indicate that the Crown’s land-purchase agents failed to clearly explain to Māori sellers the nature and extent of the transaction. As a result, Māori continued to live on the land in accordance with their customs.

#### 5.4.4.4 *Other alienations*

In addition to the blocks acquired by the Crown from specific right holders, agents also conducted two transactions during this period of Crown purchasing that purported to acquire the interests of specific iwi across lands purchased throughout the Whāingaroa, Aotea, and Kāwhia districts. To this end, in January 1856 a deed of sale for the claims of Ngāti Raukawa for lands at ‘Aotea, Whaingaroa, Karioi, Te Akau and on to Waikato’ was signed by Tamihana Te Rauparaha, Matene Te Whiwhi, and others, who received a payment of £60.<sup>420</sup> This payment was made for lands which, up to January 1856, had been acquired by the Crown and the deed specified that ‘the total amount to be paid to us will be decided upon when all those lands shall have been purchased by Mr McLean.’<sup>421</sup> Whether any additional payments were made to the iwi, however, is unclear.

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415. Document A153, p 24.

416. Document A70, pp 304–305.

417. Document M14(a) (Thomson), p 11.

418. Document N21 (Bradshaw), pp 7–10.

419. Document M14(a), pp 11, 14.

420. Document A70, p 369.

421. ‘AUC 711 Aotea, Whaingaroa, Karioi, Te Akau’ (doc A70, pp 369–370).

On 19 April 1858, meanwhile, a similar arrangement was established between T Rauparaha, Te Waka, and others described as ‘the Chiefs and People of the Tribe Ngatitao.’<sup>422</sup> The deed was executed in Wellington and signed, on behalf of the Crown, by the district commissioner of the Land Purchase Department, WN Searancke.<sup>423</sup> The interests apparently acquired from the signatories were described as ‘the whole of our lands from & about Whangaroa [*sic*] to Aotea, Kawhia, and on to the Akau – that is, all those portions of land which have been sold to the Government of New Zealand by our relations up to the present day’. For these interests, the signatories received £240.<sup>424</sup>

#### 5.4.5 The administration of reserves

Both Ligar and Rogan were instructed to make reserves from their purchases in the western harbours. In his 1849 instructions to Ligar, Colonial Secretary Sinclair emphasised the establishment of good native reserves as essential and instructed that they were to be ‘carefully agreed on and marked out before the purchase [was] completed.’<sup>425</sup> Similarly, McLean, in a letter to the colonial secretary in July 1854 and in his instructions to Rogan in 1855, stated that native reserves were to be ‘ample’ blocks of land ‘excepted by the Natives, for their own use and subsistence, within the tracts of land they have ceded to the Crown for colonisation.’<sup>426</sup> Further, they were to be extensive enough to provide for present and future Māori needs and were to be protected from alienation, as was the ‘district understanding’ at the time.<sup>427</sup>

As can be seen in table 5.3, 12 reserves were set aside from the western harbours purchases. Seven of these were considered native reserves and five were regarded as excluded from sale. No reserves were set aside from the Harihari and Oioroa purchases at Kāwhia and Aotea, or from the Wahatane purchase near Whāingaroa. The ‘blanket purchases’ of Ngāti Raukawa and Ngāti Toa-rangatira interests also made no mention of land being set aside for those iwi.<sup>428</sup>

##### 5.4.5.1 Whaingaroa block reserves

In accordance with Sinclair’s instructions outlined above, Ligar set aside four reserves for Māori sellers from the Whaingaroa purchase: Te Mata, Takapaunui, Ohiapopoko, and Te Uku. These reserves totalled approximately 2,380 acres.<sup>429</sup>

In 1932, Timi Piripi and one other petitioned Parliament, alleging that the Native Land Court had never ascertained the boundaries of the Whaingaroa block, that the Te Uku reserve had been exchanged for less valuable land in Karioi,

422. ‘AUC 140 Aotea, Whangaroa & Kawhia’ (doc A70, p 370).

423. Document A70, p 370.

424. ‘AUC 140 Aotea, Whangaroa & Kawhia’ (doc A70, p 370).

425. Colonial secretary to surveyor-general, 13 December 1849 (doc A70, p 223).

426. McLean to colonial secretary, 29 July 1854 (doc A70, p 342); McLean to Rogan, 13 July 1855 (doc A70, p 341).

427. McLean to colonial secretary, 29 July 1854 (doc A70, p 342).

428. Document A70, pp 303–305, 307–313, 321–324, 368–369.

429. Document A70, pp 238–239.

Block	Reserves and land excluded from purchase						
	Purchase year	Name	Status	Area reserved (acres)	Year title awarded	Area remaining (2013) (acres) <sup>1</sup>	Percentage remaining (2013)
Whaingaroa <sup>2</sup>	1851	Te Mata	Native reserve	1159	N/A	0.000	0.0
		Takapaunui	Native reserve	679	1869	157.900	23.0
		Ohiapopoko	Native reserve	422	1908	341.800	81.0
Karioi <sup>4</sup>	1855	Te Uku	Native reserve	99 <sup>3</sup>	1916	99.000*	100.0
		Whaanga	Native reserve	1430	1896	1115.400	78.0
		Rākanui	Excluded from sale	1044	1896	189.000	18.0
Ruapuke <sup>5</sup>	1856	Te Kōpua	Excluded from sale	143	1896	116.000	81.0
		Papahua	Excluded from sale	46	1919	0.600	1.4
		Toroanui	Native reserve	86	1874	0.000	0.0
Whararua <sup>6</sup>	1857	Horokawau	Native reserve	310	1918	0.000	0.0
		Te Rape	Native reserve	428	1905	0.258	0.1
		Mowhiti	Excluded from sale	46	1912	0.000	0.0

1. Figures based on the evidence of Kesaia Walker: doc A142.

2. Document A142, pp 23–34.

3. As described in section 5.4.5(1)(b), in 1896 the Crown substituted the Te Uku reserve with a 99-acre block known as Section 56 of the Karioi parish. The original Te Uku reserve was recorded in land purchase files as approximately 20 acres, but Māori maintained that the physical descriptions in the deed indicated a much larger area.

4. Document A142, pp 36–46; doc A70, p 335; doc A99, p 110.

5. Document A142, pp 47–53.

6. Document A142, pp 54–57.

\* Substituted

Table 5.3: Land set aside from the western harbours purchases

and that the Te Mata block, as well as never being surveyed, had been wholly sold to Europeans. The petitioners asked that the Native Land Court be empowered to 'enquire into all the circumstances surrounding these reserves', including to ascertain the boundaries and beneficial owners. The Native Department investigated the matter and reported to the Native Affairs Committee, but it seems that no further action was taken.<sup>430</sup>

#### 5.4.5.1.1 TE MATA, TAKAPAUNUI, AND OHIAPOPOKO

This chapter has already considered the history of Te Mata (see section 5.4.4.2.5). At 1,159 acres, it was the largest reserve created in the inquiry district, representing half of the land reserved to Māori from the Whaingaroa block.<sup>431</sup> Between 1854 and 1859, the Crown made a series of purchases in the Te Mata block, ultimately acquiring the entire reserve for £283.<sup>432</sup> Walker believed a re-purchased reserve possibly existed in the Te Mata block. Remana Nutana claimed before the Native Land Court in 1892 that section 85 of Te Mata reserve, containing 42 acres, was given back by McLean to those who had sold the land to the Queen.<sup>433</sup> According to cover sheet notes, Rogan purchased the land for Hetaraka Nera, but he was unable to pay Rogan back. The Government then repurchased the land from Rogan for 15 shillings an acre.<sup>434</sup> The land was reserved from sale so that it could be a 'resting place for Māori travelling from Raglan to Aotea'.<sup>435</sup>

The 679-acre Takapaunui block contained several kāinga and urupā and it was said that Ngāti Māhanga paramount chief Wiremu Te Awaiaia had lived in the middle of the block with his family and no one had lived there before him.<sup>436</sup> The Native Land Court issued title to the block in April 1869 in favour of ten named owners, along with a list of approximately 120 others interested in the land. The court also declared the land inalienable by sale or lease for 21 years. The block was partitioned in 1908 into Takapaunui A (47 acres) and Takapaunui B (620 acres).<sup>437</sup> Takapaunui B was then partitioned into Takapaunui B1 (108 acres) and Takapaunui B2 (510 acres) in 1915.<sup>438</sup> Both Takapaunui A and B1 – constituting around 23 per cent of the original block – remain Māori land today. Takapaunui B2 was alienated by private purchase in 1956.<sup>439</sup>

The Native Land Court investigated title to the 422.8-acre Ohiapopoko block in 1908 and awarded it to 147 owners.<sup>440</sup> Around 81 per cent of the block remains in

430. Document A142, pp 24–25.

431. Document A70, pp 325–326; submission 3.4.249(c), pp 30–32.

432. Document A70, p 323; doc A142, p 27.

433. Document A142, p 27.

434. Document A142, p 27.

435. Document A142, p 27.

436. Document A142, p 27.

437. Document A142, p 29.

438. Document A60, p 1073.

439. Document A142, p 27.

440. Document A142, pp 30–31. One extra owner, and ten extra shares, were added to the block in 1911 by the Native Appellate Court.



Māori ownership today. The remaining 19 per cent of the block was alienated by two private purchases, one in 1932 and another in 1965.<sup>441</sup>

#### 5.4.5.1.2 TE UKU

The Te Uku block, near where the Waitetuna River enters Whāingaroa Harbour, was reserved from the Whāingaroa purchase because of its significance to Māori as a traditional kāinga, a food-gathering site, and as a central part of a network of connected waterways.<sup>442</sup> In 1893, the Crown put up a 268-acre block of land for sale in the vicinity of the reserve prompting an immediate response from Remana Nutana, who claimed that the block of land included Te Uku.<sup>443</sup>

Surveyor-general S Percy Smith disputed Nutana's claim, understanding Te Uku to be approximately 20 acres in size, as it was recorded in government records. However, with reference to physical boundaries, Nutana understood the block to be much larger and requested that the sale be placed on hold pending a full inquiry. This request was seemingly accepted in 1894, when Smith appointed Gerhard Mueller and George Wilkinson to investigate the issue. In 1895, Mueller and Wilkinson concluded that Te Uku was intended to comprise a 'very much larger area than 25 acres.'<sup>444</sup> By this time, however, the Crown had already sold the land around the 20-acre reserve.

To compensate for this loss, the Minister of Lands provided section 56 of the Karioi parish (99 acres) to those who could prove ownership of Te Uku. Section 56 was gazetted as a permanent Māori reserve in 1896, and remains wholly Māori land today.<sup>445</sup> Claimants argued that section 56 was an inadequate replacement for Te Uku, which was set aside from the Whāingaroa block due to its economic and cultural significance. Claimants said the replacement land was far removed from Te Uku.<sup>446</sup>

The 20 acres that remained at Te Uku is yet to be returned to Māori ownership. The land was reserved by the Department of Lands and Survey in the 1890s. In 1903, the Crown gazetted the land as a permanent recreation reserve and today it is leased to a local farmer under the administration of the Te Uku and District Memorial Hall Committee.<sup>447</sup>

#### 5.4.5.2 *Karioi block reserves*

Four areas – Te Kopua, Papahua, Whaanga, and Rakaunui – totalling approximately 2,660 acres were reserved or excluded from the sale of the Karioi block.

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441. Document A142, p 30.

442. Document s54 (Green), pp 4–5; doc A142, p 31. The alienation of Te Uku is the subject of a specific claim for Wai 426, see submission 3.4.146.

443. Document A142, p 32.

444. Mueller and Wilkinson, report, 16 November 1895 (doc A142, p 32); doc A142, pp 31–32.

445. Document A142, pp 33–34.

446. Submission 3.4.146, pp 3–9; doc s54, pp 4–5.

447. Document A142, pp 31–34.

**5.4.5.2.1 TE KOPUA AND PAPAHAUA**

The Native Land Court investigated title to the 142-acre Te Kopua block in 1896 and awarded the block to 88 people. Today, 81 per cent of the block remains in Māori ownership.<sup>448</sup> Title to the 46-acre Papahua block was awarded in three partitions in 1919 to the children of Wetini Mahikai and a section of Ngāti Māhanga. Only 1.4 per cent of the block – an urupā where rangatira Te Awaitaia and members of his family are buried – remains as Māori land today.<sup>449</sup>

Te Kopua and Papahua were afforded no long-term protection from alienation and were particularly impacted by land takings under public works legislation. The Tainui Oral and Traditional Historical Report explained how the Crown constructed signal beacons upon those parts of the Te Kopua block that had been set aside.<sup>450</sup> As will be detailed in the public works chapter in a future part of our report, portions of both the Te Kopua and Papahua blocks were acquired in 1941 for defence purposes and the lands were not returned to tangata whenua following the Second World War. This led to a bitter and long-running dispute between Tainui Awhiro and the Crown, which, as counsel for the claimants submitted, served as a flashpoint of modern Māori activism, out of which the Waitangi Tribunal was established.<sup>451</sup>

In addition to land taken in 1941, portions of Te Kopua were alienated for a native school in 1904 and the construction of roads later in the century, while other parts of the reserve were Europeanised in the 1960s.<sup>452</sup> Future chapters of this report will consider matters relating to education, public works, and twentieth-century land administration.

Alongside the 1941 public works takings, other portions of the Papahua block were taken for roads, while Papahua 2 was gifted to local government in 1923.<sup>453</sup> As counsel for Ngāti Māhanga claimants explained, the gift was facilitated by the district Māori land board at a time when land could be alienated without the consent of a majority of owners (the Māori land board regime is discussed in detail in future chapters of this report). As a result, the land was alienated with the consent of just 44 per cent of owners and, while the land was ‘gifted’ to the council for use as a public reserve, a portion of the land is now used by the Raglan camping ground.<sup>454</sup>

**5.4.5.2.2 WHAANGA AND RAKAUNUI**

A portion of the Whaanga block and most of the Rakaunui block have also been alienated from Māori ownership. The original survey of Whaanga gave its size as

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448. Document A142, pp 39–40.

449. Document A142, p 41.

450. Document A99, p 109.

451. Submission 3.4.210, p 2.

452. Document A142, pp 40–41.

453. Submission 3.4.249(c), pp 63–67.

454. Submission 3.4.249(c), pp 65–66.

600 acres. In 1879, Kereopa Hone Hone and 35 others petitioned Parliament that the survey was incorrect and excluded 1,000 acres. When the Native Land Court investigated title to the block in 1896, its size was given as 1,413 acres.<sup>455</sup> After awarding title to the block, the court then subdivided it into Whaanga 1 and 2. The court declared the subdivisions inalienable, but this did not prevent the alienation of 22 per cent of the block as a result of private purchasing between the 1920s and 1940s.<sup>456</sup>

The Native Land Court awarded title to the 1,044-acre Rakaunui block in 1896 to Wetini Mahikai and others in three subdivisions. As a result of private and Crown purchasing, 82 per cent of the block has been alienated, leaving less than 190 acres in Māori ownership today.<sup>457</sup>

### 5.4.5.3 *Ruapuke block reserves*

Two blocks – Toroanui and Horokawau – totalling approximately 396 acres were reserved from the Ruapuke sale. Both reserves were subsequently alienated in full. The owners of the 86-acre Toroanui block sought a Crown grant for the block in 1874. Although the grant has not been located, it appears to have been issued to Kewene Te Haho, Ratapu Te Haho, and Pouwharetapu. The entire block was alienated to a private purchaser in 1894.<sup>458</sup> Title to the 310-acre Horokawau block was awarded in 1918 to 12 owners. The entire block was alienated in result of a road taking in 1912 and a private purchase in 1920.<sup>459</sup>

#### 5.4.5.3.1 WHARAUROA BLOCK RESERVES

Two areas – Mowhiti and Te Rape – totalling 474 acres were excluded from the sale of the Wharauoa block. In addition, the purchase included an area – Hui Pokohuka – transacted by McLean in 1954, the deed for which recorded a reserve called Kihorewaru.

#### 5.4.5.3.2 MOWHITI AND TE RAPE

Title to the 46-acre Mowhiti block was awarded in 1912. In 1969, the block was Europeanised under the Maori Affairs Amendment Act 1967.<sup>460</sup> The Native Land Court issued title to the 428-acre Te Rape block in 1905 to 54 people. Between 1916 and 1918, the Crown purchased the majority of the block. Today, Māori retain just 1 rood 5.6 perches of the original Te Rape block. The remaining land – Te Rape 2A – was gazetted as a Māori burial ground in 1961.<sup>461</sup>

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455. Document A99, p 110.

456. Document A142, pp 37–39.

457. Document A142, pp 45–46.

458. Document A142, pp 48–49. Douglas, Innes and Mitchell record that the GIS estimate of Toroanui is 102 acres, see doc A21, p 125.

459. Document A142, pp 47, 49–53.

460. Document A142, p 57.

461. Document A142, pp 56–57.

**5.4.5.3.3 KIHOREWARU**

The Hui Pokohukua block was purchased by McLean on 12 April 1854 for an initial payment of £50, with a further £50 paid on 4 August 1854.<sup>462</sup> The boundary of the block was described as commencing at Hui Pokohuka, along to Tipahau and the boundary of land purchased by Ligar at Matahahaea, then to Opiri, Kohukohu, and Tihiotonganui.<sup>463</sup> The receipt for the first payment stated that the full £300, a figure which was open to change, would be paid once the land was surveyed.<sup>464</sup> However, the purchase was never completed and it appears that the block later became part of the larger Wharauoa block purchased by the Government in 1857.<sup>465</sup>

A receipt for the £50 paid for the Hui Pokohuka block indicated that an area of land called Kihorewaru was to be set aside for Te Awaitaia as a place of residence. This does not appear to have happened because this land also became part of the Wharauoa purchase.<sup>466</sup>

**5.4.6 Treaty analysis and findings**

In the early 1850s, the Crown entered arrangements for two blocks of land on the shores of Whāingaroa Harbour. Horea, on the northern shores, was transacted by the Crown in an attempt to calm tensions between Ngāti Mahuta and Ngāti Tahinga, while the Whaingaroa block, located on the harbour's southern shores, was purchased from Ngāti Māhanga for the purposes of European settlement.

Between 1854 and 1858, the Crown purchased several blocks of land across the Whāingaroa, Aotea, and Kāwhia districts. These lands included the Oioroa block, at the northern headland of Aotea; the Harihari block, on the coast between Marokopa and Kāwhia; the Karioi, Ruapuke, Wharauoa, and Wahatane blocks, which constituted the bulk of lands between the Whāingaroa and Aotea Harbours; the entire Te Mata native reserve, set aside from the 1851 Whaingaroa sale block; and the interests of the Ngāti Raukawa and Ngāti Toa-rangatira iwi across the above-mentioned lands.

In this section, the Crown's conduct in these transactions is assessed against the standards established in the Treaty for the purchase of Māori land, as confirmed in statements by officials of the time. As with the Mōkau–Awakino purchases, three questions are addressed:

- ▶ Did the Crown fully investigate customary tenure to the land it sought to purchase?
- ▶ Did the Crown then establish the free and informed consent of the sellers?
- ▶ Did the Crown ensure Māori retained sufficient land for their present and future needs?

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462. Document A70, p 340.

463. Document A142, p 35.

464. Document A70, p 340.

465. Document A142, p 35.

466. Document A142, p 35.

**5.4.6.1 Did the Crown fully investigate customary tenure?**

The evidence demonstrates that the Crown failed to fully investigate customary tenure to the land it sought to purchase in the Whāingaroa, Aotea, and Kāwhia districts. In the case of the Whāingaroa block, Ligar purchased the 8,000-acre block for £400 in March 1851. But shortly after the purchase of a portion of the land by a Pākehā settler, additional transactions were required within the confines of the original block in order to acquire the interests of customary right holders whom Ligar had failed to consult.

During the second phase of purchasing in the Whāingaroa, Aotea, and Kāwhia districts, McLean routinely targeted willing sellers. This enabled him to circumvent any potential opposition and resulted in a series of transactions that required subsequent negotiations and additional payments to finalise. The result, however, was that McLean failed to adequately consult with all rights-holders, often entering arrangements for the sale of land with individuals or small groups of people.

Much of the responsibility for ensuring that the lands were acquired with the consent of all rights-holders then fell upon Rogan. In many instances, he too failed in this regard. In the case of the Harihari and Oioroa blocks, for example, the Crown employed a tactic whereby it conducted negotiations with specific rangatira, with the understanding that these rangatira would distribute portions of the purchase price to other right holders. This approach, Ms Boulton explained, ‘put those not involved in the initial transactions in 1854 at a disadvantage’, and left ‘many to find out later that other individuals had sold interests in the land.’<sup>467</sup> Ngāti Te Wehi claimants, for example, explained how their interests in Oioroa were alienated without the consent of their tūpuna, and the Crown appears to have acquired the Harihari block without the consent of Ngāti Mahuta or Nuitone Te Pakarū, who claimed interests in the area and was a long-time opponent of land sales.

Similar issues were evident in other Crown purchases. In acquiring the Karioi block, for example, while the Crown clearly gained the consent of many right holders, a number of those who signed the deed of sale were children and captives, who had no authority to transact the land. Moreover, Hounuku, a rangatira who held interests in the affected lands, was not a signatory of the deed. In the case of Wharauoa, meanwhile, Kanga Kihirini Te Kanawa complained in the decades following the sale of the land that, at the time of the transactions, he was opposed to land sales. The Crown dismissed Te Kanawa’s concerns, despite his recital of his shared whakapapa with one of the signatories to the sale.

We find that the Crown, in acquiring lands across the Whāingaroa, Aotea, and Kāwhia districts, failed to establish the consent of all right holders, in breach of the Treaty principle of partnership, the guarantee of tino rangatiratanga, and the duty of active protection.

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467. Document A70, p 377.

**5.4.6.2 Did the Crown establish free and informed consent?**

The Crown also made inadequate efforts to properly identify the land it was seeking to purchase at the time of the transactions. In particular, throughout 1854, McLean paid advances on lands that were generally identified with reference to physical boundaries. These arrangements were made with the understanding that final payment for the affected lands would be made following the completion of surveys. As Ms Boulton pointed out, this approach to land purchasing in the inquiry district broadly conformed with McLean's efforts elsewhere.<sup>468</sup>

In transacting the land at Horea, the surveyor-general, Charles Ligar, entered an arrangement with Te Wherowhero in May 1850, in which the latter received either £50 or £100 for his interests in the land. The extent to which Te Wherowhero and Ngāti Mahuta understood the transaction as a permanent alienation is unclear. The Crown's precise understanding of this arrangement is similarly unclear, as native title to the block was not extinguished as a result of the transaction. Accordingly, the Crown did not alienate the land as a result of the transaction. In turn, there is no evidence of a Treaty breach.

In purchasing the Whaingaroa block, Ligar appears to have failed to explain to Māori the nature and extent of the transaction, as evidenced by the re-occupation of a portion of the land by members of Ngāti Māhanga. Similarly, in the case of the Oioroa block, it appears that Crown agents failed to ensure that the nature of the transaction was clearly understood by all Māori sellers prior to the alienation of the land. Claimants pointed to the continued occupation of the land by one seller as evidence that the full and final nature of the transaction was not clearly understood by all those party to the arrangement. In our view, this assessment is substantiated by the available evidence.

The prices paid by the Crown for lands across the Whāingaroa, Aotea, and Kāwhia districts ranged between one and two shillings per acre, which broadly conformed with Governor Gore Browne's 1858 declaration of a national average price for Māori land of one shilling and sixpence per acre.<sup>469</sup> As discussed by other Tribunals, it is difficult – if not impossible – to determine what would constitute a fair price for Māori land in the context of pre-Native Land Court purchasing. Land could not be sold to third parties and, as such, there was no functioning market that could provide for the emergence of a price that was freely agreed to by both purchasers and the vendors.<sup>470</sup> Nonetheless, we do know that, at least in the Whaingaroa example, where the Crown sold an area one-fifth the size of the original block for more than three times the amount Māori had received for the whole block, the Crown's purchase prices were clearly unfair.

What is also clear from the evidence available to us is that, in the context of this series of Crown purchases, the Crown's exclusive right to purchase Māori land operated less as a mechanism to protect Māori interests, and more as a tool

468. Document A70, p 362.

469. Waitangi Tribunal, *Muriwhenua Land Report*, pp 278–279.

470. Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 1, p188; Waitangi Tribunal, *Muriwhenua Land Report*, pp 278–279.

to promote the Crown's purchasing agenda. This assessment is evidenced by McLean's 1855 instructions to Rogan, in which he promoted urgency in Rogan's efforts to finalise the transactions, in recognition that, upon becoming aware of the Crown's re-sale price of their land, Māori would demand higher prices.

In those instances where Māori sellers sought an increase to the Crown's offer, such requests were routinely denied, as was the case in the Karioi and Ruapuke block transactions. Moreover, in the case of the Ruapuke block, McLean appears to have applied pressure on Māori sellers to induce them to accept a price they had previously rejected.

Overall, we find that the Crown did not pursue its negotiations with Māori across the Whāingaroa, Aotea, and Kāwhia districts in the utmost good faith. We find that, in this way, the Crown failed to act honourably and in good faith, thereby breaching the Treaty principle of partnership.

### **5.4.6.3 Did the Crown ensure Māori retained sufficient land?**

The Crown also failed to ensure Māori retained sufficient lands from its transactions in the Whāingaroa, Aotea, and Kāwhia districts. In seeking to legitimise the prices paid for Māori lands in the context of Crown pre-emption, Crown agents and officials often emphasised the increased value of those lands retained by Māori as an important benefit of selling land to the Crown.<sup>471</sup> The Crown was also aware of the need to protect those reserves from alienation, as was the understanding in the district at the time.

While Ligar set aside a significant area of land from the Whaingaroa purchase, he provided the sellers with only limited harbourside reserves. In the context of an economy that relied upon ocean-based trading, this was a significant oversight which meant that the lands reserved to Māori sellers were not sufficient for their present and future needs.

Moreover, Ligar failed to institute protective mechanisms to ensure Ngāti Māhanga retained those lands 'reserved as places of abode for the owners' and, as a result, the vast majority of the approximately 2,300 acres set aside from the Whaingaroa block were subsequently lost. In particular, within four years of the purchase the Crown began purchasing land in the Te Mata reserve. By 1858 it had acquired the entire 1,189-acre reserve. We agree with the Wairarapa ki Tararua Tribunal that the Crown's purchasing of reserves was 'simply opportunistic[,] . . . militated against the likelihood that Māori would ever be able to engage in the new economy, and was therefore by definition inappropriate behaviour for the Crown.'<sup>472</sup>

In the case of the Te Uku reserve, when Remana Nutana informed the Crown that land it proposed to sell in the vicinity of Te Uku actually included much of the reserve, the Crown agreed to look into the matter. However, while an inquiry was conducted into the issue, the land in question was not removed from the market and, by the time the report that validated Nutana's concerns was released, the land

471. Waitangi Tribunal, *Muriwhenua Land Report*, pp 278–279.

472. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, p 262.

had already been sold. In compensating Māori for the portion of Te Uku that it had sold, meanwhile, the Crown awarded an inadequate replacement block. While Te Uku had been set aside from the Whaingaroa block due to its economic and cultural significance, the replacement land was far removed from Te Uku.

Similarly, when the Crown acquired lands across the Whāingaroa, Aotea, and Kāwhia districts between 1854 and 1857, it also failed to ensure that Māori retained sufficient lands to benefit from any potential increase in land values.

In acquiring the Harihari, Oioroa, and Wahatane blocks, as well as the interests of Ngāti Toa-rangatira and Ngāti Raukawa, the Crown did not set aside any land for the sellers, in contradiction to McLean's instructions from July 1855, as well as the Crown's own purchasing standards. In the cases of the Karioi, Ruapuke, and Wharauroa blocks, while lands were set aside or reserved from the sale block, these areas were not protected from subsequent alienation and, across later decades, significant portions of the blocks were alienated.

In failing to set aside adequate reserves from its purchases, and for failing to ensure that Māori retained sufficient land for their present and future needs, we find that the Crown failed in its duty of active protection and thereby breached the Treaty principle of partnership.

### 5.5 THE ŌTĀWHAO AND RANGIAOWHIA TRANSACTIONS

In a series of purchases during the 1850s, the Crown acquired about 1,300 acres at Ōtāwhao and Rangiaowhia, before granting most of these lands to Church organisations. Ōtāwhao and Rangiaowhia are situated in the far north of the inquiry district, between the Pūniu and Mangapiko Rivers. In contemporary terms, the Ōtāwhao lands are situated in and around modern-day Te Awamutu, while Rangiaowhia is located west of Te Awamutu and north-east of Kihikihi.

In 1834, the Anglican Church Missionary Society (CMS) established its first Waikato station at the junction of the Waipā and Pūniu Rivers, and in 1839 the Anglicans expanded their presence into Ōtāwhao.<sup>473</sup> In 1841, the Reverend John Morgan took up residence at the Ōtāwhao station. Then in about 1844 the Roman Catholic Mission established a station at Rangiaowhia under the leadership of Father Jean Pezant.<sup>474</sup> The establishment of these stations occurred under the authority of local rangatira, who granted the newcomers rights to occupy parcels of land. In time, the arrangements – which occurred in the immediate pre- and post-Treaty periods – were formalised by the Crown. The transactions occurred in an era of Māori–Pākehā relations in which many iwi and hapū sought European settlement in their midst, in light of the economic boon the presence of Pākehā could offer.

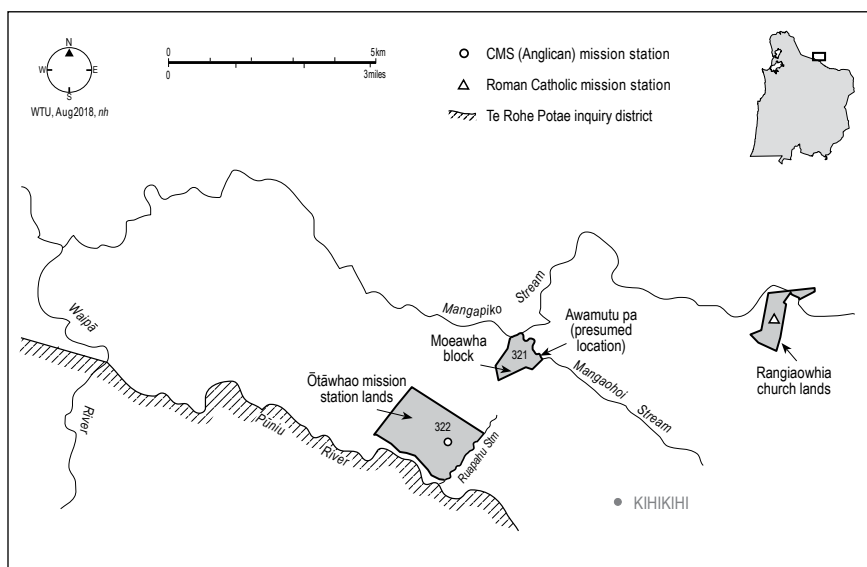
At Ōtāwhao, the following transactions took place:

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473. Document A23, p 34.

474. Document A23, pp 34, 128.





Map 5.4: The Ōtāwhao and Rangiaowhia transactions

- ▶ On 26 March 1850, the 173-acre Otawhao block – which included the site of the Ōtāwhao mission station – was acquired by the Crown.<sup>475</sup>
- ▶ The Crown acquired the 5-acre Otawhao school lands and the Awamutu pā lands on 10 July and 12 July 1850, respectively.<sup>476</sup>
- ▶ On 29 October 1853, Governor Grey granted the 870-acre Moeawha block in trust to the Bishop of New Zealand.<sup>477</sup>
- ▶ On 13 July 1855, Te Tomo was acquired by the Crown, followed by the Paiaka block on 16 July 1855.
- ▶ On 25 April 1856, 4 acres 2 roods and 31 perches at Te Taruna were allocated by Māori for Rakapa (Rachel) Edwards and her Pākehā settler husband.<sup>478</sup>

During the same period, lands occupied by the Catholic Mission at Rangiaowhia were also acquired by the Crown:

- ▶ On 2 January 1854, a deed of gift was executed by rangatira of Ngāti Apakura for the 298-acre Rangiaowhia Church Lands.
- ▶ Approximately five acres were alienated on 29 January 1857 at Karangapahau.<sup>479</sup>

475. Document K16(a) (Maniapoto appendixes), app G-1a, p 15.

476. Document A141, 'AUC 328 Otawhao' and 'AUC 395 Te Awamutu'.

477. Document K16(a), app G-4, p 19.

478. Document A141, 'AUC 330 Te Tomo', 'AUC 393 Paiaka' and 'AUC 331 Te Turuna'; doc A30 (Innes), pp 214–215.

479. Document A141, 'AUC 604 Rangiaowhia Catholic Church Lands'; doc K16(a), app H-2, p 28.

### 5.5.1 The parties' positions

The claimants had three main contentions. First, they said the Crown did not ascertain the actual intentions or understandings of Ngāti Paretekawa and others in their pre-Treaty land transactions with Church missionaries in the Te Awamutu–Waipā region. Secondly, when the Crown purchased lands there, it failed to ascertain who the right holders were. The Crown failed to engage with the mana whenua. Lastly, the claimants said, the Crown failed to ensure that the terms of the various trusts, established by the Crown and managed by the Church, were properly fulfilled.<sup>480</sup>

The Crown made no specific submissions in response to these claims.

### 5.5.2 Background to the transactions

As discussed in chapter 2 (section 2.5.1), the late 1700s witnessed growing conflict around Maungatautari, as Ngāti Raukawa sought to extend their reach over lands held by Waikato tribes.<sup>481</sup> This was the context in which Peehi Tūkōrehu and his brother Te Akanui decided to shift their primary allegiances from their Ngāti Raukawa to their Ngāti Maniapoto kin, naming their hapū Ngāti Paretekawa in honour of the daughter of Te Kanawa Whatupango.<sup>482</sup> Peehi emerged as a significant rangatira of Ngāti Maniapoto, consolidating his authority around Kakepuku and the country between the Pūniu River and Mangapiko Stream.<sup>483</sup> An alliance between Peehi and the Waikato rangatira Te Wherowhero underpinned the broader Waikato-Maniapoto alliance and, amidst the Ngāpuhi raids of the 1820s, Peehi invited his Waikato allies to settle in the Te Awamutu and Ōtāwhao districts to ensure their shared safety and security.<sup>484</sup>

Ngāti Apakura had long held interests in the Waipā region, but in the early nineteenth century Rangiaowhia became the heartland of the tribe.<sup>485</sup> In the wake of the Ngāpuhi raids a section of Ngāti Korokī moved onto the lands of Ngāti Apakura and Ngāti Hinetu at Te Awamutu: 'Although Ngāti Korokī and Ngāti Hinetu were kin, a dispute occurred which ended in a fight where some Ngāti Korokī were killed at Kaipaka near Te Awamutu.' Ngāti Hauā became involved in support of their Ngāti Korokī kin, but escalating conflict was avoided and agreement was reached that Ngāti Apakura would settle on lands at Rangiaowhia that had been occupied by Ngāti Korokī and Ngāti Kauwhata.<sup>486</sup>

480. Submission 3.4.208, p34.

481. Document A83 (Te Hiko), pp109–111; Pei Te Hurinui Jones and Bruce Biggs, *Nga Iwi o Tainui: The Traditional History of the Tainui People* (Auckland: Auckland University Press, 1995), pp294–301, 324.

482. Transcript 4.1.1, pp39–40 (Harold Maniapoto, Ngā Kōrero Tuku Iho hui, Te Kotahitanga marae, 1 March 2010), pp175–176 (Robert Te Huia, Ngā Kōrero Tuku Iho hui, Te Kotahitanga marae, 2 March 2010).

483. Document K16 (Maniapoto), pp5–8.

484. Document A110 (Barrett), pp227–228; doc A97 (Borell and Joseph), p112.

485. Document A97, pp101–102.

486. Document A97, p109; transcript 4.1.1, p41 (Harold Maniapoto, Ngā Kōrero Tuku Iho hui, Te Kotahitanga marae, 1 March 2010).

Although situated north of the Pūniu River, the Ōtāwhao and Rangiaowhia lands fall within the boundary extensions granted to our inquiry district that were granted to the Ngāti Paretekawa and Ngāti Apakura claimants.<sup>487</sup>

According to Harold Maniapoto, the prospect of a missionary presence at Ōtāwhao in the 1830s was met with enthusiasm by local rangatira. 'Peehi Tūkōrehu and Te Wherowhero quickly recognised the value that the church and Pākehā involvement in the region would bring,' Mr Maniapoto said, 'and by 1835 agreed to engage with them to exploit that opportunity for the betterment of their hapū and people of the area.'<sup>488</sup> No deeds or other evidence were provided to us to corroborate the traditional evidence of the claimants.

The Reverend Benjamin Ashwell established a CMS station at Ōtāwhao in 1839. In 1841, the Reverend John Morgan arrived with his wife Maria to further advance the work of the mission.<sup>489</sup> In Morgan's conception of missionary work, the dissemination of Christianity went hand in hand with the spread of civilisation.<sup>490</sup> Morgan aimed to '[e]stablish Maori in Christian belief', establish schools, foster the growing of wheat and the erection of flour mills, and promote the use of 'profits to buy livestock.'<sup>491</sup>

Morgan's conception of his missionary vocation seems to have complemented the aspirations of his Māori hosts. Soon after his arrival, Māori were cultivating significant areas of wheat and barley, along with fruit trees such as peaches, apples, pears, plums, quinces, and gooseberries.<sup>492</sup> Morgan also encouraged Māori to mill their own wheat rather than sending it beyond the district. In turn, he helped arrange for the first of the district's many mills to be erected in 1844, which was paid for by Māori in livestock.<sup>493</sup> Additional mills were soon constructed nearby.<sup>494</sup>

Morgan also acknowledged receiving strong support from Governor Grey, writing: 'This rapid advancement in civilisation is the fruits of Sir G. Grey's kind present and friendly feeling towards those tribes.'<sup>495</sup> Grey's approach, known as 'sugar and flour' and described by historian Andrew Francis as 'strategic gifting', led in return to Māori gifts of land for agricultural schools.<sup>496</sup> Mr Maniapoto said Ngāti Paretekawa traditions record that Peehi Tūkōrehu, Te Wherowhero, and other rangatira supported the establishment of a mission school in their district. By 1841, Mr Maniapoto said, Te Wherowhero and Te Paewaka had agreed to provide land at Moeawha for a school. His evidence was that school, in practice was primarily for the benefit of half-caste children.<sup>497</sup>

487. Submission 3.1.159; memorandum 2.5.24; submission 3.4.208; submission 3.4.228.

488. Document K16, p 11.

489. Document A26, pp 21–22.

490. Hazel Petrie, *Chiefs of Industry: Māori Tribal Enterprise in Early Colonial New Zealand* (Auckland: Auckland University Press, 2006), pp 88–89.

491. Document A26, p 22.

492. Document A26, p 24.

493. Document A26, p 24.

494. Document A26, p 24.

495. Morgan letters and journals, p 73 (doc A26, p 31).

496. Document A26, p 31.

497. Document K16, pp 11, 12–14, 15.

A Catholic mission seems to have been established by 1844 at Rangiaowhia. The first priest there was Father Pezant, and his place was taken in the 1850s by Father Garavel. As at Ōtāwhao, the mission grew wheat, oats, potatoes, and ‘an abundance of fruit including pears, apples, apricots, peaches and cherries, though not quite on the scale of the Anglican station headed by Morgan.’<sup>498</sup> Once again, we received no evidence as to the basis on which agreement to establish this mission was gained.

### 5.5.3 Crown purchases and subsequent grants to Church organisations

With the CMS and Roman Catholic missions well established in the Ōtāwhao and Rangiaowhia districts, the arrangements for land-use developed over the preceding decade were formalised by the Crown in the 1850s. Writing to the CMS headquarters in London in 1853, Morgan reflected on the mission’s acquisition of land at Ōtāwhao:

The block given up at Otawhao for my School when surveyed proved to be 870 acres, so that with the land granted by Sir G Grey (part of which was a gift from the Natives to the CMS 3 years ago) and a small piece since given we have now at Otawhao nearly 1100 acres of some of the finest land in New Zealand.<sup>499</sup>

The lands referred to by Morgan include the 173-acre Otawhao block and the 870-acre Moeawha block. In addition to these lands, the Crown acquired a number of smaller areas at Ōtāwhao between 1850 and 1856. In 1854 and 1857, meanwhile, the Crown acquired two blocks of land at Rangiaowhia that it then transferred to the Roman Catholic Mission. These were the 298-acre Rangiaowhia Church Lands and approximately five acres known as Kairangapaihau.

#### 5.5.3.1 Purchases at Ōtāwhao

##### 5.5.3.1.1 ŌTĀWHAO MISSION STATION LANDS, MARCH 1850

The deed for the Otawhao block transaction, which was the site of the CMS mission station, was dated 26 March 1850 and signed by Te Katea, Haunui, Riwai Te Mokorou, and Te Reweti Waikato.<sup>500</sup> The deed stated that the boundaries were shown to surveyor-general Ligar, who ‘Surveyed the land and made a Plan.’ The Crown granted the 173-acre block to the CMS on 15 October 1850:

as a site for a place of worship, or for schools, or in other like manner for purposes connected with the religious and moral instruction of our subjects inhabiting these islands, and of other persons being children or poor and destitute people inhabiting any islands in the Pacific Ocean.<sup>501</sup>

498. Document A26, p39.

499. Morgan to Church Missionary Society, 3 November 1853 (doc A26, p31).

500. Document K16(a), app G-1A, p15.

501. Submission 3.4.208, p39.

Although the missionaries had occupied Ōtāwhao in 1839, prior to the signing of the Treaty, they do not seem to have attempted to make a claim to the land claims commissioners established to consider pre-Treaty transactions (see chapter 4). The deed made clear, all the same, that the transaction was intended to formalise an existing agreement with the CMS. The alienation was

Partly in consideration of the Goods of the Church Missionary Society of London, given to us by the Revd John Morgan, these are things that he gave us: – Two Cows, Two Calves, Two Sheep, One Mare, Five Pounds . . . and partly as a free gift where by we gave that portion of the land on the Western side.<sup>502</sup>

### 5.5.3.1.2 MOEAWHA BLOCK

The Moeawha transaction concerns the land said to have been provided by Te Wherowhero and Te Paewaka in the early 1840s for the purpose of a school.<sup>503</sup> In closing submissions, the claimants stated that the land was transferred to the Crown on or around 10 July 1850 in return for £2 10s. This does not appear to be correct. Deed 405B, which the claimants refer to in connection with this purported transaction, relates to the Ōtāwhao school lands (discussed below) and not the Moeawha lands. There appears to be no available evidence that the Crown ever purchased the 870-acre Moeawha block.

On 29 October 1853, meanwhile, the land was transferred to the Bishop of New Zealand to support missionary schools.<sup>504</sup> The ‘Grant in Trust’ declared:

Where as Schools have been Established under the superintendence of the Bishop of New Zealand, for the Education of childrens of Our subject of both races, and of children of other poor and destitute persons . . . we of our especial grace for us our heirs and successors Do Hereby grant unto the said Bishop of New Zealand, all that allotment . . . for the use or towards the support and maintenance of the said School so long as religious Education industrial training and instruction in the English language, Shall be given to youth educated there-in and maintained there-at.<sup>505</sup>

The deed seems to have been signed by Governor Grey. Crown counsel raised the possibility that Grey might have simply witnessed the transaction. Judge Ambler responded: ‘I would think it is his signature as the donor.’ Counsel then raised what is really the crucial question: ‘Well what I’m not sure of is what, what capacity the Governor had to be the donor.’<sup>506</sup>

In accordance with the terms of the trust, a school was never established on the site, though the Moeawha block served as ‘an adjunct’ to the mission school at Ōtāwhao in the years before the Waikato war.<sup>507</sup>

502. Document K16(a), app G-1a, p 15.

503. Document K16, p 24.

504. Submission 3.4.208, p 39.

505. Document K16(a), app G-4, pp 19–20; submission 3.4.208, pp 39–40.

506. Transcript 4.1.10, pp 382–383 (Crown counsel questioned by Judge Ambler).

507. AJHR, 1905, G-5, p viii

**5.5.3.1.3** ŌTĀWHAO SCHOOL LANDS AND AWAMUTU PĀ, JULY 1850

During July 1850, two further areas were acquired by the Crown. On 10 July 1850, Te Wikitia and Karauria Papahia, described on the deed of sale as ‘Chiefs of the Ngati Ruru Living at Otawahao at Waikato’, exchanged their interests in the five-acre Otawahao school lands for £2 10s.<sup>508</sup> We do not know what relationship, if any, this land had with the mission station. Two days later, on 12 July 1850, a deed of sale was signed by Hone Pihama, Horomona, Hemi Waikato, Maruhau, and Heremaia for the Awamutu pā lands.<sup>509</sup> The signatories received £3.<sup>510</sup> The lands affected by this alienation lay within the area already transacted as part of the Otawahao block sale and later came to be designated as ‘Pt Lot 321’ of the Mangapiko parish.<sup>511</sup> It is unclear why this specific arrangement needed to be made.

**5.5.3.1.4** TE TOMO AND PAIAKA, JULY 1855

In July 1855, two further parcels of land were alienated by Māori. The acquisitions of the Te Tomo and Paiaka blocks were both conducted by Donald McLean, chief commissioner of the Native Land Purchase Department.<sup>512</sup> The Te Tomo deed of sale was signed on 13 July by Te Katea, Rewi, and Porokoru Titipa, who received £20 for a block of unknown size.<sup>513</sup> Three days later, on 16 July, McLean paid an additional £20 for the Paiaka block.<sup>514</sup> The signatories to this deed were Porokoru Titipa, Rewhi Ngaruru, and Hakopa Ngaruhi.<sup>515</sup> According to the claimants, the Paiaka block was 50 acres in extent.<sup>516</sup> It is unclear what, if any, relationship these blocks had with the CMS station.<sup>517</sup>

**5.5.3.1.5** TE TARUNA, APRIL 1856

The final parcel of land alienated at Ōtāwhao in the 1850s was Te Taruna, comprising 4 acres, 2 roods, 31 perches.<sup>518</sup> The deed of gift for Te Taruna was executed on 25 April 1854 and signed by Warana, Ahukaramu, Pita, Matena, and Patuhoe.<sup>519</sup> The deed specified that the signatories surrendered the land to ‘Victoria the Queen of England and to the Kings and Queens, who may succeed her for Ever’ and explained that ‘The reason that we surrender this place is that we Desire that the Government of New Zealand shall settle that place on Rachel Edwards and her Children.’<sup>520</sup> In accordance with this directive, the land was later awarded to Rakapa (Rachel) Edwards – the Māori wife of a Pākehā settler – in June 1864,

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508. Document A141, ‘AUC 328 Otawahao’; doc K16(a), app G-2, p 17.

509. Document A141, ‘AUC 395 Te Awamutu’; doc K16(a), app G-3, p 18.

510. Document A141, ‘AUC 395 Te Awamutu’; doc K16(a), app G-3, p 18.

511. Document K16(a), app B, p 4, app G-3, p 18.

512. Document K16(a), app G-5, app G-6, pp 21–22.

513. Document K16, p 23; doc K16(a), app G-5, p 21; doc 141, ‘AUC 330 Te Tomo’.

514. Document K16(a), app G-6, p 22; doc A141, ‘AUC 393 Paiaka’.

515. Document K16(a), app G-6, p 22; doc A141, ‘AUC 393 Paiaka’.

516. Document K16, p 24.

517. Document K16, p 24.

518. Document A141, ‘AUC 331 Te Turuna’.

519. Document A141, ‘AUC 331 Te Turuna’; doc K16(a), app G-7b, p 24.

520. Document K16(a), app G-7b, p 24.

under the Crown Grants Act 1862.<sup>521</sup> No additional detail concerning the motivations behind this transaction is available.

**5.5.3.2 Purchases at Rangiaowhia**

The Rangiaowhia Church Lands and Karangapaihau were acquired by the Crown and then awarded to the Roman Catholic Church. As with the Ōtāwhao transactions, they appear to have been intended to provide official sanction for existing arrangements between the church and Māori right holders.

**5.5.3.2.1 RANGIAOWHIA CHURCH LANDS, JANUARY 1854**

The deed of gift for the Rangiaowhia church lands was signed on 2 January 1854 by seven Ngāti Apakura rangatira: Hoani Papita Kahawai, Hori Te Waru, Turimanu, Te Wana Tarakaka, Penetita Te Wharaunga, Te Hemara Piritahi, and Werahiko Te Rongotea.<sup>522</sup> With regard to the gift, the deed specified:

We the Chiefs of Rangiaowhia in the Northern Island of New Zealand have agreed on this day . . . and consented freely to give up without consideration to the Queen of England a portion of land, to be by her transferred to the Bishop of the Roman Catholic Church at Auckland for the purposes we desire most vizt. – for a School for education for our children and for the objects of our Roman Catholic Church.<sup>523</sup>

The deed defined the boundaries of the land and stated that the signatories ‘surrender for ever’ the 298-acre block.<sup>524</sup> Apakura historians Moepātu Borell and Robert Joseph noted that ‘it appears that only 197 acres was transferred to the Mission’ when the deed eventually went through the courts in 1874.<sup>525</sup>

**5.5.3.2.2 KARANGAPAIHAU, JANUARY 1857**

The second area gifted by Ngāti Apakura to the mission was ‘the land at Rangiaowhia, named “Karanga-Pai-Hau”’. The deed was signed by Hoani Papita on 29 January 1857.<sup>526</sup> According to counsel for the claimants it comprised approximately 5 acres.<sup>527</sup> Hoani Papita conveyed the land to:

her Majesty Queen Victoria . . . upon Trust, To Grant the said land unto the Bishop of the Catholic Church and to the Bishops who may succeed him, to be held as the site of a Church for Christians, professing the forms of worship of the Catholic Church.<sup>528</sup>

521. Document A30, pp 214–215; doc K16, pp 26–27.

522. Document A141, ‘AUC 604 Rangiaowhia Catholic Church Land’; doc K16(a), app H-1, pp 26–27; submission 3.4.228, pp 74–75.

523. Document A141, ‘AUC 604 Rangiaowhia Catholic Church Land’; doc K16(a), app H-1, pp 26–27.

524. Document A141, ‘AUC 604 Rangiaowhia Catholic Church Land’.

525. Document A97, p 152.

526. Document K16(a), app H-2, p 28.

527. Document K16(a), app H-2, p 28; submission 3.4.228, pp 74–75.

528. Document K16(a), app H-2, p 28.

According to Ms Borell and Dr Joseph, Karangapaihau was ‘at the highest part of the Rangiaowhia ridge at the north-western end of the village’. The resident hapū built the first chapel and presbytery there in 1844, and also their timber replacements in 1851.<sup>529</sup>

We include these deeds at this point in the report for completeness and note that they were signed by prominent Ngāti Apakura rangatira and that there is no evidence of protest.

#### 5.5.4 Subsequent developments

The alienation of Te Taruna brought the period of Crown purchasing at Ōtāwhao to a close. Mr Maniapoto claimed that ‘the Crown failed to investigate customary interests and title to the lands’ before entering into the transactions. He asserted:

none of the persons who sold the lands held mana whenua or customary interests or ownership rights over the lands that were sold. Waikato had permanent occupation in the district through the action of Tūkōrehu in placing them there, they had no real claim beyond that.<sup>530</sup>

We are mindful that we did not hear from any hapū of Waikato with regard to these transactions. Thus we cannot offer any reflections on these alienations as understood from their perspective. There is evidence available, however, that rights at Ōtāwhao were a matter of dispute during the 1850s and into the 1860s. John Gorst took up residence in Te Awamutu in 1862 as resident magistrate for Waikato. As the main Crown official in the upper Waipā at a time of deepening crisis in the relationship between the Crown and Māori, his actions are addressed in detail in chapter 6. Here, we note that he later described Te Awamutu as ‘a debated territory, claimed both by Waikato and Ngatimaniapoto.’<sup>531</sup> Gorst made specific comment on that relationship in the context of rights to determine the use and allocation of land:

Pehitukorehu [Peehi Tūkōrehu], an ancestor of the Ngatimaniapotos, conquered the Ngatiraukawa tribe in battle and drove them from their stronghold, Otawhao, and their lands in that neighbourhood, to beyond Maunga-tautari: so little did he value the land – many square miles in extent – of which he thus became the master, that he gave it away to his friends and kinsmen, the Waikatos of the Ngatimahuta tribe . . . They occupied the country, felled the forest, and cultivated without dispute for years. Some dozen years ago the Waikatos sold a few acres of their land to settlers. The jealousy of the Ngatimaniapoto was aroused; they asserted a claim to the land, re-occupied a part of it, and the Waikatos were obliged to promise that no more should be sold without their consent. Ever since that time a feud has been going on which has

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529. Document A97, pp 150–151.

530. Document K16, pp 19–27.

531. John Gorst, *The Maori King* (Hamilton: Paul’s Book Arcade, 1959), p 221.



several times nearly broken out into open war, and the Ngatimaniapoto dispute the validity of the sale to the present day.<sup>532</sup>

James Fulloon also discussed the question of rights to land at Te Awamutu, in a report to the Native Minister at the end of March 1863:

But the real one is a question of propriety to the land, to Te Awamutu. By what I can make out, the district was taken from the Ngatiraukawa; the conquest was commenced by the Ngatimaniapoto, under Tukorehu, who gave it over to Paewaku [Te Paewaka] (Potatau's uncle) who completed the conquest, when Te Awamutu was sold, the Ngatimaniapoto did not share in the proceeds, they say now, that Potatau having died, so has his gift to the Church Missionary Society died also; therefore that part of the estate that was given by Potatau should revert to them . . . This is the real *ngakau* (heart) of the question . . .<sup>533</sup>

These passages, in our view, complement the interpretation of the transactions offered by the Ngāti Paretekawa claimants.

### 5.5.5 Treaty analysis and findings

The missionary John Morgan acknowledged that with the Ōtāwhao transactions the CMS gained about 1,100 acres of 'some of the finest land in New Zealand'. It is clear that the Crown, in the person of the Governor, played a central role in the transactions. The discussion in chapter 2 showed that possession of the region was keenly contested prior to the arrival of Europeans. The Ngāti Paretekawa claimants have presented traditional evidence that their tupuna Tūkōrehu asserted rights there until his death in the mid-1830s. This is corroborated by the observations of James Fulloon and Resident Magistrate John Gorst, who were both Crown officials.

In these circumstances, we would have expected to see evidence of a thorough investigation to ensure that the transactions took place with the consent of all right-holders. There is no evidence that this happened. It is not necessary to have heard from all those who may claim interests in the Ōtāwhao lands to conclude that the Crown's actions amounted to a failure to fulfil its Treaty duty of active protection of Māori interests in these lands. In doing so the Crown breached the plain meaning of article 2 of the Treaty.

In the two most significant transactions, for Otawhao and Moeawha, the Crown appears to have acted as an intermediary, in order to gift the land to the CMS. On one interpretation, it did so simply in order to comply to ensure that existing arrangements complied with the law, because the Crown had asserted a pre-emptive right to purchase Māori land. Another way of understanding these transactions, it seems to us, is that the Crown became a stakeholder in the relationship that the deeds served to confirm. This is clear from the Otawhao deed, which also

532. Gorst, *The Maori King*, p 32.

533. Fulloon to Native Minister, 30 March 1863, AJHR, 1863, E1, p 13 (doc A23, p 458).

specifies the purpose for which the land is to be gifted to the church. The latter interpretation is wholly in keeping with the Treaty relationship, whereby Crown pre-emption entailed an acknowledgement of concomitant responsibilities to Māori. The circumstances in which the Crown obtained the Moeawha lands, however, are completely unknown to us. The possibility that a deed containing details of the transaction exists cannot be ruled out, but the absence of such evidence puts the subsequent action of the Governor – gifting the land to the church – in an extremely questionable light.

Whatever the circumstances in which the Crown acquired these lands, there can be no doubt that the responsibilities also acquired by the Crown extended to ensuring that the terms under which the lands were gifted to church organisations were upheld. This obligation also applied to the Rangiaowhia church lands. Whether Ngāti Paretekawa and Ngāti Apakura were able to enjoy the intended benefits of these gifts is a question that will be addressed when we discuss educational issues in the inquiry district.

### 5.6 THE WAIPA–WAITETUNA TRANSACTION

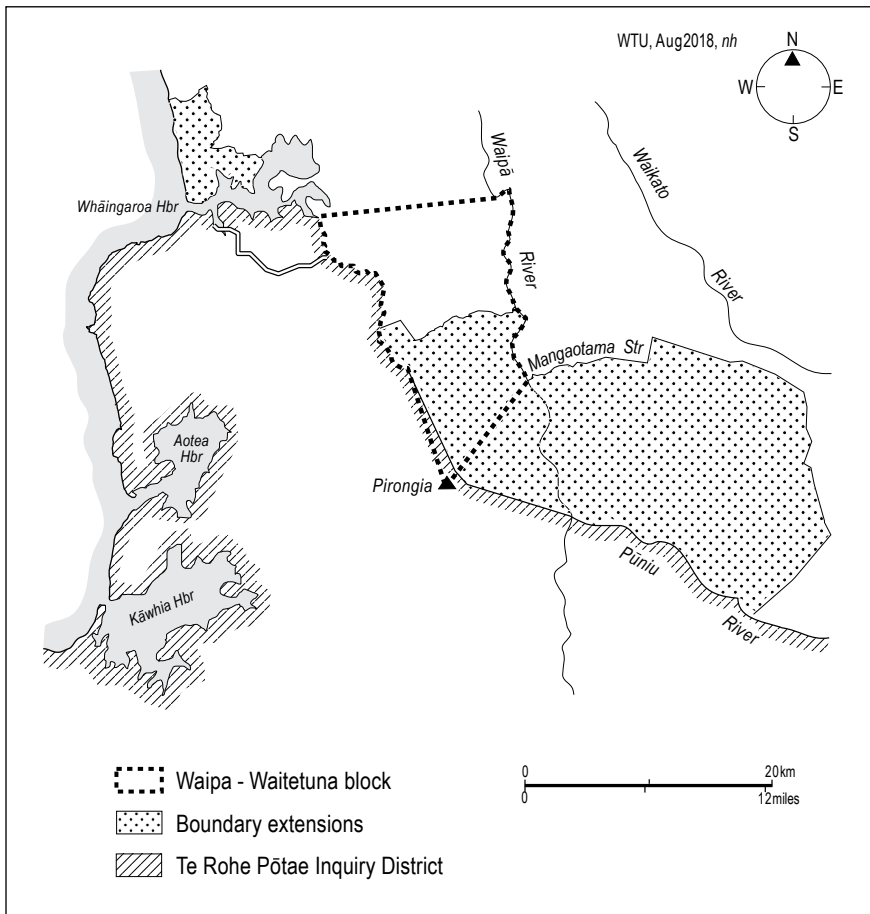
Land between the Waipā River in the upper Waikato basin and the Waitetuna River, which flows into Whāingaroa Harbour at its south-eastern end, was first offered to the Crown in 1858. By the time the deed for the sale of the 53,000-acre Waipa–Waitetuna block was signed in September 1864 the surrounding circumstances were dramatically different from the other transactions discussed in this chapter. By that time, a huge army of Crown soldiers had invaded and occupied the upper Waikato and Waipā river basins as far south as the Pūniu River. Iwi and hapū aligned to the Kīngitanga movement had been forced from their lands. The settler parliament had legislated to punish those it considered to have ‘rebelled’ against the Queen’s authority by confiscating their land for the purposes of creating military settlements. These events are discussed in more detail, as they affected the people of the inquiry district, in chapter 6, but they provide the essential context for understanding the distinctive characteristics of the Waipa–Waitetuna transaction.

Of the slightly more than 53,000 acres that made up the Waipa–Waitetuna block, just a sliver (about 2,300 acres, or around 4 per cent) lies within the Te Rohe Pōtae inquiry district proper. A further 18,400 acres, more or less, is contained within Pirongia parish, one of the four parishes that make up the extension into the Waikato raupatu district that the Tribunal granted for the purpose of hearing the non-raupatu claims of some groups.<sup>534</sup>

The main evidence in this inquiry on the Waipa–Waitetuna block either came from, or relates to, Ngāti Māhanga. The block falls within their rohe boundary. They did not raise the Waipa–Waitetuna transaction specifically in their submissions, but did adopt the generic closing submissions on pre-1865 Crown

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534. Memorandum 2.5.21, pp 16–17; doc A30(h)(i), p 5. Figures calculated by the Tribunal’s mapping officer.



Map 5.5: The Waipa-Waitetuna transaction

purchasing, which make specific reference to Ngāti Māhanga in the section on Waipa-Waitetuna.<sup>535</sup>

Ngāti Hikairo have brought specific non-raupatu claims within the Pirongia parish.<sup>536</sup> However, Ngāti Hikairo also pointed more generally to considerable areas within Pirongia parish that they said were part of their customary rohe.<sup>537</sup> Given the considerable overlap between the parish and the Waipa-Waitetuna block, the Crown's acquisition of Waipa-Waitetuna appears to be of relevance. Ngāti Hikairo adopted 'the generic submissions of claimant counsel in full', which we take to include submissions on pre-1865 Crown purchasing.<sup>538</sup>

535. Submission 3.4.249(c), pp 5, 25; submission 3.4.105, pp 21-23.

536. Submission 3.4.33, p 9; doc N40 (Apirana), p; doc N40(a) (Apirana appendixes), pp 7-64.

537. Submission 3.4.226, pp 23-24.

538. Submission 3.4.226, p 9.

### 5.6.1 The parties' positions

The claimants acknowledged that Crown officials were aware of opposition from within Ngāti Māhanga and declined to purchase the land when it was first offered. They submitted, however, that this restraint was abandoned as the land acquired a greater strategic value immediately preceding and throughout the Crown's invasion of Waikato.<sup>539</sup> They said the Crown put pressure on willing sellers to persuade the objectors to sell, and they argued that it purchased the land without first establishing the consent of all right holders.<sup>540</sup> They said that this caused divisions and tensions within the tribe.<sup>541</sup> It is by no means clear, they said, that the interests of non-sellers were properly protected, as was required under the Treaty.<sup>542</sup>

The Crown, for its part, said the Waipa–Waitetuna transaction had 'only limited applicability' to considering the course of the Crown's pre-1865 purchasing in Te Rohe Pōtae. In support of this view, it cited the fact that the block lies largely outside the inquiry district. It also pointed to the transaction being negotiated later than all the others discussed. The situation with regard to reserves was 'difficult to assess', in the Crown's view, because they had not been thoroughly investigated in the evidence.<sup>543</sup> Counsel pointed out that the transaction was initiated by Māori and that the Crown, aware of opposition to the sale, was cautious about proceeding with negotiations, 'in line with its Treaty duties.' That said, counsel also acknowledged that the evidence suggests the Crown's purchasing methods in the pre-1865 transactions did shift over time. The Crown highlighted that Māori objectives in entering into such transactions were 'complex, varied, and sometimes competing.' Pointing to the Waipa–Waitetuna transaction in particular, it said that the offer of land to the Crown 'reflected the complex and dynamic relationships between groups considered by the Crown to be "rebels" and those considered to be "loyal"'.<sup>544</sup>

### 5.6.2 Background to the transaction

The lengthy Waipa–Waitetuna negotiations and eventual sale took place against a background of increasing concern among many rangatira about the risks the influx of settlers into New Zealand posed to their continued authority over their lands and people. They perceived that they risked being sidelined from decision-making, and they were concerned about the pressure on them to sell land. During the 1850s, the idea of a Māori King, under whose mana iwi and hapū could unite to protect their own mana and lands, gathered momentum as a response to these

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539. Submission 3.4.105, p 21.

540. Submission 3.4.105, pp 21–22.

541. Submission 3.4.105, pp 14–15, 22.

542. Submission 3.4.105, p 22.

543. Submission 3.4.289, pp 1, 2.

544. Submission 3.4.289, pp 4–5, 16, 17.

pressures. In 1857 and 1858, at a series of large hui Pōtatau Te Wherowhero was chosen and installed as the first King (chapter 6, section 6.3).<sup>545</sup>

One whose mana was said to rival Te Wherowhero was Wiremu Nera Te Awaitaia of Ngāti Māhanga. They had fought together and been rivals during the conflicts of the 1820s and 1830s (chapter 2). At hui to discuss the Kingitanga, however, Te Awaitaia made it clear that his allegiance was to a partnership with the Queen. He was an early convert to Christianity and he signed the Treaty of Waitangi at Kāwhia (chapter 3).<sup>546</sup> Giving evidence at the Kōrero Tuku Iho hearing in Raglan in 2010, Ngāti Māhanga claimants characterised him as keen to engage with Pākehā so that his people could benefit from the developing European economy.<sup>547</sup> By the late 1850s, he had already been involved in a number of other land transactions with the Crown (section 5.4).

The sale of Waipa–Waitetuna land to the Crown was first proposed by another rangatira of Ngāti Māhanga, Hetaraka Nera (also written Nero). On 2 November 1858, Hetaraka wrote to McLean offering land ‘situate at Waipa and . . . called Pitawa.’<sup>548</sup> In May the following year, another letter reiterated the offer. This time it was signed by Te Awataia and several others and mentioned other locations as well as Pitawa.<sup>549</sup> Others within Ngāti Māhanga opposed the offer, and officials chose not to pursue the purchase. They did not return to the negotiating table until late in 1862.<sup>550</sup>

The Crown’s initial rejection of this offer of land reflected a number of concerns. The Waipa–Waitetuna block was in close proximity to Kingitanga strongholds and the Crown recognised that the purchase would likely escalate tensions.<sup>551</sup> In addition, the Crown considered the price asked by Nera to be too high. At £1,500, it amounted to something between four and five shillings an acre. This was considerably more than had previously been paid for land outside of Auckland, and TH Smith, the assistant native secretary, warned against a display of eagerness. This, he wrote, would only serve to increase land prices overall.<sup>552</sup>

Officials were also aware of, and concerned by, opposition to the proposed transaction. In a memorandum dated 13 June 1859, Smith noted that the land in question was ‘owned by the Ngati Mahanga, of which W Nero is the acknowledged chief’, but added that ‘the whole tribe . . . is not agreed about the cession of this

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545. Alan Ward, *A Show of Justice* (Auckland: Auckland University Press, 1973), pp 96–99; Evelyn Stokes, *Wiremu Tamihana, Rangatira* (Wellington: Huia, 2002), pp 134–135, 136–139, 141, 151–153, 156–157, 158; Gorst, *The Maori King*, pp 40, 55.

546. Document A22, pp 628–629.

547. Transcript 4.1.3, pp 55–56 (Kaye Turner, Ngā Kōrero Tuku Iho hui, Poihākēna marae, 12 April 2010); doc A70, p 389.

548. Document A70(a), vol 3, p 1082; doc A70, p 389.

549. Document A70, pp 388–389.

550. Document A70, p 392.

551. Document A70, p 387.

552. Document A70, pp 389, 393.

land to the Government, several individuals have protested against its alienation, among them the actual residents.<sup>553</sup> In light of this situation, the Crown provisionally accepted Nera's offer of the land, but told him that 'it would be desirable to postpone further action until the whole of the bona fide proprietors should agree about the surrender of their claims.'<sup>554</sup>

### 5.6.3 Negotiation and purchase, 1862–64

In the assessment of Boulton, between 1859 and the beginning of 1863 what she described as 'critical developments' in the negotiations appear to have occurred. Ms Boulton stated: 'Unfortunately, the sources located do not indicate how these came about. But they appear to have moved the situation from a stalemate to a definite acceptance of Nera's offer and a survey in preparation for a final transaction.'<sup>555</sup>

In our view, it is almost certain that the 'developments' included the land's increased strategic value as the Crown prepared for war.<sup>556</sup> This situation is discussed in detail in chapter 6; here we note that the northern edge of what would become the Waipa–Waitetuna block lay very close to the proposed route of a road between Raglan township at Whāingaroa and Whatawhata on the Waipā River. John Gorst, civil commissioner for upper Waikato, later wrote:

Wiremu Nera and his tribe had been persuaded to consent to a road being made from Raglan, through the forest ranges, to Whatawhata on the Waipa: the Government eagerly offered to supply money and employ Nera's natives at high wages in its construction. When the project became known to the Waikatos, they were greatly concerned: the peril was extreme: the intended road, if made, would place Ngaruawahia at the mercy of troops landed at Raglan.<sup>557</sup>

The evidence shows that, in addition to seeking £1,500 for the Waipa–Waitetuna land, Ngāti Māhanga separately asked for £300 for the strip of land on which the road would be built.<sup>558</sup>

Such was the opposition from Kīngitanga leaders that the Crown was forced to abandon its plan. The road was only constructed to the limits of Crown land at Whāingaroa.<sup>559</sup>

It is clear that by late 1862 the Crown was more willing to overlook opposition from within Ngāti Māhanga. Native Minister Francis Dillon Bell wrote to Governor Grey in December: 'I believe there is no doubt that Nero and his followers are the principal owners; and there can hardly be a good reason why the Crown should not acquire their rights'. With reference to opponents of the sale, Bell acknowledged that the Crown could not 'immediately get a perfect title to

553. Document A70(a), vol 3, p 1110; doc A70, p 392.

554. Document A70(a), vol 3, p 1112; doc A70, p 392.

555. Document A70, p 398.

556. Document A70, p 433; document A23, pp 420–423, 508.

557. Gorst, *The Maori King*, p 186 (doc A23, p 421).

558. Document A70, p 391; document A70(a), vol 3, p 1101.

559. Document A70, p 397.

the whole', but suggested that, by accepting Nera's offer, the government would become 'principal owner of the territory'. The 'claims of opposing proprietors' could then 'be gradually bought up, and the survey of the boundaries undertaken whenever the Govt. should judge it safe to do so'. His eagerness to pursue the deal was evident. Bell emphasised the 'great importance of such an acquisition in a political point of view'.<sup>560</sup> He advised Governor Grey:

Looking to the importance of the matters involved in this offer, His Excellency's advisers, after giving it their careful consideration, are of opinion that it would be better that negotiations should be carried on at headquarters, and after personal communication between the Governor and Nero. They recommend that Nero be invited to come in to Auckland with his friends for that purpose, and that he be informed, that if they can satisfy the Governor that they have the principal right of ownership over the land offered, such right will be purchased on behalf of the Crown.<sup>561</sup>

Bell also indicated that, while the offer on the table was 'substantially the same as was offered by Nero in 1858 & 1859', the area (which he estimated at 50,000 acres) now included 'the country that would be crossed by the road from Raglan into the heart of Waikato'.<sup>562</sup>

Grey approved Bell's proposal. With Bell, and possibly other officials, the governor met with Te Awaiaia in Auckland sometime in late January.<sup>563</sup> That was followed by a further meeting in Raglan on 21 February 1863, this time between John Rogan and a wider group of Ngāti Māhanga, to endeavour to bring matters to completion. At the meeting, Rogan, Te Awaiaia, Hakopa, and about two dozen other Ngāti Māhanga signed an agreement in principle, specifying the boundaries of the block and certain pieces of land that were to be reserved. Opponents to the sale also attended the meeting, and as a result Rogan removed a further portion of land from the block.<sup>564</sup>

Afterwards, Rogan acknowledged that many non-sellers had stayed away from the meeting. Reporting to Bell, he wrote that 'the greater part of the tribe who did not attend the meeting and who have equal claims with Nero, deny his right to dispose of this block without their concurrence'.<sup>565</sup> There is no evidence that the purchase area was reduced to any significant degree to account for the interests of 'the greater part of the tribe'. Nor was Rogan able to confirm the boundaries of the area to be purchased. Although Nera himself had listed the boundary markers in writing and a sketch map was then drawn up at some point, Rogan admitted that the meeting had 'terminated rather unsatisfactorily as Nero's own people could not agree to the boundaries represented in the sketch'. He complained: 'It is impossible

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560. Bell to governor, 3 December 1862 (doc A70(a), vol 3, pp 1169–1170); doc A70, pp 401–402.

561. Bell to governor, 3 December 1862 (doc A70(a), vol 3, pp 1170–1171); doc A70, p 402.

562. Bell to governor, 3 December 1862 (doc A70(a), vol 3, p 1168).

563. Document A70, pp 402–403.

564. Document A70, p 404.

565. Rogan to Native Minister, 23 February 1863 (doc A70, pp 404–405; doc A70(a), vol 3, p 1192).

for me to ascertain the extent and position of Nero's claims on this offer, as it is not considered advisable even by themselves that I should proceed to the ground.<sup>566</sup>

Despite admitting that he had neither established the clear consent of all customary right holders, nor managed to define Nera's claim on the ground, Rogan advised Bell that 'I am so satisfied with his right to dispose of his interest in the land that I should recommend the Government to advance a sum of money on account by way of "mark"'.<sup>567</sup>

In order to circumvent opposition to the purchase, Rogan proposed using willing sellers among the iwi to convince their whanaunga to sell. He recommended to the Native Minister that £500 be paid to Nera and the other sellers up front, with the remaining £1,000 'held over' until some future time when 'Nero will be in a better position to induce the whole of his tribe to join him in the sale'.<sup>568</sup>

This amounted to the Crown using the outstanding purchase money as leverage over Nera, to place him in the position of having to persuade opponents among his own tribe to sell their interests before he received further payment.<sup>569</sup> Moreover, Rogan recommended not paying even the £500 immediately. Rather, it should be 'delayed for a few months in order to give Mr MacGregor a chance to finish the road. Because if they get the money there will be no work'.<sup>570</sup>

Premier Alfred Domett, for his part, was reluctant to proceed with the plan until he knew exactly what the Crown was getting for its money. He apparently presumed it might not be outright ownership: 'If any money is given at all it should be first ascertained precisely *what is given* for the money. If it is a right to go on the land – to plant potatoes – catch eels in the streams – or anything else – we should *know distinctly*.' (Emphasis in original.)<sup>571</sup>

By September 1863, no payment had been made. In the middle of that month, Rogan left for Raglan but it is not clear whether he met Nera or handed over any money.<sup>572</sup> Given the amount of money eventually paid on the occasion of the formal deed-signing, the latter seems unlikely.

Meanwhile, on 12 July, General Cameron and his troops had crossed the Mangatāwhiri and invaded Waikato.<sup>573</sup> Then, on 3 December, the New Zealand Settlements Act was passed. The Act is discussed in detail in the next chapter, but here we note that in areas where Māori were deemed to be in rebellion, it authorised the Crown to 'reserve or take' land for settlement (particularly military settlement). This was followed by a newspaper report in January 1864 that an expedition

566. Rogan to Native Minister, 23 February 1863 (doc A70, pp 404–405; doc A70(a), vol 3, p 1192).

567. Document A70, p 405.

568. Document A70, p 405.

569. Document A70, p 405.

570. Rogan to Native Minister, 23 February 1863 (doc A70(a), vol 3, p 1195; doc A70, p 405).

571. Domett, note, 27 February 1863 (doc A70(a), vol 3, p 1194; doc A70, p 406).

572. Document A70, p 406.

573. Document A22, p 40.



had been ‘sent out by sea to occupy Raglan’, and that the intention was to march in force from Raglan to the Waipā valley.<sup>574</sup>

On 2 May 1864, Henry Turton was appointed as commissioner for the investigation of native titles. He promptly set out for Whāingaroa, where he met with Te Awaitaia and other ‘friendly or neutral’ chiefs to negotiate the Crown’s acquisition of their rights to land between the Waipā and the Horotiu (Upper Waikato) Rivers that was now under military occupation. The reason for these negotiations, Turton wrote in June that year, was that ‘the Government were so very anxious to have all Native titles cleared away, and the district left to them for immediate occupation by military settlers.’<sup>575</sup> Three months later, on 17 September 1864, it was Turton who signed the Waipa–Waitetuna deed for the Crown, as ‘Special Native Lands Commissioner’. The deed stated that it was ‘he Pukapuka tino hoko tino hoatu tino tuku whakaoti atu na matou na nga Rangatira me nga Tangata o Ngatimahanga o Whaingaroa’ (‘a full and final sale conveyance and surrender by us the Chiefs and People of the Tribe Ngatimahanga of Raglan’). The deed stated that Turton had paid over the full £1,500 to those who had signed.<sup>576</sup> The list of Māori signatories ran to nearly four dozen, compared with fewer than 30 who signed the 1863 agreement in principle. Given Rogan’s earlier admission that ‘the greater part of the tribe’ had refused to sign in 1863, it is unlikely that this represented unanimous, or even majority, agreement. There is no indication that the area covered by the deed had been reduced in any way. By mid-November, survey parties were already cutting the boundary lines and work on the Waipā end of the road from Whāingaroa had begun.<sup>577</sup>

On 17 December 1864, Grey proclaimed the Crown’s intention to ‘retain and hold as land of the Crown all the land in the Waikato taken by the Queen’s forces, and from which the rebel Natives have been driven.’<sup>578</sup> A map dated 15 December 1864 and ‘showing the conquered territory in the northern part of the North Island (New Zealand)’ also showed areas that the Crown considered to be inhabited by ‘friendly natives’. One of these was an area roughly matching the Waipa–Waitetuna block and noted as having been ‘offered by Nera’. It had two reserves marked inside it. Another was marked just outside but still on the west bank of the Waipā River, so in fact within Waipa–Waitetuna as shown on the deed.<sup>579</sup>

On 5 January 1865, the ‘Military Settlements district’ was proclaimed under the New Zealand Settlements Act 1863. The proclamation of districts for settlement was the legal mechanism by which confiscation of Māori land was effected (chapter 6, section 6.9), but the Military Settlements district also included most

574. ‘Monthly summary of events’, *Nelson Examiner*, 12 January 1864, p 6 (doc A70, pp 406–407).

575. Turton to colonial secretary, 17 June 1864, AJHR, E-4, p 1 (doc A70, p 407).

576. Document A141, ‘AUC 139 Waitetuna and Waipa Rivers (Land Between)’.

577. Document A70, p 411; deed of purchase (doc A70(a), vol 1, pp 102–111).

578. ‘A Proclamation’, 17 December 1864, *New Zealand Gazette*, no 49, p 461 (doc A70, p 410).

579. Document A70, pp 411–412.

of the Waipa–Waitetuna block.<sup>580</sup> The remainder of the block was included within the ‘Central Waikato district’ by a further proclamation under the New Zealand Settlements Act issued on 5 September 1865.<sup>581</sup>

#### 5.6.4 The administration of reserves

When the Ngāti Māhanga rangatira signed the February 1863 agreement in principle for Waipa–Waitetuna, they indicated places they wanted kept as reserves. After setting down the boundaries of the land they were willing ‘[give] up to the government’, Nera added the rider: ‘These are the places we reserve. “Puketutu”, “Te Rewai”, “Turangatahi”, and “Tokehohou”. These are the whole of the pieces we reserve.’<sup>582</sup>

A map purporting to date from December 1864, shows three reserves falling within the area of the Waipa–Waitetuna block, and of reserves set aside by special commissioner Turton in 1866.<sup>583</sup> It seems likely that the reserves in Waipa–Waitetuna were made for Māori of Ngāti Māhanga (being those involved in the transaction that alienated the land to the Crown). However, we received no claims from Ngāti Māhanga concerning reserves in this block. Nor do we have jurisdiction to investigate Ngāti Māhanga claims relating to land outside our inquiry boundary. For these reasons we make no further comment on this issue.

#### 5.6.5 Treaty analysis and findings

In making findings we confine ourselves to matters associated with the Crown’s initial purchase of the block. In doing so we must, of necessity, consider the block as a whole, since it is obviously impossible to separate out anything that applied only to the sliver within the inquiry boundary or even that part within the parish extension.

In purchasing the Waipa–Waitetuna block, we acknowledge that the Crown was initially reluctant to purchase the land and that this was partly because of ongoing opposition from some of those with interests in the block. However, another reason appears to have been that Ngāti Māhanga sought a price that was higher than the Crown was willing to pay. The position changed when the Crown’s perception of the value of the land changed, prior to the Waikato war. Once the Crown was willing to pay the price demanded by the sellers, the Crown proved itself willing to purchase the block without the consent of all right-holders, and despite knowing that some right-holders continued to oppose the transaction. Further support for this conclusion comes from the fact that, in February 1863, John Rogan seriously considered withholding full payment in order to put pressure on Te Awaitaia to

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580. ‘Proclaiming Certain Lands under “New Zealand Settlements Act, 1863”’, 29 December 1864, *New Zealand Gazette*, no 1, p 1.

581. ‘Proclaiming Certain Lands under “New Zealand Settlements Act, 1863”’, 2 September 1865, *New Zealand Gazette*, no 35, p 265.

582. Document A70, p 404; doc A70(a), p 1188.

583. Document A70, pp 412–428.

induce others to sell. Yet in September 1864, the Crown paid in full. The evidence points to a clear conclusion that when the Crown purchased the Waipa–Waitetuna block it failed in its duty to actively protect the interests of all Māori with customary rights in the block, and in doing so the Crown breached the Treaty principle of partnership.

The Crown argued that the Waipa–Waitetuna transaction had ‘only limited applicability’ to considering the course of the Crown’s pre-1865 purchasing in the inquiry district. We do not agree. The context for pre-1865 purchasing was growing disquiet and outright opposition among many Māori over the Crown’s land purchasing practices. As chapter 6 describes in some detail, it was the Crown’s attempts to enforce a disputed land purchase that provided the spark for the wars of the 1860s. The Waipa–Waitetuna purchase occurred alongside – and was incorporated into – a military occupation carried out with the express purpose of breaking down Māori authority including customary rights to land. This makes the circumstances of the purchase troubling, at the least. Certainly, the purchase appears analogous to the provision of compensation for confiscation. On the evidence available, however, we are not able to draw firm conclusions.

### 5.7 PREJUDICE

The parties disagreed about whether Te Rohe Pōtae Māori suffered prejudice in consequence of the Crown’s pre-1865 purchases.

Claimants argued that the impacts of the Crown’s acquisition of Māori land in Te Rohe Pōtae were self-evident ‘at an economic, cultural and spiritual level’. They said that the extent of prejudice was greater for Māori who opposed land sales – including, for example, opponents to the 1864 Waipa–Waitetuna purchase. They also said that among Māori who did engage in land sales, the prejudice was greater for those such as Ngāti Māhanga, who participated in multiple purchases, and therefore had more of their land alienated from their ownership.<sup>584</sup>

The Crown, by contrast, thought it unnecessary to consider prejudice to Māori in consequence of these transactions, because there was no evidence that it acquired land in breach of the Treaty in this period.<sup>585</sup>

That is not what the evidence shows. Rather, it demonstrates that Crown agents, in negotiating for the purchase of Māori land in the inquiry district prior to 1865, failed to comply with the Crown’s own standards of conduct for such purchases. In doing so, they breached Treaty principles at almost every step. We have found that the Crown did not fully investigate customary tenure to the land it sought to purchase; did not establish the free and informed consent of the sellers; and did not ensure that Māori retained sufficient land for their present and future needs. By these failings, the Crown breached the principles of the Treaty of Waitangi. In

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584. Submission 3.4.105, pp 45–46; submission 3.4.105(a), pp 32–35.

585. Submission 3.4.289, pp 24–25.

consequence of these Treaty breaches, approximately 150,000 acres of Māori land was alienated in the inquiry district.<sup>586</sup>

The evidence shows that the Crown, in response to growing opposition to land sales in the district during the 1850s, increasingly sought to negotiate with willing sellers only. In pursuing this strategy, the Crown repeatedly ignored the claims of those who asserted rights to the land but did not wish to sell. In such cases, opponents to land sales who nevertheless had their rights alienated were clearly prejudiced by the Crown's actions. Despite not being party to the negotiations and transactions concerning their land, the Crown's insistence on pressing ahead with its purchases meant that opponents lost their land without receiving any payment. They were also denied the opportunity to ensure that they retained adequate and suitable reserves, leaving them more likely to be left with insufficient land.

We further note that divisions over land sales to the Crown caused considerable damage to tribal relationships. Examples include the tensions between Tākerei Waitara and inland Ngāti Maniapoto chiefs, led by Taonui Hikaka, over the purchase of land at Mōkau and Awakino from 1854. Similar tensions were felt in the north between Wiremu Nera Te Awaitaia of Ngāti Māhanga and neighbouring hapū and iwi. Where the Crown ignored opposition and disputes about who had rights to the land, resulting in conflict, its actions prejudiced Te Rohe Pōtae Māori.

Those Māori who sought a relationship of mutual benefit with the Crown through land transactions were also prejudiced by the Crown's land purchasing in this period. The long delay in onselling the land to settlers meant that in most cases the benefits of European settlement to Māori communities were not realised until the late nineteenth and early twentieth centuries, when circumstances were very different. There is no evidence that the Crown made any effort to ensure that those who chose to sell retained sufficient land to prosper in the settler economy, when it finally eventuated.

Te Rohe Pōtae Māori also suffered direct economic prejudice as a result of the Crown's purchasing during this period. Purchase monies were not always distributed to all right holders, as later protests demonstrate, while the Crown's failure to adequately identify the land being transacted at the time of purchase sometimes resulted in significant underpayments to the sellers. In addition, the Crown's failure to deliver titles to reserved land, in some cases for a century or more, meant that, for sellers, the intended benefits of increased land value resulting from proximity to settlers were not realised.

Despite these impacts, Te Rohe Pōtae Māori continued to seek ways to retain their land in collective customary ownership. For Ngāti Maniapoto, an important means of achieving this was to place a tapu on land to prevent it from being sold to the Crown. In section 5.3.3.3, for example, we described the actions of the rangatira Te Kuri and Te Kaka, who placed a tapu at the heads of the Mōkau River in

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586. The nature of the evidence makes it difficult to be more precise. This figure is the Tribunal's estimate, based on either Crown survey or modern GIS calculation (see table 5.1). It does not include reserves or lands excluded from sale, or the land at Horea over which native title was not extinguished.

April 1854, as a manifestation of their rangatiratanga and a clear expression of their refusal to permit the sale of their lands to the Crown.

During the Ngā Korero Tuku Ihu hearings, Tainui claimant Sean Ellison described how Pōtatau Te Wherowhero coined the term Tainui Awhiro as a name for the Tainui people at Whāingaroa. According to Ellison, Te Wherowhero was responding to Crown purchasing at Whāingaroa, and sought to unite Tainui hapū against the sale of land:

Tainui a Whiro nei he mea tapa nā Pōtatau Te Wherowhero, te Kingi Māori tuatahi. Nā runga anō ki tōnā riri o mua ki Te Awaitaia mōna i huri ai ki te whakarata atu ki te pākehā i timata ai ki te hokohoko haere i ngā whenua. Mōna kē te aronga o tērā kupu ‘Tainui a Whiro’.

Tainui a Whiro was the name given by Pōtatau te Wherowhero, the first Māori King, because of his anger at Te Awaitaia, his old friend, because Te Awaitaia cleaved unto the pākehā and began to sell the lands. That is how the term Tainui a Whiro came to be.<sup>587</sup>

This attempt to prevent sales was, however, seen as a threat by the Crown, as was the Kīngitanga itself. As set out in chapter 6, the Crown’s willingness to pursue purchases of contested land was a major factor behind the outbreak of war in the early 1860s. Despite growing resistance by Māori leaders, the Crown’s continued pursuit of bad faith purchase tactics thus had wider implications, in the form of the resulting war and its impacts.

## 5.8 SUMMARY OF FINDINGS

In this section, we summarise the conclusions and findings made in this chapter.

- ▶ Between 1851 and 1864, the Crown purchased approximately 150,000 acres of Māori land within the inquiry district. The land was mostly concentrated on the coast, and inland around the Waipā and Puniu Rivers.
- ▶ The Crown’s right of pre-emption under the Treaty effectively gave it a monopoly over the purchase of Māori land. Although the Treaty anticipated that Māori would sell some land to the Crown, the guarantee of tino rangatiratanga, together with the article 2 duty of active protection, meant Crown purchases of Māori land had to be conducted in good faith, and in ways that were not injurious to Māori wellbeing. These obligations were heightened due to the Crown’s exclusive right to purchase land, as Māori were unable to find alternative buyers.
- ▶ The standards required of the Crown when seeking to purchase Māori land were well-known to Crown officials of the time. They can be summarised as follows:

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587. Transcript 4.1.3, p197 (Ellison). Also see doc D6, p4 (Ellison).

- the Crown had to fully investigate customary tenure to the land it sought to purchase, to ensure it was negotiating with the right people;
- the Crown had to establish the free and informed consent of right holders through a fair negotiation process; and
- the Crown had to ensure that right holders retained enough land for their present and future needs.

Our findings on the Mōkau–Awakino transactions are as follows:

- ▶ Between 1854 and 1857, the Crown acquired four blocks in the south-west of the inquiry district, between the Mōkau and Awakino river mouths, comprising about 58,000 acres.
- ▶ When seeking to acquire land at Mōkau in 1850, Crown officials initially held large public hui and took time to consult with Māori in the area. After 1852, however, officials preferred to seek out and negotiate with willing sellers only, despite being aware of significant and growing opposition to land sales. We found this to be in breach of the Treaty principle of partnership, the guarantee of tino rangatiratanga, and the duty of active protection.
- ▶ In negotiating for the consent of right holders to the four Mōkau–Awakino blocks:
  - The Crown made inadequate efforts to properly identify the land at the time of the transactions. In the case of the Awakino block, this effectively resulted in a significant underpayment in terms of the price per acre, yet when this was discovered in the 1880s the Crown made no attempt to compensate the former owners. In the case of the Mokau block, the Crown's failure to complete the survey due to difficulties created by opposition to the transaction led to a failure to define the interests of sellers and non-sellers, and their successors.
  - The Crown continued to allow Māori to understand it was acquiring land for the settlement of Europeans, even while chief purchase commissioner Donald McLean privately recorded his intention in 1854 to deliberately hold the land back from settlers to keep purchase prices for adjacent land as low as possible.
  - Rather than allow negotiations to proceed at their own pace, the Crown used the distribution of purchase money and other methods to manipulate Māori into agreeing to purchase, and did not provide sufficient time for opposition and disputes to be resolved through tikanga.
  - We found that these actions constituted breaches of the Treaty principles of partnership and good faith, and the duty of active protection.
- ▶ The Crown's administration of land reserved or otherwise set aside from the Mokau-Awakino transactions created numerous difficulties for Mōkau Māori. Title was not issued for many decades, during which time the Crown sold some of the land to settlers. When Māori complained, they were often dismissed, or given inaccurate information by Crown officials. Many of the titles were not confirmed until the mid-twentieth century, and only after sustained pressure on the Government by Māori. When the land was finally granted, it was often in a different location or of a smaller size to that

promised in the 1850s, including at least two cases where reserves are still yet to be created. We found these Crown failures to be in breach of the Treaty principles of good faith and redress, as well as the plain meaning of article 2, which entitled Māori to retain possession of their lands for as long as they desired.

Our findings on the western harbours transactions are as follows:

- ▶ Between 1851 and 1857 the Crown acquired virtually all the land between the Whāingaroa and Aotea Harbours, in the north-west of the inquiry district, as well as one block situated between Kāwhia Harbour and the Marokopa River, comprising about 40,000 acres. In the early 1850s, the Crown entered arrangements for two blocks of land on the shores of Whāingaroa Harbour. Then, between 1854 and 1858, the Crown purchased several blocks of land across the Whāingaroa, Aotea and Kāwhia districts.
- ▶ The Crown failed to consult all customary right holders when purchasing the Whāingaroa block in 1851, requiring a series of further payments. During the second phase of purchasing, from 1854, chief commissioner McLean targeted willing sellers, through a series of arrangements made with individuals or small groups of people. This enabled him to circumvent any potential opposition. McLean then left it to his subordinate John Rogan and others to complete negotiations, which usually involved further payments. Rogan, too, made inadequate efforts to identify all right holders, for example in the Harihari and Oioroa purchases, where the Crown relied on rangatira involved in the land sales to distribute portions of the purchase price to other right holders. We found these failures to be in breach of the Treaty principle of partnership, the guarantee of tino rangatiratanga, and the duty of active protection.
- ▶ In negotiating for the consent of right holders to the western harbours transactions:
  - The Crown made inadequate efforts to properly identify the land at the time of the transactions. This was especially true of McLean's 1854 advance payments, for which the land was identified with reference to physical boundaries, sometimes sketched on a map.
  - The Crown entered a transaction at Horea with Pōtatau Te Wherowhero, in the hope of resolving internal tensions between two groups of right holders. The extent to which Te Wherowhero and Ngāti Mahuta understood the transaction as a permanent alienation is unclear, and the Crown showed no interest in negotiating with Ngāti Tahinga/Tainui hapū. However, as native title to the block was not extinguished, we found no evidence of a Treaty breach.
  - When purchasing the Whāingaroa block, the Crown appears to have failed to explain to Māori the nature and extent of the transaction, as evidenced by the re-occupation of a portion of the land by members of Ngāti Māhanga. Similarly, in the Oioroa purchase, claimants pointed to the continued occupation of the land by one seller as evidence that transaction was not understood to be permanent by all right holders.

- The Crown generally set the price for its pre-1865 transactions. When Māori asked for more money, such requests were almost always denied, as was the case in the Karioi and Ruapuke purchases. This was part of the Crown's deliberate strategy to buy from Māori at a low price and sell the land on to settlers for much higher amounts. The value of such a strategy can be seen in onsale prices within the Whaingaroa block, one of the few parts of the district where settlement took place soon after purchase.
  - We found that through these actions the Crown failed to act honourably and in good faith, thereby breaching the Treaty principle of partnership.
- In reserving or otherwise setting aside land from the western harbours transactions:
- The Crown was aware it had a duty to provide for present and future Māori needs. Crown agents were instructed to establish good reserves that were clearly marked out and agreed with Māori before the purchases were completed. The Crown was also aware of the need to protect those reserves from alienation, as was the understanding in the district at the time.
  - Within four years of the 1851 Whaingaroa purchase the Crown began purchasing land in the Te Mata reserve, and by 1858 it had acquired the entire 1,189-acre reserve.
  - The Crown was aware that in the Whaingaroa purchase, Māori sought for land to be reserved near the harbour. However, the Crown included only limited harbourside reserves. In the case of the Te Uku reserve, the Crown failed to award this land to Māori in a timely manner, and did not act to prevent the land from being sold to a settler. Instead, it provided Māori with replacement land that was inadequate to their needs.
  - Much of the land that was set aside from the Karioi, Ruapuke, and Wharauoa purchases has now been alienated from Māori ownership. The Crown set aside no reserve land whatsoever in the Harihari, Oioroa, and Wahatane purchases, or in the purchase of Ngāti Toa-rangatira and Ngāti Raukawa interests.
  - For failing to ensure that Māori retained sufficient land for their present and future needs, we found that the Crown failed in its duty of active protection and thereby breached the Treaty principle of partnership.

Our findings on the Ōtāwhao and Rangiaowhia transactions are as follows:

- During the 1850s, the Crown acquired about 1,300 acres inland at Ōtāwhao and Rangiaowhia, in the north of the inquiry district around the Waipā and Puniu Rivers. Almost all of this land was granted to Church organisations.
- These lands were of high quality, and occupation and control of the area had been keenly contested by Māori prior to the arrival of Europeans. In the 1840s and 1850s, with assistance from missionaries, the Māori economy of the area expanded considerably, notably through wheat production and flour milling.
- In acting as an intermediary between Māori right holders and church organisations, the Crown became a stakeholder in the relationship that the land



transactions served to confirm using its pre-emptive purchasing powers. This created obligations on the Crown to ensure that the terms under which the lands were gifted to church organisations were upheld. These matters will be addressed in future parts of our report, including those addressing education issues.

- ▶ Despite Crown officials being aware of contests between Ngāti Paretekawa and others over customary rights, there is no evidence that the Crown investigated the customary tenure of the area before conducting the Otāwhao transactions. We found this to be a breach of the plain meaning of article 2 of the Treaty.

Our findings on the Waipa–Waitetuna purchase are as follows:

- ▶ In 1864, after a long series of negotiations, the Crown acquired the 53,000-acre Waipa–Waitetuna block, which lies partly within and partly outside of the inquiry district’s northern boundary.
- ▶ The Crown was initially reluctant to purchase the land, in part due to ongoing opposition from some of those with interests in the block. The Crown was also unwilling at first to pay the price asked for by the sellers. However, Crown perception of the value of the land changed after preparations began for the Waikato War. The Crown was now willing to pay the price demanded by the sellers, and to purchase the block without the consent of all right-holders, despite knowing that some right-holders continued to oppose the transaction.
- ▶ The Waipa–Waitetuna purchase occurred during a Crown military occupation of land in Waikato (including the area covered by the purchase block) that was carried out with the express purpose of breaking down Māori authority, including customary rights to land. Although the evidence is not sufficient to draw firm conclusions, aspects of the purchase resemble the process of compensation for confiscated land discussed in chapter 6.
- ▶ We found that the Crown, in purchasing this land, failed in its duty to actively protect the interests of all Māori with customary rights in the block, and in doing so the Crown breached the Treaty principle of partnership.

In consequence of these Treaty breaches, approximately 150,000 acres of Māori land was alienated, resulting in prejudice to Te Rohe Pōtae Māori.



## CHAPTER 6

### TE TOHERIRI TE RAUPATU: WAR AND CONFISCATION

*Ā muri, kia mau ki te whakapono,  
kia mau ki te ture me te aroha,  
hei aha te aha, hei aha te aha.*<sup>1</sup>

#### 6.1 INTRODUCTION

In 1860, 20 years after the Treaty signings at Waikato Heads and Kāwhia, the Crown's relationship with the people of Te Rohe Pōtae remained extremely limited. So, too, did its effective authority. Māori in the district continued to live according to their own law and authority, even as they avidly continued to take advantage of the opportunities presented by the arrival of Europeans in Aotearoa.

The first sustained engagement between Te Rohe Pōtae Māori and the Crown took place between 1860 and 1864, which culminated in the Crown deploying the largest military force yet seen in New Zealand in an attempt to enforce its sovereign control. An initial positioning of British troops to enforce a land survey at Waitara in Taranaki deteriorated into violent conflict but without a clear military outcome. The parties negotiated a truce. Then, in July 1863, soldiers crossed the Mangatāwhiri Stream south into Waikato. By April 1864, a Crown force of nearly 12,000 men occupied all of the Waikato Basin as far south as the Pūniu River. All this land was confiscated from its Māori owners, largely for the purpose of settling Europeans. Conflict also reignited in Taranaki. Most of that district, too, was occupied and confiscated by the Crown. The lands between, which remained under Māori authority within the protection of the aukati, became known as Te Rohe Pōtae.

The claimants in this inquiry used the term 'raupatu' to describe the war and the confiscations as two parts of a single process by which the Crown sought to impose its authority and large-scale European settlement. According to Dean Mahuta, raupatu 'refers to the hundreds of people that were killed (by the blade of the patu) in the confiscation of land'.<sup>2</sup>

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1. The words of Pōtatau Te Wherowhero after he was raised up as king: transcript 4.1.1, p 222 (Tom Roa, Ngā Kōrero Tuku Iho hui, Te Kotahitanga Marae, 2 March 2010). 'In the time to come, hold fast to the faith, to the law, and to compassion, whatever may happen' (Tribunal translation).

2. Document A22 [O'Malley], p 233, quoting Dean Mahuta, 'Raupatu: A Waikato Perspective', *Te Kaharoa*, vol 1, no 1 (2008), p 178.

The Waitangi Tribunal has now addressed raupatu issues in several reports, beginning with the *Taranaki Report* in 1996. The conflicts between Māori and the Crown in the 1860s have been the subject of considerable inquiry by historians. And, as the Crown has worked to restore its Treaty relationships with iwi and hapū in the modern era it has acknowledged and apologised for waging war on its citizens and taking their land. While the Waikato raupatu has not been the subject of a thorough Tribunal inquiry, that cannot be attempted here for reasons of jurisdiction, scope, and relevance. Our focus in this chapter is on the raupatu grievances of the people of Te Rohe Pōtae, notably Ngāti Maniapoto.

In this inquiry, importantly, we heard from many claimants who told us their histories and experiences of raupatu. In addition, two major research reports on raupatu issues by Dr Vincent O'Malley were presented in evidence. Traditional history reports were prepared by the Ngāti Maniapoto, Ngāti Apakura, Mōkau ki Runga, and Ngāti Kauwhata claimants. Paul Thomas, Craig Innes, and Brent Parker also prepared research reports.<sup>3</sup>

### 6.1.1 The purpose of this chapter

The raupatu in Taranaki and Waikato profoundly affected the relationship between Te Rohe Pōtae Māori and the Crown. Understanding the raupatu is therefore essential to understanding subsequent development of that relationship, particularly through the Te Ōhāki Tapu negotiations of the 1880s. And the impacts of raupatu, as the evidence presented in this inquiry showed, are still felt today.

The scale of European immigration to New Zealand during the 1850s and the Crown's steps towards recognising settler self-government led many Māori to consider how they might best safeguard their tino rangatiratanga, their mana motuhake. The Kīngitanga movement was perhaps the most significant Māori response. Te Rohe Pōtae Māori were (and are) among the strongest supporters of the Kīngitanga, and to that extent the establishment and purposes of the Kīngitanga, and the Crown's response, are important issues for this chapter. We acknowledge that Waikato, the iwi to which the first Māori King Pōtatau and his descendants belong, have settled their raupatu claims with the Crown.

The decision by Ngāti Maniapoto to support resistance to the Crown's disputed purchase of land in Taranaki in 1860 was interpreted by the governor as an unjustified interference and an insurrection against the Queen's authority. During

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3. Vincent O'Malley, 'Te Rohe Pōtae War and Raupatu' (document A22); Vincent O'Malley, 'Te Rohe Pōtae Political Engagement, 1840 – 1863' (document A23); M Tauariki, Te I Ngaia, T Roa, R Maniapoto-Anderson, A Barrett, T Douglas, R Joseph, P Meredith, 'Ngāti Maniapoto Mana Motuhake: Report for Ngāti Maniapoto Claimants and the Waitangi Tribunal' (document A110); Moepatu Borrell and Robert Joseph, 'Te Iwi Ngāti Apakura Mana Motuhake: Report for Ngāti Apakuru Claimants and the Waitangi Tribunal' (document A97); Bruce Stirling, 'Mōkau ki Runga Claim Issues' (document A147(b)); Peter McBurney, 'Ngāti Kauwhata and Ngāti Wehi Wehi interests in and about Te Rohe Pōtae District' (document A120); Paul Thomas, 'The Crown and Maori in Mokau 1840 – 1911' (document A28); Craig Innes, 'Alienation of Maori granted lands within Te Rohe Pōtae Parish extension 1863 – 2011' (document A30); J Parker, 'Evidence of J Parker on Land returned to rebel Māori' (document A139).

the war, the Crown painted Ngāti Maniapoto and their leader Rewi Maniapoto as implacably opposed to the Queen's sovereignty and as a violent and extremist group that had forfeited their rights under the Treaty. Ngāti Maniapoto have also been blamed for the outbreak of the Waikato war in 1863. The effects of this view have continued to be apparent even in the very recent past. In 1995, for example, the Treaty negotiations Minister Douglas Graham referred to Ngāti Maniapoto as 'the real rebels' during the passage of the Waikato Raupatu Claims Settlement Bill through Parliament.<sup>4</sup> In 2003, the noted historian Michael King wrote in his best-selling *Penguin History of New Zealand* that 'the group that had been perhaps most bellicose in both the Waikato and Taranaki wars, Ngāti Maniapoto, lost nothing' (emphasis in original).<sup>5</sup> The actions of Rewi and Ngāti Maniapoto in the lead-up to the Waikato war are thus crucial to understanding the raupatu and the Crown's actions towards the people of Te Rohe Pōtae.

At the outset of the inquiry the Crown indicated a view that its concessions would remove the need for the Tribunal to address many of the issues relating to raupatu. Rather, the Crown suggested the focus be on the extent of the prejudice suffered.

In the event, however, the Crown contested most of the issues raised by the claimants, including who was responsible for starting the war in Waikato and the Crown's conduct during the fighting. The taking of prisoners and their treatment, and allegations of deliberate infection of prisoners with smallpox, rape, and killing the wounded, the unarmed, the elderly, women, and children, remain as issues that need to be addressed.

Parts of the northern and southern boundaries of our inquiry district were originally set following the historical lines of confiscation in Waikato and Taranaki. But these boundaries neither prescribe nor limit the customary rights and interests of the people of Te Rohe Pōtae. The Crown disputed the right of some claimants to bring raupatu claims in this inquiry, arguing they were already settled by virtue of being named in the Waikato Raupatu Claims Settlement Act 1995. In chapter 1, we determined that these groups were still able to make claims on the basis of non-Waikato whakapapa. An important task for this chapter is to assess what rights and interests were confiscated from Te Rohe Pōtae Māori.

Assessment of prejudice is certainly required, and we examine such matters as casualties, loss of land, destruction of property, displacement, disease, support for refugees, economic losses, care of wāhi tapu, damage to leadership and identity, labelling as 'loyal' or 'rebel', historical vilification, and damaged relationships with Pākehā.

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4. Douglas Graham, 19 October 1995, NZPD, vol 551, p 9922 (quoting Michael King, *Te Puea* (Auckland: Hodder & Stoughton, 1977), p 26).

5. Michael King, *The Penguin History of New Zealand* (Auckland: Penguin Books, 2003), p 215.

### 6.1.2 How the chapter is structured

Section 6.2 sets out what previous Tribunals have said about raupatu as context for the claims in this inquiry, and then summarises the arguments put forward by claimants and the Crown to establish the issues to be determined in this chapter.

Sections 6.3 to 6.8 address issues about the Taranaki and Waikato wars which are in dispute between the Crown and the claimants. Section 6.3 analyses why the Kīngitanga was established, and the Crown's attitude towards it before the Taranaki war. Section 6.4 examines the question of why Ngāti Maniapoto and other Te Rohe Pōtae and Waikato tribes decided to intervene in Taranaki in 1860. Section 6.5 addresses the question of whether the Crown tried to avoid war in the crucial period of 1861–1863, including the issue of whether opportunities existed for the Crown to recognise the authority of the Kīngitanga. In section 6.6, we assess the Crown's argument that Te Rohe Pōtae Māori were partly responsible for the Waikato war, particularly the question of whether there was a credible threat of an attack on Auckland. Finally, we outline the course of the conflict in Waikato in section 6.7. The extent of involvement of Te Rohe Pōtae iwi and hapū is established, and claims that Crown forces acted egregiously during several engagements are addressed. Section 6.8 discusses Ngāti Tūwharetoa's involvement in the war.

Section 6.9 sets out the extent and impact of confiscation on Te Rohe Pōtae iwi and hapū. In section 6.10, the prejudice caused by raupatu is assessed. Section 6.11 provides a summary of the Tribunal's findings of Treaty breach.

## 6.2 ISSUES

### 6.2.1 Historiography of the causes of war

We begin our discussion of the issues with a brief overview of how historians have explained the causes of the wars. Until the 1950s, explanations for the war focused on its necessity: armed intervention by the British was said to have been necessary to quell a rebellion and, in particular, to forestall an attack on Auckland.<sup>6</sup> That did not mean, however, that the Crown bore no responsibility. In the first significant attempt to explain the war, *The Maori King*, published in 1864, John Gorst argued that the Crown had failed to govern:

No effort had been made to teach obedience to rulers – indeed, it had never been quite settled on our side who the rulers of the Maories were to be. . . . So that it was the very caution and timidity of our policy that had brought us upon the horns of a dilemma, in which we must either give up the right to govern, which we had been too weak to exercise, or plunge the colony into a war of races.<sup>7</sup>

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6. Document A23 [O'Malley], pp 495–507, where Dr O'Malley provides a more extensive historiographic overview, informs this section.

7. John Gorst, *The Maori King, Or, The Story of Our Quarrel with the Natives of New Zealand* (Hamilton: Paul's Book Arcade, 1959), p3. Gorst's book was first published in 1864; references here are to the 1959 edition.

Māori were treated alternately as British subjects or foreigners 'according to the interest or caprice of their British rulers'. The Government, Gorst said, denied Waikato tribes self-government and then punished them for not exercising it. He praised the 'wisdom and moderation' of Kingitanga leaders, but argued this was not enough to overcome the 'weakness' of their system of governance. Nor could they control the Ngāti Maniapoto leader, Rewi Maniapoto, whom Gorst characterised as a leader of the 'most violent of the king's partizans', a man who sought to 'hatch mischief'.<sup>8</sup>

James Cowan, whose extensive history of the wars appeared in 1922, thought 'the passionate sentiment of nationalism and home rule for the Maoris . . . developed into a war-fever'; Māori aimed to 'sweep the pakeha to the sea'. The Government, in contrast, sought what was seen as the reasonable goal of 'teach[ing] subjection to British authority'.<sup>9</sup> Yet elsewhere, Cowan provided an incisive summary of Waikato Māori dissatisfaction:

irritation caused by the inevitable friction over European encroachment, the treatment of the natives by the lower class of whites, the reluctance of the authorities to grant the tribes a reasonable measure of self-government, and, lastly, the sympathy with Taranaki and the bitterness engendered by the loss of so many men in the Waitara campaign . . .<sup>10</sup>

In the 1960s, academic historians focused on an examination of the motives of the colonial government. Keith Sinclair emphasised the agency of the settler government at the expense of imperial power, and after examining the Waitara purchase argued that the wars that followed were 'essentially campaigns in the same war, a product of colonization in New Zealand, a war for dominion, for land'.<sup>11</sup> Alan Ward renewed the emphasis on the Waikato invasion, which was 'largely to facilitate the acquisition of Maori land'. But the war also 'expressed the determination of Europeans to resolve the ultimate question of which race and which society was going to prevail and admit the other on sufferance'. This question 'had to be resolved in any colonial situation'. The colonists feared chaos, and like Gorst and Cowan, Ward identified the belief that Māori society was unable to organise itself along peaceful and orderly lines as an important reason for the war. But faith in strong leadership had its own shortcomings: Ward argued that the autocratic tendencies of Governors Browne and Grey aggravated tensions.<sup>12</sup> Criticism of Grey's conduct was sharpened by B J Dalton, who invoked Machiavelli to argue

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8. Gorst, *The Maori King*, pp 7, 108, 176, 240.

9. James Cowan, *The New Zealand Wars: A History of the Maori Campaigns and the Pioneering Period*, 2 vols (Wellington: Government Printer, 1983), vol 1, pp 231, 241.

10. Cowan, *The New Zealand Wars*, vol 1, p 232.

11. Keith Sinclair, *The Origins of the Māori Wars*, 2nd ed (Wellington: New Zealand University Press, 1961), p 271.

12. Alan Ward, 'The Origins of the Anglo-Maori Wars: A Reconsideration', *NZJH* (1967), vol 1, no 2, pp 151, 156–157, 159, 165.

that, despite professing peace, Grey deliberately planned an aggressive and unprovoked invasion of Waikato.<sup>13</sup>

As historian Vincent O'Malley told the Tribunal, the explanation for the wars now largely accepted among historians is that advanced by James Belich in 1986.<sup>14</sup> Belich offered a 'tentative' argument that the wars were 'more akin to classic wars of conquest than we would like to believe'. The British, he said, repeatedly sought victory through a decisive battle and while that did not preclude 'a political aim of seizing land' the 'single minded search for rapid and decisive victory accords much better with a political aim of asserting sovereignty'. Thus, 'a main cause of the Waikato War was the failure of the British attempt to assert their sovereignty over the Maoris through victory in Taranaki'.<sup>15</sup> At Waipapa marae, Dr O'Malley agreed that the 'argument about imposing substantive sovereignty, wishing to do that, is essentially correct'.<sup>16</sup>

The histories cited, from Sinclair on, focus on explaining British aggression. Hostilities were initiated by the British, so in one sense the focus is logical. Nonetheless, the British aggression was not unopposed, and in the absence of considered attempts to explain why Māori responded, old stereotypes of hatching mischief and war fever have been allowed to linger.

When Belich wrote that Kingitanga forces did not join the conflict in Taranaki to assist Wiremu Kīngi, but to 'repel a British foray across the tacitly agreed boundaries of control and so protect Maori independence', he was essentially arguing that sovereignty was a shared motivation for the conflict. In part, this was an aspect of Belich's criticism of 'the myth that the Treaty of Waitangi made New Zealand British instantly, by the wave of a wand'. Historians, he claimed, had tended to follow Sir William Martin and Octavius Hadfield, denying a conflict over sovereignty and arguing that Kīngi was loyal to the Crown but justified in resisting Governor Browne's abuse of his powers.<sup>17</sup>

In sum, historians now largely agree that the causes of war were the Crown's attempt to impose 'substantive sovereignty' on tribes which had remained independent since 1840, and the settlers' imperative to open up tribally held land for colonisation.

### 6.2.2 What other Tribunals have said

Tribunals have generally concluded that the Crown made war on Māori in the 1860s to break Māori authority and obtain land for settlement.

The Taranaki Tribunal concluded that the governor's actions at Waitara, which caused the Taranaki war, were contrary to the Treaty because they were contrary to Māori law and disregarded Māori authority. More broadly, the Crown's actions

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13. BJ Dalton, *War and Politics in New Zealand, 1855-1870* (Sydney: Sydney University Press, 1967), ch 7.

14. Document A23, pp 504-505.

15. James Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict* (Auckland: Penguin, 1988), p 80.

16. Transcript 4.1.12, p 948.

17. Belich, *The New Zealand Wars*, pp 79-80.



could not have been consistent with Treaty principles because underlying them was an intention to confiscate most of Taranaki for European settlement.<sup>18</sup>

The Crown breached Treaty principles by seeking military solutions to essentially political problems in Waikato, the Hauraki Tribunal said.<sup>19</sup> The Tauranga Raupatu and Central North Island Tribunals agreed that the Crown's invasion of Waikato amounted to a declaration of war on 'the tribes of the Kingitanga'.<sup>20</sup> The Crown's stance towards the Kingitanga made a negotiated settlement impossible unless Māori 'forfeited their tino rangatiratanga' and Māori acted consistently with Treaty principles when they refused.<sup>21</sup>

The Turanga Tribunal said that the Treaty 'contemplated a right' to defend tino rangatiratanga by armed force, if necessary, against unlawful attack. Article 3 of the Treaty 'bestows upon Maori all the rights and privileges of British subjects, and British subjects have a right to the rule of law and to protection against a capricious sovereign'.<sup>22</sup>

Beginning with Taranaki, Tribunals have acknowledged that, in emergency situations, treaties, the rule of law, and civil rights may all be suspended. However, the Taranaki Tribunal considered that the 'general principles' of the Treaty persist 'to the extent that they provide criteria for assessing the circumstances'.<sup>23</sup> The Tauranga Raupatu Tribunal's firm conclusion was that 'the circumstances in Tauranga Moana were never so extraordinary as to warrant the suspension of the Treaty'.<sup>24</sup>

Whether threats to Pākehā settlers justified a pre-emptive attack by Crown troops was considered by the Mohaka ki Ahuriri Tribunal. The Tribunal found no evidence of such a threat, and that article 1 of the Treaty placed an obligation on the Crown to use its authority to maintain peace.<sup>25</sup>

Tribunals have given considerable attention to the question of whether Māori rebelled against the Crown. The Turanga Tribunal said the Crown 'must reasonably apprehend that there is an intent to overturn the existing legal order, and that apprehension must be so clear as to render it necessary for the Crown to turn its

18. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996), pp 78–79, 103.

19. Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 1, p 248.

20. Waitangi Tribunal, *Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claims* (Wellington: Legislation Direct, 2004), p 105; Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 1, p 248.

21. Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, p 118.

22. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, pp 120–121.

23. Waitangi Tribunal, *The Taranaki Report*, p 132; see also Waitangi Tribunal, *Te Urewera*, 8 vols (Wellington: Legislation Direct, 2018), vol 1, pp 321–322.

24. Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, p 119.

25. Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, p 220.

guns on its own citizens.<sup>26</sup> The Manukau, Taranaki (in north and south Taranaki), Ngāti Awa Raupatu, Mohaka ki Ahuriri, Turanga, and Te Urewera Tribunals found that Māori were not in rebellion in their districts.<sup>27</sup> The Taranaki Tribunal emphasised that it was not rebellion ‘to resist an unlawful attack and so to defend oneself and one’s home.’<sup>28</sup>

In considering rebellion, the Tauranga Raupatu Tribunal said the Crown’s promise to protect tino rangatiratanga needed to be considered; so too did the nature of Māori society: ‘its strong tribal basis, the whanaungatanga links among tribal groups, and the dependence on the spiritual and physical connections of Maori to the natural world, particularly to their land’. Had these matters been considered, the Tribunal thought ‘one result might have been the acceptance of some kind of doctrine of justified self-defence. Accordingly, for one Maori group to help defend a related group from unlawful attack, for example, might have been found to be not rebellion but self-defence.’<sup>29</sup> The Tribunal agreed with the Crown’s position in the Waikato Raupatu Claims Settlements Act 1995 that it was unfair to label those Māori as rebels.<sup>30</sup>

The Central North Island Tribunal considered it unnecessary to determine whether a rebellion existed in fact, following the Tauranga Raupatu Tribunal’s conclusion that whether or not ‘a technical definition of “rebellion” applied when Tauranga Maori went to fight for the King, the Crown’s actions were clearly in serious breach of the Treaty.’<sup>31</sup> The National Park Tribunal endorsed the Central North Island Tribunal’s finding that: ‘Those tribes which went outside their own lands to fight a defensive war in support of the Kīngitanga, were fighting for their kin, their King, and their own futures.’<sup>32</sup>

Crown actions during the wars have been found to breach Treaty principles. The Mohaka ki Ahuriri and Turanga Tribunals found that the deportation and detention without trial of prisoners breached article 3.<sup>33</sup> The Te Urewera Tribunal also identified the relevance of article 3:

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26. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 1, p 118; see also Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 253.

27. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim*, 2nd ed (Wellington: Waitangi Tribunal, 1989), p 17; Waitangi Tribunal, *The Taranaki Report*, pp 80, 102–103; Waitangi Tribunal, *The Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999), p 63; Waitangi Tribunal, *Mohaka ki Ahuriri*, vol 1, p 257; Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 1, p 161; Waitangi Tribunal, *Te Urewera*, vol 2, pp 555, 558.

28. Waitangi Tribunal, *The Taranaki Report*, p 129 (Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 253).

29. Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, p 114.

30. Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, p 172.

31. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 252.

32. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 254; Waitangi Tribunal, *Te Kāhui Maunga: The National Park District Inquiry Report*, 3 vols (Wellington: Legislation Direct, 2013), vol 1, p 184.

33. Waitangi Tribunal, *Mohaka ki Ahuriri*, vol 1, p 219; Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 1, p 193.

The killing of innocents is an obvious violation of the fundamental right of British subjects not to be arbitrarily deprived of life by the State. Also fundamental for British subjects is the right of an alleged criminal to the due processes of law – a fair trial and, if found guilty, punishment in accordance with the law. The summary execution of prisoners without a trial for their alleged crimes, and so without the death sentence being lawfully pronounced, violates that fundamental right.<sup>34</sup>

While the Te Urewera Tribunal accepted the Crown's submission that a strategy of destroying kāinga and food supplies served a military purpose, it did not accept 'the Crown's lack of consideration for the consequences of the actions deemed necessary to achieve its strategic purpose'. Food, shelter, and security needed to be available to non-combatants, including women, children, and the elderly.<sup>35</sup>

The question of rebellion is also important because the New Zealand Settlements Act 1863 enabled land to be confiscated in districts where the governor was satisfied that a tribe or section of a tribe was in rebellion. The Taranaki Tribunal determined that the Act and its associated legislation 'were within the authority of the New Zealand General Assembly to enact. In other words, the Act itself is not unlawful'.<sup>36</sup> However, the Taranaki, Ngati Awa Raupatu, and Mohaka ki Ahuriri Tribunals concluded that confiscations in their districts were not lawful because the Crown failed to comply with the legislation.<sup>37</sup> The Tauranga Raupatu Tribunal acknowledged that subsequent legislation retrospectively validated the confiscation, but stated:

For the Crown to act unlawfully is obviously not good governance. All the more so when the unlawfulness consisted of Crown officers acting without any statutory power and in place of a judicial process that would have determined the existence and extent of fundamentally important Maori rights.<sup>38</sup>

Regardless of its legality, all Tribunals that have considered the issue have found confiscation to be in breach of the Treaty. The Taranaki Tribunal said the New Zealand Settlements Act 1863 and the confiscation of land in Taranaki

were obviously prejudicial to claimants and inconsistent with the principles of the Treaty of Waitangi. The Treaty guarantee to Maori of their lands and estates for as long as they wished to keep them was an unequivocal undertaking, with which the Act and policies were in direct conflict.<sup>39</sup>

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34. Waitangi Tribunal, *Te Urewera*, vol 1, p 322.

35. Waitangi Tribunal, *Te Urewera*, vol 1, p 360.

36. Waitangi Tribunal, *The Taranaki Report*, p 126.

37. Waitangi Tribunal, *The Taranaki Report*, pp 133–134; Waitangi Tribunal, *Mohaka ki Ahuriri*, vol 1, p 251.

38. Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, p 172.

39. Waitangi Tribunal, *The Taranaki Report*, p 131.

Confiscating and then granting land back to Māori, the Ngati Awa Raupatu Tribunal said, were intended to force the individualisation of Māori title.<sup>40</sup> The Mohaka ki Ahuriri Tribunal concluded that in exercising kāwanatanga the Crown had to pay due respect to Māori rangatiratanga, and the New Zealand Settlements Act clearly breached the principle of reciprocity.<sup>41</sup> Noting that earlier Tribunals had found confiscation of tribal land to be ‘a grave breach of the Treaty’s promise of active protection’, the Te Urewera Tribunal found the Crown needed to ‘take the greatest possible care to ascertain who would be affected by the confiscation and to ensure that those who were not its targets would be as little disadvantaged as possible’. The Crown ‘failed to ascertain which iwi, apart from those it intended to punish, had land within the district.’<sup>42</sup>

The principle of good government, according to the Te Urewera Tribunal, ‘required the Crown to establish clear and fair processes for compensation and land return, the implementation of which would be subject to independent scrutiny. None of this occurred.’<sup>43</sup> The compensation scheme breached Treaty principles because it was ‘not swift, honest, certain, or clement’, the Taranaki Tribunal said. Further breaches occurred because rights to land were determined by judicial officers and by unilateral imposition of individual title.<sup>44</sup> The Ngati Awa Raupatu Tribunal found the compensation process ‘as a whole’ to be ‘entirely inconsistent with the principles of the Treaty’. Ngāti Awa had a right to ‘retain their own polity and sufficient land for their future survival as a people’. This did not happen. ‘There is nothing in the record,’ the Tribunal said, ‘to satisfy us of the Government’s compliance with even minimal protective standards or the performance of fiduciary obligations.’<sup>45</sup> When grants were eventually issued, the Mohaka ki Ahuriri Tribunal noted that they ‘often went immediately to Europeans or to the Crown who had already made payments on the land and had got a lien on it by paying survey charges’. In that district, a Compensation Court never actually sat and so there was no judicial determination of whether those whose land was confiscated were actually in rebellion. This lack of due process breached the Crown’s duty of active protection, while the return of land to individuals who in some cases had no customary right to the land breached the principle of options.<sup>46</sup>

Although compensation was originally intended for those who could demonstrate they had not been in rebellion, the Te Urewera Tribunal observed that, by late 1865, ‘the Government’s policy was to pacify those who had fought against it by granting them enough land to live on.’<sup>47</sup> The Crown required

40. Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 78.

41. Waitangi Tribunal, *Mohaka ki Ahuriri*, vol 1, pp 257–258.

42. Waitangi Tribunal, *Te Urewera*, vol 1, pp 195, 243.

43. Waitangi Tribunal, *Te Urewera*, vol 1, p 243.

44. Waitangi Tribunal, *The Taranaki Report*, p 138; Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, p 305.

45. Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 97.

46. Waitangi Tribunal, *Mohaka ki Ahuriri*, vol 1, pp 254, 258, 259.

47. Waitangi Tribunal, *Te Urewera*, vol 1, p 200; see also Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 265–266.

that ‘rebels’ should have ‘come in’ or ‘surrendered’ before they would be granted land. In other words, in the wake of conflict with Crown forces and their defeat or expulsion from their lands, Maori would accept the authority of the Queen and – as a consequence of defeat – the right of the Crown to allocate them lands to live on.<sup>48</sup>

Later attempts by the Crown to provide redress for confiscations have been found wanting. The Taranaki Tribunal said it took 60 years for the ‘real grievance: the justice of the confiscations’ to be investigated by the Sim commission. Even then, the commission was unable to consider the lawfulness of the confiscations. Under its terms of reference, ‘the commission was required to assume that those who did not accept the Crown’s authority could not claim the benefit of the Treaty’. The commission was only to assess whether the confiscations ‘exceeded in quantity what was fair and just’. These constraints were inconsistent with the Crown’s Treaty obligations.<sup>49</sup>

### 6.2.3 Crown concessions and acknowledgements

#### 6.2.3.1 Treaty settlement legislation

The Hauraki Tribunal agreed that certain Crown concessions in the Waikato Raupatu Claims Settlement Act 1995 could be applied to other groups as a matter of logic.<sup>50</sup> In this inquiry, the Crown set out what it called the ‘broad, non-iwi specific historical facts, which have been conceded’ in relation to raupatu and are contained in Waikato, Ngāti Ruanui, and Ngāti Tama settlement legislation.<sup>51</sup> Ngāti Raukawa, who participated in this inquiry, concluded a settlement with the Crown in 2014.<sup>52</sup> Te Ātiawa, who did not participate in this inquiry but who feature in this chapter, signed a deed of settlement in 2014.

A number of acknowledgements specific to these groups were itemised by the Crown, with the caveat that they would not be extended to Te Rohe Pōtae groups ‘unless similar historical evidence is produced’. The Crown said that its acknowledgements of Treaty breaches in existing settlement legislation ‘could be adapted and used if the Crown obtained sufficient historical evidence that Te Rohe Pōtae groups suffered similar prejudice.’<sup>53</sup>

The ‘broad, non-iwi specific historical facts’, which could be applied to Te Rohe Pōtae groups, included the following relevant statements:

The New Zealand Government at the time perceived the Kiingitanga as a challenge to the Queen’s sovereignty and as a hindrance to Government land purchase policies, and did not agree to any role for, or formal relationship with, the Kiingitanga.

48. Waitangi Tribunal, *Te Urewera*, vol 1, p 201.

49. Waitangi Tribunal, *The Taranaki Report*, pp 291, 293; see also Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, p 395; Waitangi Tribunal, *The Hauraki Report*, vol 1, p 247.

50. Waitangi Tribunal, *The Hauraki Report*, vol 1, p 209.

51. Submission 3.1.162, p 2; Waikato Raupatu Claims Settlement Act 1995; Ngāti Ruanui Claims Settlement Act 2003; Ngāti Tama Claims Settlement Act 2003.

52. Raukawa Claims Settlement Act 2014

53. Memorandum 3.1.162, p 2.

In July 1863, after considered preparations by the New Zealand Government, military forces of the Crown . . . invaded the Waikato south of the Mangatawhiri river, initiating hostilities against the Kiingitanga and the people. By April 1864, after persistent defence of their lands, Waikato and their allies had fallen back before the larger forces of the Crown and had taken refuge in the King Country.<sup>54</sup>

#### **6.2.3.2 Crown concessions in this inquiry**

Early in our inquiry, the Crown acknowledged that the ‘wars in Taranaki and the Waikato were an injustice and that the confiscations of land were wrongful and in breach of the Treaty of Waitangi and its principles.’<sup>55</sup> In its statement of position and concessions, Crown counsel made further concessions in respect of the Waikato war:

The Crown has previously acknowledged that its representatives and advisers acted unjustly and in breach of the Treaty of Waitangi and its principles in its dealings with the Kingitanga, which included iwi and hapū of Te Rohe Pōtae, in sending its forces across the Mangatawhiri in July 1863, and occupying and subsequently confiscating land in the Waikato region, and resulted in iwi and hapū of Te Rohe Pōtae being unfairly labelled as rebels.

The Crown advises that this concession will be addressed to iwi and hapū of the Rohe Pōtae independently of any reference to the Kingitanga if it is shown during the course of the inquiry that iwi and hapū of the Rohe Pōtae have rights in the Waikato rapatu district that are distinct from Waikato Tainui.<sup>56</sup>

The Crown acknowledged Ngāti Maniapoto’s ‘strong ties to the land north of the Puniu river.’ Accordingly, the Crown accepted that, ‘once the invasion of the Waikato began, Rohe Pōtae Māori were justified in taking up arms in defence of their lands and homes.’<sup>57</sup>

The prejudice caused by confiscation, the Crown acknowledged, was compounded by inadequacies in the Compensation Court it set up, and processes to investigate grievances were imposed without consultation.<sup>58</sup>

#### **6.2.4 Claimant and Crown arguments**

In this section, we consider the parties’ arguments in respect of the Taranaki and Waikato wars and the confiscations which followed. The issues for determination in this chapter fall out of the points on which the Crown and claimants disagree.

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54. Memorandum 3.1.162, p 5.

55. Memorandum 3.1.192, p 3.

56. Statement 1.3.1, pp 44–45; submission 3.4.300, p 1.

57. Statement 1.3.1, p 47; submission 3.4.300, p 8.

58. Statement 1.3.1, p 49; submission 3.4.300, p 23.

More than 40 claims in this inquiry contain grievances related to raupatu.<sup>59</sup> While there are specific grievances which detail comprehensively the impact of raupatu on particular claimants and claimant groups, most of the claims concern issues set out in the generic submissions on raupatu and in claim-specific closings.<sup>60</sup> These include arguments that the Crown should have negotiated with the Kingitanga to avoid war and that the Crown was wrong to continue the war after the surrender of Ngāruawāhia. Claimants cited the significant number of Māori deaths and casualties and alleged that atrocities were committed by the Crown against non-combatants. Claims also concerned the destruction and appropriation of economic resources and personal property, and the confiscation of land and inadequacies of attempts at compensation. Claimants alleged the Crown attacked Ngāti Maniapoto specifically and sought to demonise Rewi Maniapoto.

Initially, the Crown argued that its concessions, together with previous Tribunal findings on raupatu, meant that it would be 'most useful for the Tribunal to focus on the effects that war and raupatu had on Rohe Pōtae Māori rather than the causes of the conflicts and the legality of the Crown's actions.'<sup>61</sup> In their closing submissions, the claimants rejected this approach as inadequate. A full review of the wars, including causes and the legality of Crown actions, was necessary 'to determine responsibility and total effects of these actions,' they said, not least because the Crown attributed responsibility for the wars, in part, to Te Rohe Pōtae Māori. Claimants said this was untenable, 'when all they were trying to accomplish was the ability to exercise their tikanga, their right.'<sup>62</sup>

#### 6.2.4.1 *The Taranaki war*

In the Crown's submission, its concessions (cited above) did not apply to the participation of Te Rohe Pōtae Māori in the Taranaki war. This was because, in the Crown's view, their interests in the Taranaki district were 'away from Waitara, where the conflict arose.'<sup>63</sup> In other words, Te Rohe Pōtae Māori were not fighting in defence of their lands and homes. The Crown's attack did not threaten them 'directly'. Instead, they 'became involved as a result of a decision on their part to support Wiremu Kingi, who opposed the Crown purchase of the Pekapeka Block [at Waitara], and took up arms against [the Crown] for that purpose.'<sup>64</sup> The Crown endorsed Belich's assessment that Waikato and Te Rohe Pōtae iwi committed between one-third and a half of their 'fighting strength' to Taranaki, which amounted to 'something more than just support for Kingi's rights'. Crown coun-

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59. Wai 537; Wai 1534; Wai 1976, Wai 1996, Wai 2070; Wai 440; Wai 457; Wai 551, Wai 948; Wai 846; Wai 1098; Wai 1099, Wai 110, Wai 1132, Wai 1133, Wai 1136, Wai 1137, Wai 1138, Wai 1139, Wai 1798; Wai 1469, Wai 2291; Wai 1593; Wai 2068; Wai 784; Wai 972; Wai 1482; Wai 1523; Wai 800; Wai 1606; Wai 535; Wai 691, Wai 788, Wai 2349; Wai 729; Wai 48, Wai 81, Wai 146; Wai 366, Wai 1064; Wai 555, Wai 1224; Wai 575.

60. Submission 3.4.15; submission 3.4.127; submission 3.4.130(e), pp 10–19.

61. Statement 1.3.1, p 44.

62. Submission 3.4.391, pp 3–4; submission 3.4.127, p 17.

63. Submission 3.4.300, pp 3, 7.

64. Submission 3.4.300, p 7.

sel did not explain what that ‘something more’ might be.<sup>65</sup> The Crown accepted that Te Rohe Pōtae Māori lost lives and expended resources in Taranaki, but again submitted that this was not a war which ‘extended into the Rohe Pōtae itself’.<sup>66</sup>

The claimants disagreed that the Crown should draw a distinction in this way between the Taranaki and Waikato wars. As a general point, claimant counsel submitted: ‘The justification of Maori defence of Maori land must apply regardless of from where those interests emanated’.<sup>67</sup> More particularly, the claimants argued that Te Rohe Pōtae Māori fought in Taranaki to assist their kin and protect their southern boundaries.<sup>68</sup>

#### 6.2.4.2 *The Waikato war*

As noted above, the Crown has accepted that it acted unjustly and in breach of the Treaty in its dealings with the Kīngitanga (including Te Rohe Pōtae Māori) when it invaded the Waikato in July 1863, occupied land, confiscated land, and labelled Te Rohe Pōtae Māori as ‘rebels’. Further, the Crown extended this concession to apply to Te Rohe Pōtae Māori, over and above their allegiance to the Kīngitanga, because they had been ‘justified in taking up arms in defence of their lands and homes’.<sup>69</sup> According to Crown counsel, this removed any need for the Tribunal to comment on the lawfulness of the Crown’s attack on the iwi of Waikato and Te Rohe Pōtae.<sup>70</sup>

Although these concessions were significant, they did not address many of the issues in dispute between the Crown and claimants. The Crown’s closing submissions also appeared to qualify its concessions. First, the Crown argued that it tried to avoid war and negotiate an accommodation with the Kīngitanga, including direct negotiations and the offer of self-government institutions. The latter ranged from Governor Grey’s ‘New Institutions’<sup>71</sup> to the possibility of establishing native provinces with a role for the King.<sup>72</sup> Secondly, the Crown submitted that its invasion of the Waikato occurred because in 1863 ‘some Māori were seen to be threatening settlers and Māori who supported the Crown’.<sup>73</sup> In particular, the Crown said that it was justified in its fears of an attack on Auckland, given the resumption of war in Taranaki and the threats made by ‘some Kīngitanga Māori (notably Rewi Maniapoto)’. Crown counsel noted that there was debate ‘as to how real the threat to the Auckland district actually was’, but argued that it was taken very seriously by settlers and the officials responsible for their protection.<sup>74</sup> Thirdly, the Crown argued that Te Rohe Pōtae Māori did not act strictly defensively in response to its

65. Submission 3.4.300, p 7.

66. Submission 3.4.300, p 15.

67. Submission 3.4.391, p 5.

68. Submission 3.4.208, p 8; submission 3.4.208(a), p 44.

69. Submission 3.4.300, pp 1, 8.

70. Statement 1.3.1, p 44.

71. Grey’s ‘New Institutions’ were established in 1861–1862. They included State-sponsored rūnanga which would work in conjunction with a civil commissioner (at the regional level) and a magistrate (at the local level) to exercise statutory powers of self-government.

72. Submission 3.4.300, pp 9–11.

73. Submission 3.4.300, p 3.

74. Submission 3.4.300, pp 5–6.



invasion, pointing to a ‘campaign’ of raids against soldiers and out-settlers once the Crown’s forces had entered the Waikato.<sup>75</sup>

The claimants strongly disagreed with the Crown’s position. In their view, the Crown’s concessions did not go far enough, and it was still necessary for the Tribunal to report fully on all issues – including the legality of the Crown’s actions in making war upon them.<sup>76</sup> The claimants made the following arguments:

- ▶ The war was avoidable but the Crown failed to take any of the options available to ‘negotiate and avoid conflict’, and in fact Governor Grey was bent on war from the beginning of his governorship.<sup>77</sup>
- ▶ Grey’s ‘New Institutions’ were intended to dominate Māori (rather than give them self-government), and the failure to provide native provinces was caused by a fear of retarding settlement.<sup>78</sup>
- ▶ The Crown ‘demonised’ Rewi Maniapoto and Ngāti Maniapoto, and used their expulsion of Gorst and a ‘trumped up plan to invade Auckland’ to justify the war, and the Crown today still attributes part of the responsibility for the war to Māori.<sup>79</sup>
- ▶ The Crown’s invasion of the Waikato in July 1863 was actually caused by its determination to ‘extinguish’ the Kīngitanga by force, establish British control, suppress rangatiratanga, and open up lands for colonisation – with an explicit intention to confiscate land and use it for Pākehā settlement.<sup>80</sup>
- ▶ The Crown’s invasion forced Te Rohe Pōtae Māori to fight a ‘defensive war’ – that is, a war in defence of their lands, homes, authority (tino rangatiratanga), and way of life against unjustified Crown aggression. They were wrongly labelled ‘rebels’ as a result.<sup>81</sup>

#### **6.2.4.3 The Crown’s conduct of the Waikato war**

The parties also disagreed strongly about the Crown’s conduct of the Waikato war. In the claimants’ view, the Crown’s conduct was particularly egregious, including unreasonably prolonging it by refusing opportunities to negotiate. The claimants provided detailed submissions about alleged massacres at Rangiaowhia (including women and children) and Ōrākau. They also gave detailed submissions about the Crown’s failure to negotiate after Ngāruawāhia was abandoned, its allegedly wanton destruction of a treasured meeting house (Hui Te Rangiora), and other aspects of Crown actions during the Waikato war. Some claimants accused the Crown of

75. Submission 3.4.300, p 8.

76. Submission 3.4.127, p 17; submission 3.4.281, pp 26–27; submission 3.4.391, pp 3–4.

77. Submission 3.4.130(e), pp 12–13; submission 3.4.391, pp 4–5, 7.

78. Submission 3.4.391, p 6; submission 3.4.281, pp 22–23.

79. Submission 3.4.391, pp 3–4; submission 3.4.130(e), p 14; submission 3.4.198, p 18; submission 3.4.208, pp 6–7.

80. Submission 3.4.130(e), pp 12–13; submission 3.4.208, pp 6–7; submission 3.4.198, p 18; submission 3.4.228, pp 40–41; submission 3.4.281, p 29.

81. Submission 3.4.228, p 40; submission 3.4.208, p 11.

atrocities such as deliberately infecting prisoners with smallpox and sending them home to spread the disease.<sup>82</sup>

The Crown denied almost all of these claims. Crown counsel did not accept that there was clear willingness on the part of rangatira to negotiate or to accept its terms after Rangiriri (when Ngāruawāhia was abandoned). Further, the Crown argued that there was no evidence before the Tribunal about the appropriate standards of war in the 1860s. The Crown acknowledged that there were numerous casualties in the Waikato war, and property was destroyed, taken, or damaged. However, there was no evidence, the Crown submitted, to demonstrate that women or children were killed at Rangiaowhia, or that there was an agreement it would not be targeted. Nor did the evidence sustain allegations of deliberate smallpox infection. At Ōrākau, the Crown acknowledged the high proportion of killed to wounded. Although the reasons for this were not clear, the Crown accepted that ‘it may be that some Māori men and women were killed out of hand’.<sup>83</sup>

#### **6.2.4.4 Confiscation and compensation**

Despite the concessions it made on confiscations in Taranaki and Waikato (noted above) and acknowledging that Ngāti Maniapoto had ‘strong ties to the land north of the Puniu river’, the Crown made no specific acknowledgements regarding either the extent of its confiscations in either region or whether any particular Te Rohe Pōtae iwi or hapū had lost lands.<sup>84</sup> Indeed, the Crown contested the ability to bring raupatu claims of some claimants who asserted interests in the Waikato raupatu district (see chapter 1). Although the Compensation Court process had inadequacies, the Crown said, the Confiscated Lands Act 1867 and the Waikato Confiscated Lands Act 1880 enabled land to be provided to surrendered or former rebels, and it established the Sim commission in 1926 to inquire into grievances related to confiscations.<sup>85</sup>

Because the Crown began the war, the claimants said, the Crown’s actions should be ‘subject to strict liability for subsequent damage’.<sup>86</sup> In the claimants’ view, war and confiscation formed a single process with one desired outcome: ‘the seizing of Māori land from those Māori whom the Crown alleged were in a state of rebellion’. Confiscation was intended for the benefit of settlers and planned as a speculative operation, the claimants said, and between 120,000 and 130,000 acres in Waikato were said to have been confiscated from Ngāti Apakura, Ngāti Paretekawa, and Ngāti Ngutu as a result.<sup>87</sup> The claimants also argued that the confiscations in Waikato were not carried out in accordance with the legislation and

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82. Submission 3.4.127; submission 3.4.130(e); submission 3.4.198; submission 3.4.189; submission 3.4.134; submission 3.4.169(a); submission 3.4.228; submission 3.4.208, pp 13–14.

83. Submission 3.4.300, pp 12–13, 19–20; statement 1.3.1, p 48.

84. Submission 3.4.300, p 8.

85. Submission 3.4.300, pp 24–25.

86. Submission 3.4.130(e), p 14.

87. Submission 3.4.127, p 12; submission 3.4.410, p 9; submission 3.4.130(e), pp 17–18; submission 3.4.208, p 14; submission 3.4.230, pp 5–6; submission 3.4.228, p 53.

that the Crown offered no opportunities to negotiate or establish culpability.<sup>88</sup> The claimants made detailed submissions on the shortcomings of the Compensation Court, which overall, in their view, constituted a serious Treaty breach because it ‘assisted in the breakdown of the Māori social structure’, and on the inability of Te Rohe Pōtae Māori to participate in inquiries such as the Sim commission.<sup>89</sup>

#### 6.2.4.5 Prejudice

The Crown acknowledged a ‘high level of responsibility for the effects of war and raupatu’ on the people of Te Rohe Pōtae. These effects were significant and ranged from loss of property and resources, to social and political disruption and the loss of innocent lives.<sup>90</sup> Yet, the Crown argued, not all of the adversities confronting Te Rohe Pōtae Māori in the years following the war could be laid at its feet.<sup>91</sup> Crown counsel also introduced a series of qualifications related to uncertainty about the number of Māori casualties and the assessment of the social and economic effects of the war on those within the aukati, which had the effect of drawing back from its broader concessions.<sup>92</sup>

The claimants maintained that the Crown’s assessments of prejudice did not go far enough.<sup>93</sup> Claimant counsel submitted that the Crown’s qualifications not only served to minimise the war’s impact on Te Rohe Pōtae but also marginalised tangata whenua kōrero.<sup>94</sup> The effects listed by the Crown did not take into account the range of psychological and cultural consequences such as the erosion of and damage to tribal identities, loss of reo, waiata, tikanga, and whakapapa. Nor did the concessions capture the full scope of social and economic prejudices suffered by those dispossessed of their ancestral lands, as well as the deprivations and strain on resources, already depleted significantly through war, that occurred from hosting the refugees.<sup>95</sup>

#### 6.2.5 Issues for discussion

Having reviewed the Tribunal Statement of Issues for this inquiry and briefly summarised the parties’ arguments, we now identify the issues for us to determine.<sup>96</sup> Each issue question is the subject of analysis in a section of this chapter. The issues regarding confiscation will be outlined in a later section. The Crown’s early and relatively extensive concessions on raupatu issues are helpful and welcome. Nonetheless, many issues remain in dispute between the parties, as will be evident from the summary of their arguments above. The issues for determination are:

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88. Submission 3.4.208, p 6; submission 3.4.127, pp 30, 34.

89. Submission 3.4.127, pp 35–39.

90. Submission 3.4.300, p 21.

91. Submission 3.4.300, p 21.

92. Submission 3.4.300, pp 22–23.

93. Submission 3.4.391, p 3.

94. Submission 3.4.391, pp 3–10.

95. Submission 3.4.127, p 40; submission 3.4.130(b), pp 16–17.

96. Statement 1.4.3, pp 22–26.

- ▶ Why was the Kīngitanga established, and what was the Crown's response to the Kīngitanga before the Taranaki war?
- ▶ Why did Te Rohe Pōtae Māori go to fight in Taranaki, were they justified in their support for Wiremu Kīngi Te Rangitāke at Waitara, and what were the outcomes for them?
- ▶ Did the Crown try to avoid war in Waikato, and were there opportunities for the Crown to recognise Kīngitanga authority in 1861–1863?
- ▶ Was the Waikato war partly caused by Māori and, in particular, was there a credible threat of an attack on Auckland?
- ▶ Was the Crown's conduct of the war disproportionate or egregious, especially at Rangiaowhia and Ōrākau?
- ▶ Why did Ngāti Tūwharetoa participate in the Waikato war, and were they justified in doing so?
- ▶ Why did the Crown confiscate land from Te Rohe Pōtae Māori, and how did it carry out its confiscations and subsequent efforts to provide compensation?
- ▶ What prejudice did Te Rohe Pōtae Māori suffer from the Crown's Treaty breaches?

### 6.3 THE ESTABLISHMENT OF THE KĪNGITANGA

The establishment of the Kīngitanga in the late 1850s is a fundamental issue for all of the matters dealt with in this chapter. In 1863, the Crown invaded the Waikato to suppress the Kīngitanga by force, resulting in the Waikato war of 1863–1864, the expulsion of the King and many of his people to live in exile in Te Rohe Pōtae, and the confiscation of 1.2 million acres of land north of the Pūniu River. From the beginning, the Crown was concerned about the election of a Māori King, but it was the Taranaki war which turned that concern into a determination to suppress the Kīngitanga – by force if necessary. In this section, we provide a very brief account of how and why the Kīngitanga was established and explain the Crown's attitude towards the Kīngitanga (often called the 'King Movement' by Pākehā at the time), prior to the Taranaki war.

#### 6.3.1 The establishment and purposes of the Kīngitanga

We received a great deal of evidence from kaumātua and kuia on the establishment of the Kīngitanga, including the evidence of the late Dr Tui Adams, Rovina Maniapoto-Anderson, Harold Maniapoto, Dr Tom Roa, and Paranapa Otimi. We acknowledge that there are a number of accounts of foundation hui and other events leading up to the recognition of Pōtatau Te Wherowhero as the first Māori King, and many of them differ in their particulars.

At our kōrero tuku iho hearings, Dr Roa told us that the Kīngitanga was established 'to retain the land, to stop the shedding of blood and to maintain Mana Māori Motuhake'.<sup>97</sup> 'Mana', he explained, was the 'operative word . . . here' in Te

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97. Transcript 4.1.1, p108.

### The Pukawa Hui, 1856

After Pōtatau Te Wherowhero was chosen as King at the Pukawa hui in 1856, Te Heuheu Iwikau performed a haka, indicating some of the overriding concerns which had led to the creation of the Kīngitanga:

Ka ngapu te whenua	When the land is put asunder
Ka ngapu te whenua	When the land is put asunder
Ka haere ngā tangata ki hea?	Where shall the people stand
Aua	Aua
Ko Rūaimoko	Oh Rūaimoko
Tawhia!	Hold it
Puritia!	Grasp tightly to the land
To mana kia mau!	Be firm
Kia ita! Aha Ita! Ita!	Let not your mana, your land
Kia mau tonu!	Be torn from your grasp! <sup>1</sup>

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1. Document J22 (Otimi and Chase), p [14].

Rohe Pōtae, instead of (or equivalent to) the concept of ‘tino rangatiratanga’.<sup>98</sup> The Taranaki Tribunal noted that the words ‘te mana Maori motuhake’ were ‘emblazoned on the King’s crest’, and considered the Kīngitanga ‘an affirmation of the Treaty’s terms’, in that ‘the right of Maori to retain their lands and authority was Treaty guaranteed’.<sup>99</sup>

One of the key motivating forces in the Kīngitanga’s establishment was the growing concern about the Crown’s purchases of Māori land, the tactics used, and the seemingly unchecked spread of settlement. This concern was exacerbated by the exclusion of rangatira from the exercise of state power, and the exclusion of all Māori from representation in the settler Parliament, which first sat in Auckland in 1854 (see section 3.4.5.3).<sup>100</sup> Dr Roa explained that Tamihana Te Rauparaha and Matene Te Whiwhi of Ngāti Toa and Ngāti Raukawa began the search for a king in the early 1850s.<sup>101</sup> This culminated in the great hui at Pukawa in the Taupō district in 1856.<sup>102</sup>

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98. Transcript 4.1.1, p108.

99. Waitangi Tribunal, *The Taranaki Report*, pp 63, 64.

100. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 224–225, 230; Waitangi Tribunal, *The Hauraki Report*, vol 1, pp 194–195.

101. Transcript 4.1.1 [Roa], pp 218–222. See also document 112 [Te Hiko], p 3.

102. See document A110 [Maniapoto O&T report], pp 478–491; doc A23, pp 173–216; doc A23(a) (i), pp 681–687 (Pei Te Hurinui Jones, ‘The Maori King Movement’, no date); Pei Te Hurinui, *King Pōtatau: An Account of the Life of Pōtatau Te Wherowhero the First Māori King* (Wellington: Huia Publishers, 2010), pp 187–191.

At the Pukawa hui, called ‘Hinana ki uta, Hinana ki tai / Search the land, search the seas’, it was said that 3,000 to 4,000 people attended from around the North Island.<sup>103</sup> Mr Paranapa Otimi of Ngāti Tūwharetoa explained that the rangatira debated for three days, plaiting strands of flax to make one rope (binding their maunga together in unity), at the end of which Te Wherowhero of Waikato was chosen to be King.<sup>104</sup>

Dr Tui Adams explained that Te Wherowhero did not immediately accept the position of King in 1856. He ‘responded that he would have to go back to his kau-maataua and tuakana for approval and advice before he would accept such a role.’<sup>105</sup> Te Wherowhero descended from Maniapoto via Te Kanawa Whatupango and is said to have told the rangatira at Pukawa:

‘The sun has set’ an allusion to the fact that he was now too old. Wiremu Tamihana replied, ‘The sun sets in the evening, but rises again in the morning.’ Te Wherowhero replied, ‘Let me return to my elders and my senior cousins’ (in the King Country). Wiremu Tamihana replied ‘Why should you return to those your senior cousins when you have the whole country here supporting you on this Marae?’<sup>106</sup>

Dr Adams’ kōrero helps to explain the events of 1857, when Ngāti Maniapoto were ‘instrumental’ in the establishment of the Kingitanga and resolved to give their ‘full support to Te Wherowhero to become King.’<sup>107</sup> This happened at a hui at Haurua. As noted above, there are different accounts of this hui.<sup>108</sup> Briefly, Dr Tui Adams explained:

Later in Haurua, near Waitomo within the heart of Ngaati Maniapoto country, Te Wherowhero and many of the chiefs from the initial Pukawa hui met and discussed whether he would be king. This hui was called Te Puna o te Roimata (the wellspring of tears). The kaumaataua and tuakana of Te Wherowhero were present at that hui and they resolved to support him.<sup>109</sup>

We do not have space here for a full discussion of these events, the outcome of which was the installation of Te Wherowhero as the first Māori King during 1858 and 1859.<sup>110</sup> Suffice to say that the various accounts confirm that the purposes of the Kingitanga were to ‘stem the bloodshed within the tribes, [t]o stop loss of Maaori

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103. Document J22 [Otimi], pp [11]–[13].

104. Document J22, pp [13]–[14].

105. Document A46 [Adams], pp 4–5.

106. Document A52(a) [Adams], pp 5–6.

107. Document A110, p 603; doc A52(a), p 6.

108. See, for example, document A110, pp 479–486.

109. Document A46, p 5.

110. See the accounts collated and discussed in document A110, pp 478–491. See also document A23, pp 173–216; Te Hurunui, *King Pōtatau*, pp 193–217.

land, and [t]o unite the tribes of the motu, and at its inception the Kingitanga was not seen as hostile to the Queen or to Pākehā.<sup>111</sup> Dr Tom Roa explained:

Ka whakawahia a Pōtatau Te Wherowhero hei Kīngi Māori. Ko tōna kaupapa he pupuri i te whenua, he pupuri i te toto, he pupuru i te mana Māori motuhake. He whakakotahi i tana iwi Māori.

Ka mutu te whakawahinga, ko tā Pāora o Waikato me tautoko te Kīngi e te iwi. Ko tāna mahi he rukeruke i te kino, te karo i te ringa o te tangata mahi kino. Ko tā Te Awarahi o Ngāti Pou, 'Me tua a Pōtatau hei matua atawhai i tana iwi'. Ko tā Te Heuheu Tūkino o Tūwharetoa, 'Me noho kia kotahi a Kīngi Pōtatau, rāua ko Kuini Wikitōria. Ki runga rawa ko te whakapono ki a Ihu Karaiti, ā, ko te ture, hei whāriki mō ōna waewae mō ake tonu atu'.

Ka mutu, ka tū a Pōtatau, ko tāna kupu, 'Ae, e whakaae ana ahau mō tēnei wā, haere ake. Kia kotahi anake te kōwhao o te ngira e kuhuna ai he miro mā, he miro pango me te miro whero. Ā muri, kia mau ki te whakapono, kia mau ki te ture me te aroha, hei aha te aha, hei aha te aha'.

Pōtatau was anointed as a Māori King. His role was to hold the lands, to hold the blood, and to hold on to Māori independence. Also, to unite his Māori people.

After the anointing, Pāora of Waikato said the people should support the King. His task would be to cast away evil and to parry the hand of the evil-doer. Te Awarahi of Ngāti Pou said, 'Pōtatau should stand as a kind parent to his people.' According to Te Heuheu Tūkino of Tūwharetoa, Pōtatau should be as one with Queen Victoria. Above both should be the faith of Jesus Christ, and behold, the laws should be a blanket for his feet forever after.

After they had finished, Pōtatau stood and these were his words: 'Yes, I accept for this period going forwards. Let there be only one hole in the needle through which the red, black, and white threads pass. In the time to come, hold fast to the faith, to the law, and to compassion, whatever may happen.'<sup>112</sup>

In considering the decision to fight in Taranaki in 1860, it is crucial to understand these events of 1856–1859, the support of Ngāti Maniapoto for the Kingitanga, and the peaceful intentions of those who raised Pōtatau and placed their lands under the King. Mr Otimi explained this latter point: 'The Kingitanga tribes placed the whenua under the protection of the King. And yet while they acted collectively to protect their lands, they maintained their mana and autonomy over the land.'<sup>113</sup> We note, however, that not all of Ngāti Maniapoto supported the King; some Mōkau hapū and leaders did not do so until the invasion of Waikato in 1863.<sup>114</sup>

111. Document A46, p6; doc H17(e) [Harold Maniapoto], p5; doc A110, pp 478–491; doc A23, pp 214–215.

112. Transcript 4.1.1 [Roa], p 222. Tribunal translation.

113. Document J22, p [16].

114. Document A28(c), p 8; doc A28 [Thomas], pp 137–138.

The Kingitanga established self-government institutions (or incorporated existing tribal institutions). The King's council, which played an important role in formulating a united position among Kingitanga leaders, was established at Ngāruawāhia. Tribal rūnanga made local laws, regulated tribal affairs according to tikanga, adjudicated on important matters (including disputes between Māori and any local settlers), and were – above all – to maintain mana and autonomy with respect to land and people.<sup>115</sup> Rewi Maniapoto raised the King's flag at the coronation in 1858, and was a member of the King's council (and also claimed to have designed his seal).<sup>116</sup> Paul Meredith explained that Rewi Maniapoto's rūnanga was at Kihikihi, where it met in the whare rūnanga Hui Te Rangiora:

I tōna hokinga ki Kihikihi i whakatūria e Rewi tōna ake rūnanga i raro i te maru o te Kingitanga, ara ko te Rūnanga o Kihikihi tenei i tū ai i tōna whare rangatira ko Hui-te-rangi-ora . . . Ko Rewi te tumuaki, otiia rā ko te tokomaha o tenei Rūnanga e 40 ōna mema. He tini ngā ture i mahia e tēnei rūnanga mō te waipiro, mō te kōrero teka, mō te tahae me te tini atu. He nui noa iho te mahi o tēnei rūnanga i te ao i te pō ki te whakatakoto tikanga hei pēhi mō te he, hei whakatū mō te tika.

When Rewi returned to Kihikihi he established his own Council under the auspices of the King movement. This was the Council of Kihikihi housed in his principal meeting house – Hui-te-rangi-ora . . . Rewi was the chair of some 40 members of this Council. The Rūnanga made a number of laws relating to alcohol, slander, theft, and many other things. The council worked tirelessly to suppress wrongs and promote uprightness.<sup>117</sup>

Thus, the Kingitanga represented and embodied self-government and it established institutions for that purpose, but by the end of the 1850s the question remained to be answered: how would the authority of Kingitanga rangatira over their lands and peoples relate to the authority of the Queen, her governor, and the settler Parliament?

At the various hui of the 1850s, missionaries and Government observers were present and reported their impressions and understandings of these events to the governor and Ministers. We turn next to consider briefly the Crown's attitudes towards the Kingitanga prior to the Taranaki war.

### 6.3.2 The Crown's attitudes towards the Kingitanga prior to the Taranaki war

Crucially, the Crown's view of the Kingitanga (and of the iwi and hapū of Te Rohe Pōtae) was transformed by the Taranaki war of 1860–1861, which we discuss in the next section. Before the war, Governor Browne essentially took a 'wait and see' attitude. Looking back in 1861, T H Smith stated that

115. Document A110, p 491.

116. Document A110, pp 495, 603.

117. Document A110, p 496. Translation by Dr Robert Joseph.



the Governor had acted on the advice of their late chief Potatau and refrained from making the Maori King movement a cause of quarrel while no positive mischief came of it. He had therefore confined himself to an intimation of his disapproval and to warning its promoters.<sup>118</sup>

The governor's advisers at the time tended to perceive the Kingitanga from two different (but not necessarily contradictory) perspectives. On the one hand, some of his European informants saw the establishment of the Kingitanga as part of a 'nationalist urge or instinct on the part of Maori communities to preserve and protect themselves against the threat posed by incoming settlers.'<sup>119</sup> According to the missionary John Morgan, the King's supporters feared that unless settlement could be 'arrested', they would soon be greatly outnumbered and 'then the Treaty of Waitangi would be set aside, and their lands seized by the English Government.'<sup>120</sup> This resulted in what Pākehā called a 'Land League' of non-sellers, which hoped the King movement would preserve their lands and independence.<sup>121</sup>

On the other hand, the King movement was seen as searching for new forms of law and government because – it was held – the Crown had failed to provide any. The Native Minister C W Richmond wrote in 1857 that 'aspirations for the maintenance of a separate nationality' were mixed up with imitation of British forms of government in the 'agitation for a Maori King':

Self constituted native magistrates are administering justice after European fashion in several of the Waikato villages. They are also desirous of trying their hands at legislation both in village assemblies and in even a larger meeting – a Maori General Assembly – which they desire the Governor to convene . . . I hear in it the voice of a people crying out to be governed – a people wary of anarchy and desiring guidance in the right way. I believe it is a movement which we may take possession of and turn to great uses but which if neglected will become dangerous. The Governor is inclined to shy at the name of '*King*'. All his advisers agree that there is nothing in this name – that what is really of importance are these two things – the plainly asserted claim of national independence, and the plainly expressed desire for better government. We shall extinguish the first if we can satisfy the second. [Emphasis in original.]<sup>122</sup>

This view of the King movement resulted in F D Fenton's appointment as a resident magistrate in the Waikato in 1857–1858, which had to be cut short because

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118. TH Smith, 'Notes of a Conversation with Tamati Ngapora and Patera at Mangere', 23 January 1861 (doc A23, p 340).

119. Document A23, p 220.

120. Reverend Morgan, letter, 9 October 1860, 'Minutes of Evidence: Report of the Waikato Committee', AJHR, 1860, F-3, p 105 (doc A23, p 219).

121. H Halse to Native Secretary, 16 October 1861, 'Reports on the State of the Natives in Various Districts', AJHR, 1862, E-7, p 10 (doc A23, p 220).

122. Richmond to Sewell, 16 June 1857 (doc A23, pp 239–240).

of the tensions arising from his efforts (including his snubbing of Pōtatau and his attempts to create a 'Queen party' in the district).<sup>123</sup>

Governor Browne's closest advisers in the Native Department, Donald McLean and T H Smith, advised him to simply ignore the King movement and leave it to die away.<sup>124</sup> In McLean's view, a policy of non-interference would allow the movement to 'undergo its experimental stages' and then collapse, crippled by the distrust and tribal rivalries which would cause all such 'future combinations' to fail.<sup>125</sup> Governor Browne later recalled McLean's 'frequent assurances that the Kingitanga "would die out"', adding: 'I was from the first moment alarmed at the King movement, though laughed at by the Missionary party & assured by McLean.'<sup>126</sup>

Browne toured the Waikato in April 1857, noting that he met everywhere with a 'determination to preserve a separate nationality and to appoint some great chief to defend it'. This was accompanied by a repudiation of the settler Parliament's authority 'but . . . there was very little sign of hostility to Europeans or to the Crown.'<sup>127</sup> It was clear, he wrote to the Colonial Office in May 1857, that

they did not understand the term 'King' in the sense we use it; but though they constantly professed loyalty to the Queen, attachment to myself, and a desire for the amalgamation of the races, they did mean to maintain their separate nationality, and desired to have a Chief of their own election, who should protect them from any possible encroachment on their rights, and uphold such of their customs as they were disinclined to relinquish. This was impressed upon me everywhere; but only on one occasion, at Waipa, did any one presume to speak of their intended King as a Sovereign, having similar rank and power with Her Majesty; and this speaker I cut short, leaving him in the midst of his oration.<sup>128</sup>

According to Professor Alan Ward, Browne's main concerns were that the movement would attract 'militants' whom the leadership could not control, and that 'it would seek to control settlers [living] in their territory'. This, the governor feared, would be unacceptable to the settlers and result in a 'collision'.<sup>129</sup>

After withdrawing Fenton as magistrate in 1858, the Crown's policy towards the Kīngitanga became one of 'watchful inactivity and of careful avoidance of any provocation'.<sup>130</sup> By 1859, as events moved towards a crisis in Taranaki, nothing significant involving the Kīngitanga had caused any specific alarms. But nor,

123. Document A23(c) (O'Malley), pp 9–10; 'Despatches from the Secretary of State and the Governors of New Zealand', AJHR, 1862, E-1, p 7.

124. Dalton, *War and Politics in New Zealand*, pp 68, 71, 84.

125. McLean memorandum, 7 September 1857 (Wai 903 RO1, doc A143 (Loveridge), p 48).

126. Document A23, p 218. See also Dalton, *War and Politics in New Zealand*, pp 68, 71.

127. Dalton, *War and Politics in New Zealand*, p 66 (Alan Ward, 'A "Savage War of Peace"? Motives for Government Policies Towards the Kingitanga, 1857–1863', in Richard Boast and Richard Hill (eds), *Raupatu: The Confiscation of Maori Land* (Wellington: Victorian University Press, 2009), p 79.

128. Browne to Labouchere, 9 May 1857 (doc A23, p 255).

129. Ward, 'A "Savage War of Peace"?', p 80.

130. Dalton, *War and Politics in New Zealand*, p 76.

as Dalton put it, was ‘the Movement . . . dying a natural death in the Waikato, as McLean, Smith and some missionaries had expected.’<sup>131</sup> Henry Turton visited Waikato early in 1859 and reported that Pōtatau was ‘very strong in some of his remarks’ that ‘It can only be by some great mismanagement, that their affections, as a body, can be alienated from us.’ All the same, Turton did not think a magistrate would be welcome at Rangiaowhia. Henry Halse was appointed as visiting magistrate to lower Waikato, but based in Auckland.<sup>132</sup>

In July 1859 there was ‘one of the periodic alarms to which Auckland was subject’ as a result of rumours of an attack from the Waikato, but the rumours were groundless.<sup>133</sup> The following month, Governor Browne admitted that he was uneasy that the Kingitanga might become ‘a central rallying point in the event of war’, but it posed no immediate danger and gave no sign of ‘developing an aggressive spirit.’<sup>134</sup>

The King’s council issued a circular in November 1859 stating that no magistrates and no roads would be permitted in Kingitanga territories. This circular was signed by a number of rangatira, including Rewi Maniapoto.<sup>135</sup>

In sum, the Crown’s policy towards the Kingitanga after Fenton’s withdrawal was one of non-interference and ‘watchful inactivity’. It is impossible to say how long the Crown might have maintained this approach if the war in Taranaki had not happened. What is certain, however, is that the Taranaki war transformed the Crown’s view of (and policies towards) the Kingitanga and its supporters – especially Ngāti Maniapoto.

### 6.3.3 Treaty analysis and findings

In chapter 3 we discussed the distinct spheres of authority recognised by the Treaty of Waitangi. We determined that the Treaty provided for the Crown to exercise a significant new power – *kāwanatanga*. The Treaty modified Māori authority to the extent necessary for the Crown to control settlers and settlement. But the Treaty guaranteed the right of Māori to continue to exercise *tino rangatiratanga*. This meant that their pre-existing systems of law (*tikanga*) and authority (*mana*) continued. In turn, the Treaty created an obligation on the Crown to protect Māori communities in their possession of and authority over their territories, resources, and all other valued things. The Treaty did not diminish Māori authority, but affirmed it, and to the extent that the spheres of *kāwanatanga* and *tino rangatiratanga* overlapped or created tensions, negotiation was required.

The Taranaki Tribunal considered that by the 1850s it would have ‘seemed that Maori would have to combine if they were to achieve the relationship with the Government that was sought’ and that ‘although pan-tribal policy making had not

131. Dalton, *War and Politics in New Zealand*, pp 83–84.

132. Alan Ward, *A Show of Justice: Racial ‘Amalgamation’ in Nineteenth Century New Zealand* (Auckland: Auckland University Press, 1973), pp 111–112; doc A23, p 220.

133. Dalton, *War and Politics in New Zealand*, p 83.

134. Dalton, *War and Politics in New Zealand*, pp 83–84.

135. Evelyn Stokes, *Wiremu Tamihana Rangatira* (Wellington: Huia Publishing, 2002), p 174.

previously been regular before the arrival of Europeans, that was only because it had not previously been needed.<sup>136</sup> That Tribunal went on to state:

Accordingly, the Kingitanga was at once a new innovation and an extension of old values, a necessary development to deal with new variables that the old order could not control. Of even greater significance was the essential symbolism. It was not just that the Kingitanga stood for the right of hapū to retain their land and authority. It presaged especially of a partnership between Pakeha and Maori, where both could have a place and be respected. The Kingitanga was not anti-Pakeha, as those threatened by the thought of power-sharing often said. Rather, it demonstrated an essential difference between Maori and colonial Pakeha thinking, the latter being that unity comes from conformity, the former, that it comes from acknowledging differences and respecting them.<sup>137</sup>

Counsel for Ngāti Tūwharetoa submitted:

The Kingitanga was a political movement and an alliance, but importantly it was also an institution that aligned with tikanga Māori, in that constituent iwi and hapū who placed their whenua under the protection of the King maintained their mana and autonomy over their own lands and people even while they worked as an alliance to promote their common objectives.<sup>138</sup>

Our review of the evidence presented to us about the formation of the Kingitanga, summarised in section 6.3.2, supports these conclusions. It is clear to us from the way in which Pōtatau was chosen to be King, from the manner in which he accepted the burden (including his reliance on his Ngāti Maniapoto kin), and from the series of ceremonies at which his position was proclaimed, that the legitimacy of this new institution depended fundamentally on its recognition of tikanga and on the mana of the hapū and the rangatira who gave it their support.

Ngāti Maniapoto rangatira supported the King at Haurua, just as the leaders of Ngāti Tūwharetoa and other iwi had at Pukawa, not only because the movement sought to protect their rights to land and authority, but also because Pōtatau acknowledged their mana and so placed the Kingitanga within the existing Māori polity of relationships and obligations (see sections 2.4.3, 2.5.2.1). The rangatira who supported the King did not think that by doing so their authority was in any way diminished; rather, they understood the Kingitanga as a means to retain and enhance their mana. Te Rūnanga o Kihikihi, established by Rewi Maniapoto at Hui Te Rangiora under auspices of the King, was but one fulfilment of this purpose.

The Crown submitted that its initial response to the formation of the Kingitanga in the late 1850s 'was to develop policies that would attract its adherents back to

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136. Waitangi Tribunal, *The Taranaki Report*, pp 62, 63.

137. Waitangi Tribunal, *The Taranaki Report*, p 64.

138. Submission 3.4.281, p 13.

an acceptance of the Crown's authority'.<sup>139</sup> Although this could be said to describe Fenton's efforts to establish a 'Queen party' in Waikato in 1857 and 1858, the evidence shows the Crown made little attempt to engage directly with the Kīngitanga at this time. And in practice Fenton's efforts simply exacerbated divisions.

We concluded in chapter 3 that the exact relationship between Māori and Crown authority was not spelled out in the Treaty. The relationship was in the nature of a partnership and further discussions were required in order to bring into effect the specific legal or institutional arrangements that might be needed to provide for the ongoing exercise of both forms of authority. The Kīngitanga was entirely consistent with the new legal and institutional arrangements necessitated by the Treaty.

We disagree with the Crown's submission that the Kīngitanga represented a rejection of the Crown's authority by its Māori adherents. In our view, this perpetuates the misconception that the Kīngitanga (and, therefore, the authority of the hapū and the rangatira) was incompatible with the authority of the Crown. We acknowledge Governor Browne held genuine concerns over who was to control settlers. But what was required by the Treaty was negotiation as to how Kīngitanga and Crown authority might intersect.

By 1860, the Kīngitanga was still a new institution. How it would develop and operate in practice was by no means certain. In the Central North Island inquiry, Crown counsel accepted that it was both reasonable and possible for the Crown to have adopted and empowered Māori self-governing bodies in the 1850s and 1860s. In that Tribunal's view, including the Kīngitanga in the machinery of the State was among the options available to the Crown as a Treaty-compliant way for it to recognise and give effect to Māori autonomy.<sup>140</sup> Governor Browne himself acknowledged that supporters of the Kīngitanga professed their loyalty to the Queen.

Our analysis set out in section 6.3.3 shows that the Crown made no attempt to engage with Kīngitanga leaders on this basis. The governor's advisors explained the Kīngitanga variously as an attempt to protect Māori from the threat posed by European settlement and as a desire for better law and government. The Crown did little to address these valid concerns, and after Fenton's failure it resorted to 'watchful inactivity'. The underlying problem remained that the Crown was not prepared to engage with the Kīngitanga, as a Treaty partner, in a way that acknowledged Māori authority and autonomy.

We make no findings of Treaty breach at this stage of our analysis. What further opportunities presented themselves between 1861 and 1863 for the Crown to recognise Kīngitanga authority is a question we address in section 6.5.

#### **6.4 WHY DID TE ROHE PŌTAE MĀORI GO TO FIGHT IN TARANAKI AND WHAT WERE THE CONSEQUENCES?**

In its initial statement of position and concessions, the Crown suggested that its concessions on raupatu 'obviate[d] the need' for it to respond in detail 'to a

139. Submission 3.4.300, p 9.

140. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 206.

number of issues.' It would be most useful, the Crown suggested, for the Tribunal to focus on the effects of raupatu on Te Rohe Pōtae Māori 'rather than the causes of the conflicts.'<sup>141</sup> We acknowledge these submissions but the Crown's position on the Taranaki war does require the Tribunal to report in some detail on the reasons why Te Rohe Pōtae Māori went to fight in Taranaki, and on the consequences for them.

The Crown conceded early in the hearings that the Taranaki war was an injustice. In closing submissions, the Crown said that before the outbreak of war in Taranaki Te Rohe Pōtae Māori were 'not in direct contact with the Crown and its forces'. Nevertheless, they took military action in 1860 in opposition to the Crown. During the course of the fighting in 1860 and 1861, Te Ātiawa, led by Wiremu Kīngi Te Rangitāke, 'received supplies and armed support from various iwi' in Te Rohe Pōtae, 'most or all of whom were affiliated with the Kingitanga'. In its closing submissions, the Crown termed Te Rangitāke's people 'insurgents': those who rise in revolt against constituted authority; rebels who are not recognised as belligerents. We note that this submission was made in November 2014, three months after the Crown had accepted, in its deed of settlement with Te Ātiawa, that treating them as rebels was 'unfair'.<sup>142</sup>

The Crown noted James Belich's assessment of the the nature of 'Waikato' involvement in Taranaki. As we discuss further below, he estimated that 1,200 to 1,500 warriors from the north fought in Taranaki in 1860 and 1861. This 'probably represented between a third and a half of the total [fighting] strength of the Waikato or "core" Kingite tribes'. Such numbers, Belich said, 'can scarcely be considered an extremist minority', while the remainder did not necessarily remain at home because they were unwilling to fight. 'They may equally well have done so because greater numbers could not be maintained' in Taranaki.<sup>143</sup>

The Crown also noted Vincent O'Malley's statement that, 'when the Crown sought to take forcible possession of the land in March 1860, members of Waikato and Ngāti Maniapoto subsequently fought in defence of Kingi's rights to Waitara'.<sup>144</sup>

An intention to defend Kīngi's rights, the Crown suggested, was not sufficient explanation. While the Crown did not advance any alternative explanations, it stated that involvement by Te Rohe Pōtae Māori 'amounted to something more than just support for Kingi's rights'.<sup>145</sup>

Drawing on these points, Crown counsel submitted that there were differences in the nature of Te Rohe Pōtae Māori involvement in the conflicts in Taranaki and Waikato:

Ngāti Maniapoto had strong ties to the land north of the Puniu river, which, as a result of the war, became the northern boundary of the Rohe Pōtae. Accordingly, the

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141. Statement 1.3.1, pp 44–45.

142. Submission 3.4.300, p 3; Te Ātiawa and the Crown, 'Deed of Settlement of Historical Claims', 9 August 2014, p 29.

143. Belich, *The New Zealand Wars*, pp 103–104; submission 3.4.300, p 7.

144. Document A23, p 114.

145. Submission 3.4.300, p 7.

Crown accepts that, once the invasion of the Waikato began, Rohe Pōtae Māori were justified in taking up arms in defence of their lands and homes.<sup>146</sup>

In contrast, the Crown said, while Te Rohe Pōtae Māori had land interests in Taranaki these were not at Waitara. The Crown's actions in Taranaki in 1860 and 1861, therefore,

did not threaten Te Rohe Pōtae Māori directly. Members of Ngāti Maniapoto became involved as a result of a decision on their part to support Wiremu Kīngi, who opposed the Crown purchase of the Pekapeka Block, and took up arms against [the Crown] for that purpose.<sup>147</sup>

Thus, the Crown has not conceded that Te Rohe Pōtae Māori were justified in taking up arms in the Taranaki conflict. No acknowledgement has been offered that it was unfair to label Te Rohe Pōtae Māori who fought there as rebels.<sup>148</sup> This leaves the principal issues still in contention between the parties.

#### 6.4.1 How did the war in Taranaki begin?

The immediate cause of the fighting in Taranaki was the Crown's effort to enforce its claim to have purchased the disputed Pekapeka block on the south (or west) bank of the Waitara River, at its mouth. This was opposed by Wiremu Kīngi Te Rangitāke, senior rangatira of Te Ātiawa. On 20 February 1860, an attempt to survey the external boundaries of the block was resisted by an unarmed group of 60 to 80 men and women, who seized the surveyors' instruments when they were placed on the ground. Lieutenant-Colonel Murray wrote to Te Rangitāke later that day:

This is rebellion against the Queen. I am most anxious that no harm should come to any Maories caused by your conduct; but I must tell you plainly that the Governor has ordered me to take possession of the land with soldiers, and I must obey him if you continue in opposition.<sup>149</sup>

Te Rangitāke set out his position in his reply, the following day:

You say that we have been guilty of rebellion against the Queen, but we consider we have not, because the Governor has said he will not entertain offers of land which are disputed. The Governor has also said, that it is not right for one man to sell the land

146. Submission 3.4.300, p 8.

147. Submission 3.4.300, p 7.

148. For comparison, the Crown conceded in the Te Urewera inquiry that 'Ngai Tuhoe as a whole were not in "rebellion"': Wai 894 RO1, doc N20, topic 3, p 55. Consequently, that Tribunal said, debates surrounding Tuhoe participation in battles such as Ōrākau did not require their examination: see Waitangi Tribunal, *Te Urewera*, vol 1, pp167–169.

149. Murray to Kingi, 20 February 1860, BPP, 1861, vol 41, [2798], p 9 (IUP, vol 12) (Wai 143 RO1, doc A3, p 41); doc A23, p 315.).

to the Europeans, but that all the people should consent. You are now disregarding the good law of the Governor, and adopting a bad law.<sup>150</sup>

On 13 March 1860, troops were sent to begin cutting boundary lines for the block. They were ordered not to fire unless fired on.<sup>151</sup>

During the night of 15 March 1860, Te Rangitāke and his people built and occupied a pā, Te Kohia, on a corner of the block. British troops brought up two 24-pound guns and on 17 March they began to bombard the pā.<sup>152</sup>

Historians have argued that the proximate cause was merely a symptom of deeper and more intractable differences.<sup>153</sup> Dr O'Malley explicitly linked the dispute over Pekapeka and its broader implications:

once Browne had determined to override the collective wishes of Kingi and the other owners, the question soon became a more fundamental one as to whose will would prevail. That brought into focus issues of sovereignty versus rangatiratanga left unresolved since the time of the Treaty.<sup>154</sup>

In an oft-quoted passage from a despatch to the Secretary of State for the Colonies written in March 1860, Governor Browne claimed: 'I must either have purchased this land, or recognised a right which would have made W[illiam] King virtual Sovereign of this part of New Zealand.'<sup>155</sup> A year later, Browne confided to his diary: 'I regret the mental elation I felt in 1860 when I hoped & expected to put an end to many Maori difficulties by a vigorous and decisive act.'<sup>156</sup>

The governor framed the conflict as a question of who should exercise political authority. But that misrepresented what Te Rangitāke had said. What the governor understood to be a direct challenge to his authority and to the sovereignty of the Crown, Te Rangitāke saw as a matter of 'bad law'. The governor's actions at Waitara, if allowed to stand, meant that rangatira would be forced to give up authority to determine ownership and possession of land in accordance with tikanga.

The Taranaki Tribunal laid the immediate blame for the war with the governor:

The causes of war are many. In this case, however, they point generally to the conclusion that the Governor started it. Most especially, he disregarded Maori law and authority. Contrary to Maori law, and in disregard for Maori authority, he presumed to buy from one group, though to do so would affect all and when, by their own collective process, not all affected had agreed. Maori law and authority with regard to the

150. Kingi to Murray, 21 February 1860, BPP, 1861, vol 41, [2798], p9 (IUP, vol 12) (doc A23, p 315).

151. Wai 143 ROI, doc A3, p 52

152. Document A23, p 318; Belich, *The New Zealand Wars*, pp 82–83.

153. Waitangi Tribunal, *The Taranaki Report*, p 81; Belich, *The New Zealand Wars*, pp 76–80; Danny Keenan, *Wars Without End: The Land Wars in Nineteenth Century New Zealand* (Auckland: Penguin, 2009), p 206.

154. Document A23, p 387; see also pp 303–319.

155. Browne to Duke of Newcastle, 22 March 1860, AJHR, 1860, E-3, p 18 (doc A23, p 311p 18).

156. Browne, diary, 12 October 1861 (doc A23, pp 391–392).



ownership and possession of land were Treaty guaranteed, and thus the Governor's actions, which caused the war, were contrary to the Treaty.<sup>157</sup>

The Taranaki Tribunal further found that the governor had acquired the land at Waitara 'unlawfully, that is, without proper regard for Maori custom as required by English law'. The governor's 'violent seizure of the block was also unlawful' and 'Wiremu Kingi was unjustly attacked'. The Tribunal added:

We have obtained the opinion of a senior constitutional lawyer in the matter, and we concur with his view that the opening of the war at Waitara was represented in an unlawful attack by the armed forces of the Crown on Maori not at that time in rebellion and that there was no justification for the Governor's use of force. We note further his view that, at the time, the Governor and certain officers were liable for criminal and civil charges for their actions.

The evidence for the view that the Governor was willing to go to war to settle the question of authority but that Maori were keen for peace is compelling.<sup>158</sup>

In 1927, the Sim commission had come to a similar view, emphasising the right of citizens to fight in self-defence when wrongfully attacked by the Crown:

The Natives were treated as rebels and war declared against them before they had engaged in rebellion of any kind, and in the circumstances they had no alternative but to fight in their own self-defence. In their eyes the fight was not against the Queen's sovereignty, but a struggle for house and home . . . The government was wrong in declaring war against the Natives for the purpose of establishing the supposed rights of the Crown under that purchase.<sup>159</sup>

The Taranaki Tribunal also considered the position of Te Ātiawa's southern Taranaki neighbours, including Ngāti Ruanui:

Given the background described, when the war began in the north, southern hapu had little practical option but to join in. The Governor's policy and intention were clear. They would not be able to retain their own homes or the status to which they were entitled under his policy and laws, and had thus to defend their own positions once Kingi was attacked.<sup>160</sup>

The Tribunal did not, however, address the situation of Te Ātiawa's northern Taranaki neighbours, including Ngāti Maniapoto, and whether they had 'little practical option but to join in.'<sup>161</sup> We turn to that question next.

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157. Waitangi Tribunal, *The Taranaki Report*, pp 78–79, see also pp 67–77.

158. Waitangi Tribunal, *The Taranaki Report*, p 80.

159. 'Confiscated Lands and Other Grievances' (Report of the Sim commission), AJHR, 1928, G-7, p 11 (Waitangi Tribunal, *The Taranaki Report*, p 81).

160. Waitangi Tribunal, *The Taranaki Report*, p 80.

161. Waitangi Tribunal, *The Taranaki Report*, p 80.

### 6.4.2 How and why did some Te Rohe Pōtae Māori (and other Kīngitanga groups) intervene in Taranaki in 1860–1861?

As outlined above, there was a stark disagreement between the parties about the Taranaki war. Crown counsel made no concession of Treaty breach in respect of Te Rohe Pōtae Māori participation in the Taranaki War (except in respect to confiscation), and did not concede that Te Rohe Pōtae Māori were unfairly labelled as ‘rebels’ for their participation – an admission the Crown has made for various Taranaki iwi. Because the Crown has adopted this position, it is necessary for the Tribunal to make a detailed inquiry into why and how some Te Rohe Pōtae Māori intervened in Taranaki in 1860–1861.

Due to the controversial nature of the events of 1860–1863, in which both sides felt the need to justify and explain their actions at home and in Britain, a number of contemporary accounts have survived – from both Pākehā and Māori writers. We also have the benefit of oral traditions, some of which were shared with us by kaumātua and kuia during our hearings. The oral histories of participants or their descendants were also collected and recorded by James Cowan in his history of the wars. From these various accounts, it is clear that there were a number of reasons why Te Rohe Pōtae and other Kīngitanga groups found it necessary to intervene in Taranaki in 1860–1861. Those interventions were of different kinds:

- ▶ some sent supplies and provided other assistance, such as a sanctuary for the wounded at Mōkau;<sup>162</sup>
- ▶ some went to escort a delegation from Taranaki home;
- ▶ some went to give armed assistance;
- ▶ some (including Rewi Maniapoto) arranged a cessation of hostilities in 1861; and
- ▶ some tried to get an impartial inquiry by the British authorities to ensure the peaceful return of Waitara to Te Rangitāke’s people even after the fighting had ended.

In this section, we explore the reasons that were advanced for the intervention of Te Rohe Pōtae and other Kīngitanga groups, and evaluate the nature and extent of that intervention. We then address some of the consequences of intervention for Te Rohe Pōtae Māori in section 6.4.3.

#### 6.4.2.1 *Fighting in defence of the Kīngitanga*

In May 1859, the Manukorihi hapū at Waitara were visited by ‘an agent of the Maori King’, and a ‘strong party favoured adhering to the King’. They accepted the King’s flag in November 1859. Wiremu Kīngi Te Rangitāke apparently threatened to return to Waikanae if they ‘persisted’.<sup>163</sup> For the most part, Taranaki iwi did not support the Kīngitanga in 1859. This position changed dramatically in 1860 after martial law was declared across the whole district, and the Crown’s troops

162. Document A28, pp140–141.

163. Dalton, *War and Politics in New Zealand*, p 83; see also Thomas Buddle, *The Maori King Movement in New Zealand with a full Report of the Native Meetings held at Waikato, April and May, 1860* (Auckland: The New Zealander, 1860), p 28.

marched on Waitara. In early March 1860, John Morgan advised the Government that a letter from Te Rangitāke had arrived at Mohoanui, seeking support from the Kīngitanga. He claimed it used most violent language, urging the Kīngitanga to rise and join him against the Europeans.<sup>164</sup>

A delegation of Te Ātiawa, Taranaki, and Ngāti Ruanui reached Ngāruawāhia on 10 April 1860. They were – in the words of a missionary observer, Thomas Buddle – ‘entrusted with the important duty of presenting the allegiance of those tribes to the Maori King, and of handing over their lands to the [land] league of which he is the head.’<sup>165</sup> They had come ‘for the King’s flag’, Buddle said, and they ‘handed over Waitara to the league.’<sup>166</sup>

Buddle added (in reference to subsequent events in Taranaki):

This is the reason assigned by the party who have gone to aid W King, for their having taken up arms in his defence; ‘Our flag is there,’ they say. Others of the extreme King party only wait to ascertain whether their flag reached Waitara before the Queen’s money was paid or after, declaring, that if the flag was first there the land shall not be given up, but that they shall go and take it. . . . [I]t now belongs to the land league, and . . . they consider he is engaged in fighting for the principles of that confederation.<sup>167</sup>

Setting aside Buddle’s interpretation of the Kīngitanga as a ‘land league’, a number of sources agree that the Waitara block was placed under the protection of the King, and that some Taranaki iwi pledged themselves to the Kīngitanga, receiving the King’s flag in return. TH Smith, the assistant Native Secretary, reported to the governor that the ‘Taranaki and Ngatiruanui deputation had arrived, and gone through the ceremony of tendering the allegiance of their respective tribes to the “Maori king”’.<sup>168</sup> The speeches of the Ngāti Ruanui leaders on this occasion intimated that ‘the affairs of these tribes being now entrusted to the management of the king’s council, they would be looked to, to find a way out of their present difficulties, and that they were responsible for bringing matters to a satisfactory issue.’<sup>169</sup>

A report in the *Daily Southern Cross*, dated 1 May 1860, noted that a Ngāti Maniapoto group saw the delegation safely home. Reference was made to the ‘earlier invitation issued by the Waikato tribes to join the King movement’ (in

164. Guy H Scholefield, *The Richmond-Atkinson Papers* (Wellington: Government Print, 1960), vol 1, p 532. Mohoanui is east of Ōtorohanga, near junction of the Waipā River and Mangawhero Stream. John Morgan was the CMS missionary based at Otawhao.

165. Buddle, *The Maori King Movement in New Zealand*, p 28; see also Waitangi Tribunal, *Taranaki Report*, p 85. Note that ‘Taranaki’ here refers to the iwi proper and not iwi from Taranaki.

166. Buddle, *The Maori King Movement in New Zealand*, p 20.

167. Buddle, *The Maori King Movement in New Zealand*, p 20.

168. TH Smith, ‘Narrative of a Visit to Waikato’, not dated, BPP, 1861, vol 41 [2798], p 36 (IUP, vol 12).

169. TH Smith, ‘Narrative of a Visit to Waikato’, not dated, BPP, 1861, vol 41 [2798], p 36 (IUP, vol 12).

1859). The newspaper recorded that ‘Kingitanga flags had been made and sent to [Wiremu] King’,<sup>170</sup> and the Ngāti Maniapoto escorts felt ‘bound to shew their love to him’ as a result.<sup>171</sup> It may have been the earlier sending of the King’s flag in 1859 to which a *Te Hokioi* article referred in 1862:

Na, terongonga o nga Iwi katoa ki te ingoa o taua kara, e karangatia ana hei tohu mo te whakaaetanga, ki te pupuru whenua, ka tahi nga iwi katoa ka hiahia kia purutia o ratou pihi whenua, hei waiho tanga iho ki o ratou nei Uri i muri i a ratou na, ko Taranaki raua ko Ngati Ruanui nga Iwi i tae tuatahi atu nga kara ko ta ratou tohu i whakatu ai i mua hei tohu pupuru i Taranaki, he whare nui ko Taiporohenui te ingoa . . . kei ki koutou no muri i te tukunga a te Teira I tae ai te kara, ki Taranaki; kahore, ko te kara ano kua tae tua tahi, i muri ka tukua e te Teira te whenua ki te Kanawa.<sup>172</sup>

When all the tribes heard of the name of that flag and that it was a symbol of our agreement to hold our land then they all desired to retain their own land as an inheritance for their heirs after them. The Taranakis and Ngatiruanuis were the people to whom the flags were first sent and the first sign that they set up for holding Taranaki was a large house called Taiporohenui. . . . Therefore do not suppose that it was after Te Teira sold the land that the flag was sent to Taranaki. No the flag was sent first, and after that Teira sold the land to the Governor.<sup>173</sup>

The Native Secretary, Donald McLean, attended a hui at Ngāruawāhia in May 1860. He, too, noted that the King’s flag had been dispatched, and that the ‘upper Waikato [tribes]’ considered Waitara to be under the joint authority of the Kingitanga and Te Rangitāke – so long as the latter could show that he had a good title and the sale had ‘taken place since the king’s flag was sent there.’<sup>174</sup> These important considerations will be discussed further below.

Governor Browne certainly believed that ‘the Waikatos’ fought in Taranaki because of the allegiance tendered to the King: ‘the Waikatos have repeatedly announced both in public and private interviews with myself that they interfered in [Wiremu] King’s quarrel, not on account of any special sympathy with him, but because he had acknowledged the sovereignty of their king.’<sup>175</sup> Whether the governor really understood the full meaning of these ‘announcements’ is doubtful. He added that ‘the Waikatos’ had ‘seized upon’ this opportunity ‘for extending and giving effect to the authority of their king over the Ngatiawa tribe.’<sup>176</sup> This was his own interpretation, and nothing could be further from the truth, and was based

170. Document A23, p 326.

171. ‘Waikato’, *Daily Southern Cross*, 1 May 1860, p 2 (doc A23, p 326).

172. Stokes, *Wiremu Tamihana*, p 188.

173. Stokes, *Wiremu Tamihana*, p 189.

174. ‘Report by Mr McLean of Native Meeting on the Waikato’, 31 May 1860, BPP, 1861, vol 41 [2798], p 69 (IUP, vol 12).

175. Browne to Newcastle, 12 April 1861 (doc A23, p 346).

176. Browne to Newcastle, 12 April 1861 (doc A23, p 347).

on a misunderstanding of how tribal autonomy continued under the overarching protection and authority of the King.

In another account, Wiremu Tamihana explained to the governor why Te Wetini Taiporutu of Ngāti Hauā went to fight: 'It was not a gratuitous interference on the part of Waikato; they were fetched. They were written for by Wiremu Kingi and Hapurona by letter, and that was why Te Wetini Taiporutu went to war.'<sup>177</sup>

Gorst gave more details:

Tamihana by this time had ceased to doubt, and had become satisfied of the justice of Wiremu Kingi's cause, but he was not clear as to the right of Waikato to interfere in Kingi's behalf: at any rate he strongly dissuaded Wetini from going. He used religious arguments against war; he called a meeting of the tribe, at which Wetini's proposals found only nine supporters, and for the time succeeded in holding him back. But three weeks later, a letter came from Wiremu Kingi asking what was the use of sending him only a 'disembodied flag' [ie the King's flag] and why did they not personally come to help him. Wetini could bear it no longer, and in spite of his friend's arguments, denunciations, and prayers, set off with a considerable number of his tribe to the war.<sup>178</sup>

Thus, whatever the overall decision of the Kīngitanga leadership, not all tribal communities immediately (or unanimously) supported intervention in Taranaki. We return to this point below. But clearly the adherence of Te Ātiawa, Taranaki, and Ngāti Ruanui to the King in April 1860, and the placing of Waitara under the protection and authority of the King, led at least some to fight in defence of the Kīngitanga (as they saw it) against the Crown's aggression. The Taranaki Tribunal found that the Kīngitanga was 'committed to supporting Kingi' because he had 'placed his lands under the mana of the Maori King.'<sup>179</sup> It was not the case, however, that support would have been forthcoming, even for a tribe which had given its adherence to the King, if that tribe had been in the wrong. We consider that issue next.

### **6.4.2.2 Careful investigation followed by consensus**

#### **6.4.2.2.1 THE CROWN SEEKS SUPPORT AMONG MĀORI FOR ITS POSITION**

It was not only Te Rangitāke who was sending letters and appealing for support. As the situation at Waitara descended into open warfare, the governor and his officials sought to ensure support for their stance. When the governor committed troops to enforce the survey of the Pekapeka block, he set out his position in a manifesto, published in Māori and 'widely circulated by special agents amongst all the Tribes in the Northern Island.' The key points in the Crown's manifesto were that the Crown had acquiesced in the reoccupation of 'Ngatiawa' after buying

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177. Wi Tamehana Te Waharoa to governor, undated translation (Stokes, *Wiremu Tamihana*, p 221).

178. Gorst, *The Maori King*, p 148.

179. Waitangi Tribunal, *The Taranaki Report*, p 87.

the interests of the 'Waikato', that Te Teira and his supporters wanted to sell their pieces, and that Te Rangitāke and his people had tried to forbid the sale of land in which they had no interests. This, the governor said, was breaking the Queen's law, which allowed any person to sell their piece of land if there were no other claimants to it. Further, the manifesto stated that Te Teira had been paid and the land now belonged to the Queen. The land would have to be surveyed and the surveyors would be protected. Although the governor wanted peace, '[i]f William King interferes again, and mischief follows, the evil will be of his own seeking.'<sup>180</sup>

In reality, only a deposit had been paid and the purchase had not been completed, while Te Teira's supporters were only a minority of those who had rights in the block. The Government's foremost expert on land purchase, Donald McLean, took virtually no part in any negotiation or investigation between March 1859 and February 1860. That was left to Robert Parris, new to the role of district land commissioner, with limited knowledge of Māori customary tenure, and demonstrably ill-suited to the task.<sup>181</sup>

In addition to circulating this manifesto, the Crown sent officials to the Waikato to try to persuade the Kīngitanga tribes that Te Rangitāke was in the wrong and the governor's actions were fully justified. In April 1860, the assistant Native Secretary, T H Smith, attended hui at Ngāruawāhia to explain the Crown's position.<sup>182</sup> In the following May, it was the turn of the Native Secretary, Donald McLean.<sup>183</sup> The governor also called a national conference of chiefs at Kohimarama in July 1860, seeking their support for his position. By that time, the Kīngitanga tribes had investigated the matter and some had come to their own determination that Te Rangitāke was in the right, contrary to that of the governor. Armed parties had gone to Taranaki to fight. Dr O'Malley explained:

with the first Taranaki War already underway, in July 1860 Governor Browne convened a conference of chiefs from around the country at Kohimarama, close to central Auckland. Although it is often assumed that Kingitanga supporters were not invited to attend the conference, Wiremu Tamihana and others were invited, though others such as Rewi Maniapoto were not. In the event only a small number of rangatira from the Rohe Potae district attended. But from the government's perspective, the conference was not intended as an opportunity for open dialogue, leading to the prospect of reconciliation with the Kingitanga, but rather had been called in the expectation that those present would condemn the movement and uphold the government's handling of the Waitara dispute. Browne and his ministers failed to secure the kind of glowing endorsement of their position hoped for.<sup>184</sup>

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180. Manifesto, AJHR, 1860, E-3E3, pp 21–22.

181. Waitangi Tribunal, *The Taranaki Report*, pp 51, 67–76.

182. T H Smith, 'Narrative of a Visit to Waikato', not dated, BPP, 1861, vol 41 [2798], pp 34–36 (IUP, vol 12).

183. 'Report by Mr McLean of Native Meeting on the Waikato', 31 May 1860, BPP, 1861, vol 41 [2798], pp 69–73 (IUP, vol 12); Buddle, *The Maori King Movement*, pp 57–58.

184. Document A23, p 302.

**6.4.2.2.2 HOW DID THE KĪNGITANGA TRIBES COME TO A DECISION ?**

The Taranaki Tribunal wrote that, in occupying Te Kohia pā, Te Rangitāke pursued a ‘necessary strategem’. According to tikanga, ‘support is not regularly available to an aggressor or to someone in the wrong’.<sup>185</sup> The governor had warned Colonel Gold at the beginning of March: ‘other tribes would join William King in a demand for *utu* if he could satisfy them that he had not been the first aggressor’.<sup>186</sup> Utu, the Tribunal said, was not revenge but ‘the maintenance of balance as a mechanism for harmony and peace’.<sup>187</sup>

Initially, it appears that many Ngāti Maniapoto were inclined to trust the governor. In particular, Mōkau leaders had a record of supporting peace in Taranaki because they sought trade and Pākehā settlers. In May 1860, the Government newspaper *Te Karere* published three letters of support from Mōkau Ngāti Maniapoto (with two more from elsewhere in New Zealand). The first, to Robert Parris from Takerei Waitara, Te Wetini, and Taati, was dated 16 March and stated their disagreement with ‘the proceedings of Wiremu Kingi and Ngatiawa’ (‘e he ana te ritenga a Wiremu Kingi, a te Ngatiawa’).<sup>188</sup> The second, written 10 days later, was to McLean from Hone Eketone. It was sent with the stated support of Takerei Waitara, Hikaka, Tikaokao, Te Motutapu, Ngatawa, and Te Wetini, and responded to an earlier letter from McLean about ‘te mahi a Wiremu Kingi’ (the work of William King). Eketone told McLean:

Tena te tangata e tukua mai e nga rangatira o Ngatimaniapoto, ko Timoti te ingoa; e haere atu ana ki te kawae atu i nga kupu pai ki a Wiremu Kingi, kia whakamutua taua mahi he. Kei rapurapu koutou ki a ia, e haere ana i runga i te rangimarie, he puru atu i Taranaki kia noho atu.

The chiefs of Ngatimaniapoto have sent a person, whose name is Timothy, with good advice to William King, recommending him to put a stop to his evil work; don’t be doubtful of him, he goes on a peaceful mission to Taranaki to recommend them not to interfere.<sup>189</sup>

The third letter, written on 29 March 1860 and also from Hone Eketone, assured the missionary John Whiteley:

Kia rongoa mai koutou, ekore rawa a Ngatimaniapoto e porangi ki tena mahi pouri a Waikato.

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185. Waitangi Tribunal, *The Taranaki Report*, pp 77–78.

186. Browne to Gold, 3 March 1860, BPP, vol 12, p 13; Waitangi Tribunal, *The Taranaki Report*, pp 77–78.

187. Waitangi Tribunal, *The Taranaki Report*, pp 77–78.

188. *Te Karere Maori*, 31 May 1860, p 8. These three men in the 16 March letter appear to be among those listed as invited to Kohimārama in July, but who did not attend: doc A23, pp 278–279.

189. *Te Karere*, 31 May 1860, p 8.

Kia rongō mai koe, ka puru tenei taha, no te mea, 'ko te marae tenei o Hine.' He whakatauki tena, he marae oranga tangata, na Maniapoto tenei whakatauki. Ekore e pikitia e te kino tenei wahi; mau korero atu ki a Kawana enei whakaaro, ekore nga iwi e rapu ki te tikanga e whawhai ki te Pakeha.

The Ngatimaniapotos will not have anything to do with the foolish work of the Waikatos.

Listen. This side will be closed, because 'It is the inclosure of Hine.' This is a proverb of Maniapoto, an enclosure for the preservation of the people. Evil will not climb over this place. The people will not seek a war with the Europeans.<sup>190</sup>

As noted above, John Morgan had alerted the governor in early March that Te Rangitāke had written to seek support from the Kingitanga. Morgan noted:

At present I cannot discover any desire on the part of the Waikato natives to join Wiremu King – Still it is impossible to say in the event of fighting what might take place. During the last fortnight I have had several conversations with leading men of the maori king party. They say that even if a deposit was paid upon the land before the maori king party put forth its claim, the Wiremu King is in error & will not meet with any support from them, but if since that time the Govt. were wrong in purchasing without having the sanction of Potatau to the sale.<sup>191</sup>

Morgan added an update to this note a week later: 'The rapid movement of the Governor on Taranaki astonished the Waikato's. Up to the present time they do not appear at all disposed to join Wiremu King.'<sup>192</sup>

However, also in early March, the former resident magistrate in the Waikato, Francis Dart Fenton, noted sympathy for Te Rangitāke 'amongst the Waikatos.'<sup>193</sup>

A hui took place at Waiuku (west of Pukekohe) on 13 and 14 March 1860, 'at which most of the Waikato tribes assembled, including the Ngatimahuta, Te Ngaungau, Ngatihine, Ngatinaho, Ngatipo, Ngatitipa and Ngatiteata, with the natives from Mangere, and the other settlements on the Manukau.' The main topics of discussion were first, whether lower Waikato groups would join the 'confederation of tribes acknowledging Potatau as their head', and secondly, the situation

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190. *Te Karere*, 31 May 1860, p 8. Te Marae o Hine is discussed in chapter 2. The term refers to an area of land given to Te Rongorito (younger sister of Maniapoto) in recognition of her peacemaking between Maniapoto and Matakore. Rereahu gifted her this land, which was east of Otorohanga. On this land, all violence was forbidden.

191. Morgan to C W Richmond, 5 March 1860 (Scholefield, *The Richmond-Atkinson Papers*, vol 1, p 533).

192. Morgan to C W Richmond, 13 March 1860 (Scholefield, *The Richmond-Atkinson Papers*, vol 1, p 534).

193. Emily Richmond to C W Richmond, 4 March 1860 (Scholefield, *The Richmond-Atkinson Papers*, vol 1, p 531).



in Taranaki.<sup>194</sup> A statement of the Government's position on Waitara, published in the 29 February issue of *Te Karere*, was read out. It said in part:

4. No Maehe, no te tau 1859, ka tukua nuitia mai ki te Kawanatanga e etahi o taua hunga noho to ratou wahi whenua ki Waitara.
  5. Whakauaua mai ana a Wiremu Kingi, mea ana, kua tetahi whenua i Waitara e hokona. Tena, kahore i a Wiremu Kingi te mana o te whenua; na, kahore he tikanga mo tana ki kia kua e hokona tetahi whenua ehara nei i a ia ake.
- . . . . .
12. Kua riro i a Te Teira he utu mo te whenua. No Te Kuini taua whenua inaianei.
  13. Kua peke mai a Wiremu Kingi ki te pana atu i te kai ruri a Te Kuini i haere atu ki te ruri i tona whenua. E kore e ahei te waiho kia penei noa iho he mahi pokanoa.
  14. Kua puta ta Te Kawana kupu ki a Te Teira, a e kore e mahue noa i a ia, a kia rite ra ano. Kua riro mai te whenua te hoko, a me ruri ano ia. Ko nga hoia a Te Kuini mana e tiaki te kai-ruri. Ki te peke mai ano a Wiremu Kingi, ki te aitua hoki, heoi, nana ano i kimi te he mona.
- . . . . .
4. In March, 1859, some of these [Ngatiawa] occupants, Te Teira and others, openly offered to sell to the Government their claims to a portion of the land at the Waitara.
  5. William King opposed this offer, and said that no land at the Waitara should be sold. But the 'mana' of the land was not with William King, and he had no right to forbid the sale of any land which did not belong to him personally.
- . . . . .
12. Payment for the land has been received by Te Teira. It now belongs to the Queen.
  13. William King has interfered to prevent the survey of the Queen's land by her own surveyors. This interference will not be permitted.
  14. The Governor has given his word to Te Teira, and he will not go back from it. The land has been bought and must be surveyed. The Queen's soldiers will protect the surveyors. If William King interferes again, and mischief follows, the evil will be of his own seeking.<sup>195</sup>

Letters from Te Rangitāke seeking assistance were also read out, and 'the meeting very generally came to the conclusion that William King was wrong in interfering with Te Teira.' However, doubt clearly lingered: 'It was proposed that a deputation should go to Taranaki to enquire into the real state of the case.'<sup>196</sup>

Te Huia Raureti of Ngāti Paretekawa later told James Cowan about another meeting to discuss the matter, this time at Hui Te Rangiora in Kihikihi. He named Rewi Maniapoto, his cousins Te Winitana Tupotahi and Raureti Te Huia Paiaka, Epiha Tokohihi, Hopa Te Rangianini, Pahata Te Kiore, Matena Te Reoreo, with

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194. *Te Karere*, 15 March 1860, p 6.

195. *Te Karere*, 29 February 1860, p 3.

196. *Te Karere*, 15 March 1860, p 6.

several other chiefs, as the rūnanga of Ngāti Maniapoto who had been present. He went on:

The conclave of chiefs did not act hastily. Two delegates, Raureti te Huia Paiaka (father of the narrator) and Pahata te Kiore, were despatched to Taranaki by the *runanga* to investigate the dispute and its causes. Their inquiries satisfied them that Wiremu Kingi's cause was just. 'My father and Pahata', said Te Huia Raureti, 'came to a decision adverse to Ihaia te Kirikumara, the Government adherent, because he had taken sufficient *utu* for his personal wrongs (the seduction of his wife) by killing the offender, and there was no just cause (*take*) for parting with tribal lands in order further to involve Wiremu Kingi's people.'<sup>197</sup>

The explanation given by Te Huia is one of five recorded by Dr Parsonson, which deal with customary rights and contests that may have eluded Parris and Governor Browne. Three are from Pākehā sources and two by Māori, but all indicate that the sale of Waitara to the Government may have been, as Dr Parsonson put it, motivated less by a desire to come under the rule of the Government 'than with upholding the mana of their respective hapu, and that in the context of the ceaseless settler pressure for land at Waitara, their choice of land offers as a means to an end was not a surprising one.'<sup>198</sup>

One of the accounts cited by Dr Parsonson is from Edward Shortland:

It is a recognised mode of action among the Maori, if a chief has been treated with indignity by others of his own tribe, and no ready means of redress can be obtained, for the former to do some act which will bring trouble on the whole tribe. This mode of obtaining redress is termed 'whakahe,' and means putting the other in the wrong.'<sup>199</sup>

Shortland said he had been told by a Ngāti Hauā chief, Paora Te Ahuru, who fought in Taranaki, that this was why Te Teira offered to sell Waitara.<sup>200</sup>

Another account given to Cowan links the two:

A woman, Hariata, was the cause. She was the wife of Ihaia te Kiri-kumara, and because of her unfaithfulness Ihaia had her seducer, Rimene, killed . . . Because of the wrong done to him Ihaia sought for further revenge and sought compensation in land. The tribe would not agree to this, inasmuch as the offence had already been paid for sufficiently by the death of the man Rimene. Ihaia, however, would not listen to this agreement, and he joined with Teira and sold some of the land of Te Rangitaake to the Government in order to obtain compensation for the adultery of his wife.'<sup>201</sup>

197. Cowan, *The New Zealand Wars*, vol 1, pp 184–185 (doc A23, pp 322–323).

198. Wai 143 RO1, doc A3, pp 6–10; doc A23, pp 304–307.

199. Edward Shortland, *Maori Religion and Mythology*, p 101 (Wai 143 RO1, doc A3, p 6).

200. Wai 143 RO1, doc A3, p 6.

201. Cowan, *The New Zealand Wars*, vol 1, p 157.

Te Huia Raureti and Pou-patate Huihi sang a waiata for Cowan, lamenting those later killed in the Taranaki war at Māhoetahi. Composed by a Ngāti Maniapoto woman named Hokepera, it includes these lines:

Tenei taku poho e tuwhera kau nei, he wai kokiringa mo  
Kiri-kumara, te tangata whakanoho i te riri.  
Te kino, e—e—i!

See now my unprotected breast, naked to the spear of Kiri-kumara. 'Twas he who raised this storm of war. Alas! The evil of it!<sup>202</sup>

The implication of Te Huia's statement is that, because the offer of land was prompted by a prior, customary motivation, the Ngāti Maniapoto rangatira determined who was in the right according to customary terms. Dr Parsonson called it 'interesting' that these explanations were never mentioned by Robert Parris as motives for Te Teira or Ihaia to sell land. The killing of Rimene, which occurred towards the end of 1854, was not unknown to the New Plymouth settlers, who saw it as another example of increasing lawlessness. Police officer Henry Halse wrote to McLean that Ihaia had 'trampled upon the white man's law.'<sup>203</sup>

Ngāti Maniapoto then travelled to Ngāruawāhia to discuss the question with Pōtatau and the King's council.<sup>204</sup> The timing of this approach is unclear, whether in April or May 1860. What is clear though, is that from March to May the Kingitanga tribes carefully investigated the facts of the dispute and debated whether or not to assist Te Rangitāke. The Ngāruawāhia hui of April 1860 was briefly discussed in the previous section in respect of the Taranaki delegation. According to Buddle's description, the delegation arrived on 10 April and was made up of Te Ātiawa and Ngāti Ruanui people, 'accompanied by Ngatimaniapoto from Kawhia, Rangiaohia and Upper Waipa'. There were about 60 men from Taranaki in a total party of 150 or so, including women and children. According to Buddle several near relatives of these men had already been killed in fighting.<sup>205</sup>

Speakers at the hui included Tapihana of Ngāti Hikairo, Karaka Tomo Te Whakapo from Rangiaowhia, Wiremu Hikairo of Waikato, Paetai of Kihikihi, Te Wetini of Ngāti Hauā, Ta Karei of Kāwhia, Wiremu Te Ake of Ngāti Hikairo, Te Kihirini of Te Kanawa, and Hari of Ngāti Maniapoto (Kāwhia).<sup>206</sup> The speakers advanced a wide range of opinions on the question of support for Te Rangitāke. According to Thomas Buddle, Ngāti Maniapoto 'urged the Waikato tribes to take up Kingi's cause after meeting with the deputation from Taranaki'. Rewi Maniapoto, however, told TH Smith that 'nothing had yet been decided' at this

202. Cowan, *The New Zealand Wars*, vol 1, pp 199–200.

203. Halse to McLean, 9 December 1854, p 2, <http://mp.natlib.govt.nz/pdf/?id=1004134&format=largepdf&section=0>; Ann Parsonson, 'He Whenua te Utu', PhD thesis, p 283.

204. Cowan, *The New Zealand Wars*, vol 1, p 184.

205. Buddle, *The Maori King Movement*, pp 28–29.

206. Buddle, *The Maori King Movement*, pp 28–30.

time.<sup>207</sup> A group of about 100 Ngāti Maniapoto escorted the Taranaki delegation home after the hui, reportedly taking the King's flag with them.<sup>208</sup>

This did not mean that Ngāti Maniapoto or the other Kingitanga tribes had definitely decided to assist Te Rangitāke. King Pōtatau had not yet agreed to armed protection for Te Rangitāke (or the delegation), and he asked the Ngāti Maniapoto escort to go unarmed. There are different reports as to whether this injunction was obeyed, but the escorting group is said to have saved Robert Parris' life when the Taranaki people sought to kill him.<sup>209</sup> Dr O'Malley suggested that the escorting group may have included the men sent by the rūnanga at Hui Te Rangiora to determine whether Te Rangitāke was in the right, and that their investigation took place at this point.<sup>210</sup> Newspaper accounts at the time reported that they had 'no intention of doing more than "korero" with William King' – they did not intend to fight although 'if any fighting should take place whilst they were with Wi Kingi, they would certainly lend him their aid'.<sup>211</sup> The governor was careful to avoid any such occasion, issuing instructions to 'suspend active operations against Kingi, firstly on 20 April and again on 17 May, in the hope that in the absence of any active provocation the Kingitanga might be persuaded to remain at home'.<sup>212</sup>

A further Kingitanga hui took place on 21–28 May 1860, which was attended by Donald McLean, John Rogan (of the Native Land Purchase Department), Bishop Selwyn, Buddle, and other missionaries. According to Buddle's account, intervention in Taranaki was debated by Ngāti Hauā, Ngāti Hinatu (Hinetu?), Ngāti Apakura, and Ngāti Maniapoto, who met on 21 May 1860 to 'deliberate the question of peace or war'.<sup>213</sup> More tribes arrived subsequently and the matter was further debated by tribal leaders of the Waikato and Te Rohe Pōtae on a number of occasions during the hui. The governor was criticised for attacking without a prior investigation, appearing to set Christianity aside in doing so, and some held that Te Rangitāke was clearly in the right (both in terms of customary authority at Waitara and in his response to the governor's attack). Marr observed 'the well known symbolism of the use of sticks and flax to represent God, the Governor, and the Maori King, with all three bound together in love by a rope of flax'. When Taranaki was being discussed, the rope was sometimes cut 'to indicate concerns that the Governor was acting unjustly or upsetting this arrangement'.<sup>214</sup>

Some leaders maintained that a further investigation was needed to determine who was in the right. Others were concerned about whether the money for the purchase had all been paid by the governor (thereby completing the purchase)

207. Document A23, p 325.

208. Document A23, pp 326–327.

209. Document A23, pp 326–327; Buddle, *The Maori King Movement*, pp 33–34.

210. Document A23, p 325.

211. *New Zealander*, 16 May 1860 (doc A23, p 327).

212. Document A23, p 330; Belich, *The New Zealand Wars*, p 90.

213. Buddle, *The Maori King Movement*, p 36.

214. Document A78 (Marr), p 49; For Buddle's report of the speeches, see *The Maori King Movement*, pp 36–39, 41–57.

before the King's flag arrived at Waitara.<sup>215</sup> Donald McLean reported to Browne that the 'upper Waikato' leaders held such concerns. They

expressed discontent with the Governor for not consulting Potatau and the Waikato native assessors before he declared war; and said the land sold at Waitara would be held by them, conjointly with Wiremu Kingi, if the sale had taken place since the king's flag was sent there, or if he could establish a title; but if not, and his title proved defective, it should be handed over to the Governor.<sup>216</sup>

It is likely that this May 1860 'runanga', said to have attracted 3,000 people,<sup>217</sup> is the occasion on which King Pōtatau agreed to Ngāti Maniapoto going to fight in Taranaki (it is possible that the decision had been taken at the April hui in Ngāruawāhia).<sup>218</sup> For this, we have Te Huia Raureti's account to Cowan, referred to above. Returning from their investigation in Taranaki, Cowan wrote, Raureti Te Huia Paiaka and Pahata Te Kiore reported back to the rūnanga in Kihikihi. After the rūnanga had considered their report:

Rewi Maniapoto then went down to Ngaruawahia to lay the matter before King Potatau and his council. He requested the King to consent to a war-party of Ngāti-Maniapoto marching to Taranaki in order to assist the Atiawa. The proposal was assented to. The old King delivered his command to the assembly of chiefs in these words: '*Ngāti-Maniapoto, haere hei kai ma nga manu o te rangi. Ko koe, e Waikato, ko Pekehawani taku rohe, kaua e takahia.*' ('Ngāti-Maniapoto, go you as food for the birds of the air. As for you, Waikato, Pekehawani [meaning the Pūniu River] is my boundary, do not trespass upon it!')<sup>219</sup>

According to Harold Maniapoto's account, the King's consent to Ngāti Maniapoto was couched in more generous terms, citing private papers in the Te Whiwhi Maniapoto collection:

The Runanga of Hui Te Rangiora in 1860 moved to support Wiremu Kingi and his Te Atiawa people in the defence of their homelands in Taranaki and sent a contingent under Manga and others to Waitara to assist them under the parting words of Te Wherowhero the first king.

'*Haere Maniapoto he kai mo nga manu o te rangi. Ma taku aroha koutou hei hari, ma taku aroha koutou hei whakahoki mai.*' (Go Maniapoto, as food for the carrion of the sky. Let my compassion safely take you, and let my compassion also bring you (safely) home.)<sup>220</sup>

215. Buddle, *The Maori King Movement*, pp 54–57.

216. McLean to Browne, 31 May 1860 (doc A23, p 329).

217. Buddle, *The Maori King Movement*, p 53.

218. For a contrary view, see document A110, pp 516–517, which dates the King's injunction to the April hui.

219. Cowan, *The New Zealand Wars*, vol 1, pp 184–185 (doc A23, pp 322–323).

220. Document K35 (Maniapoto), p 19.

From these Ngāti Maniapoto sources, King Pōtatau consented to sending armed assistance to Taranaki, although he apparently prohibited Waikato iwi from joining Ngāti Maniapoto. This prohibition was either lifted soon after or of limited effect. Dr O'Malley concluded:

any check on Waikato proper involvement in the war was no more than temporary, while it was believed that Rewi would have gone to Taranaki with or without the King's sanction. Nevertheless, the fact that an investigation had been conducted, a runanga held to discuss the findings and a request put before the King all suggest that there was no impetuous or fanatical rush to join the fight. Ngāti Maniapoto carefully investigated the matter, weighing up and deliberating on the evidence available to them before determining the justice of Wiremu Kingi's position.<sup>221</sup>

At the latest, the prohibition on Waikato involvement had been lifted by 1 December 1860. King Pōtatau died in June 1860. On 1 December, King Matutaera (later renamed Tāwhiao), Tamihana, and other rangatira issued a 'lengthy written statement of laws or regulations.'<sup>222</sup> This statement of the Kingitanga's laws indicated that there was 'nothing wrong with our fighting there [Taranaki], because that place is open, in these times as a fighting place for Maori and Pakeha.'<sup>223</sup> The implication was that it was the governor who had opened Taranaki as a place for fighting, not Māori. Professor Ward suggested that this was a reluctant and disapproving acceptance.<sup>224</sup> This may have been true for Wiremu Tamihana. There does, however, seem to have been a broad consensus in favour of intervention although each iwi made its own decision about whether or not to go and fight (as discussed above in the cases of Ngāti Maniapoto and Ngāti Hauā.

Professor Belich calculated:

In sum, though 800 was the probable peak at the scene of action at any one time, it is difficult to believe that less than 1,200 different Waikato warriors fought in Taranaki, at one time or another, and 1,500 seems more likely. This probably represented between a third and a half of the total strength of the Waikato or 'core' Kingite tribes.

Clearly, Kingite commitment to the war was by no means so circumscribed as is sometimes supposed . . .<sup>225</sup>

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221. Document A23, p 323.

222. Ward, 'A "Savage War of Peace"?', p 86. In August 1864, King Matutaera went to Taranaki to consult with Te Ua Haumene, the Pai Marire prophet. Te Ua anointed the King and gave him the name Tāwhiao (Encircle the World): Stokes, *Wiremu Tamihana*, p 407.

223. 'Rules drawn up by Tawhiao and Tamihana', 1 December 1860 (Ward, 'A "Savage War of Peace"?', p 86).

224. Ward, 'A "Savage War of Peace"?', p 86.

225. Belich, *The New Zealand Wars*, p 103.

The point here is that a broad consensus must have been reached among the Kingitanga tribes for these kinds of numbers to have been committed. Professor Belich commented:

A third or a half of the warriors of Waikato can scarcely be considered an extremist minority, and the rest did not necessarily remain at home because they were unwilling to fight. They may equally well have done so because greater numbers could not be maintained.<sup>226</sup>

So far, we have considered the importance of the placing of Waitara under the authority and protection of the King, and of the careful investigation by Ngāti Maniapoto and the Kingitanga leadership more generally to ascertain who was acting correctly in terms of Māori law and customary rights at Waitara: Te Teira or Te Rangitāke; and Te Rangitāke or the governor? In both cases, it seems that the decisive answer was Te Rangitāke, hence the sending of the King's flag to Waitara was followed up by more active assistance, including armed support. But these were not the only imperatives causing Te Rohe Pōtae and other Kingitanga leaders to intervene. We turn next to consider the kinship and other customary obligations which played an important part in their decisions.

#### 6.4.2.2.2 CUSTOMARY KINSHIP OBLIGATIONS

In his explanation to the governor in 1861, Wiremu Tamihana emphasised the crucial importance of customary obligations in the decision to intervene at Taranaki.<sup>227</sup> These obligations took two forms:

- ▶ kin relationships with various Taranaki rangatira and their hapū; and
- ▶ King Pōtatau's obligations in a situation where Waikato iwi had allowed people to return to Taranaki to resume their traditional homes, and Pōtatau himself had been instrumental in bringing Te Rangitāke and his people back to Waitara from Waikanae.

We consider the significance of the second point in the next section. Here, we note Tamihana's explanation to Browne that one of the 'grounds for Waikato's going' was 'because of their relations, Rauakitua, Tautara and Ngatata.'<sup>228</sup> Gorst quoted Tamihana as stating that 'blood relationship would have driven them to it had there been no flag.'<sup>229</sup> Gorst provided no details, simply stating that Tamihana had 'particularized the relationship between some of the leading Waikatos who had gone to Taranaki and Wi Kingi.'<sup>230</sup>

226. Belich, *The New Zealand Wars*, p 104.

227. Wiremu Tamihana to Browne, not dated (Stokes, *Wiremu Tamihana*, pp 212–222).

228. Wiremu Tamihana to Browne, not dated (Stokes, *Wiremu Tamihana*, p 221). Rauakitua is said to have escorted Pehi Tūkorehu and the Te Amiowhenua taua to safety in Pukerangiora pā in 1821–1822: Angela Ballara, *Taua: 'Musket Wars', 'Land Wars' or Tikanga? Warfare in Māori Society in the Early Nineteenth Century* (Wellington: Penguin Books, 2003), p 323.

229. Gorst, *The Maori King*, 1864 (Stokes, *Wiremu Tamihana*, p 225).

230. Gorst, *The Maori King*, 1864 (Stokes, *Wiremu Tamihana*, p 225).

Evidence presented by claimants in this inquiry has also emphasised enduring and close relationships and efforts to ensure unity and peace.<sup>231</sup> Dr Thomas pointed out that interconnection, such as by inter-hapū marriage and whāngai, remained intrinsic to relationships between Taranaki and Maniapoto people. '[W]hile reading an account based largely on European written sources,' Dr Thomas said, 'it is important to keep in mind the traditions of claimants, which suggest a much more complex and fluid picture.'<sup>232</sup> But written sources also contain evidence of interconnection.

The daughter of Wekipiri Wharo of Mōkau married Henare Te Puni, son of Te Ātiawa rangatira Honiana Te Puni. Henare Te Puni had been sent back to Taranaki in about 1840 by his father, to assist New Zealand Company efforts to acquire land. Mr Stirling noted that another member of the Te Puni whānau, Tamihana, spent three years at Mōkau with the missionary Cort H Schnackenberg.<sup>233</sup> In 1846 McLean referred in his diary to 'one of the Waikato chiefs living at Waitara' and in 1848 to many 'Waikato' men living in Taranaki with Te Ātiawa wives. One of these would have been Peketahi of Ngāti Maniapoto, who, Riwai Te Ahu of Te Ātiawa stated, lived at Waitara with his Te Ātiawa wife.<sup>234</sup>

In 1855, discussing a dispute over land between New Plymouth and Waitara, Henry Turton wrote that Mōkau people 'have a direct interest in the question, from being nearly related, both by birth and marriage to the head family of the Puketapu.'<sup>235</sup>

Hone Pumipi, also of Mōkau, was sent by Ngāti Tama to warn the inhabitants of Ngā Motu of impending attack by Ngāti Maniapoto, during the fighting of the 1830s. He was related to Ngāti Tama and Te Ātiawa, but also Ngāti Maniapoto. According to Mr Stirling, Pumipi had strong links to Taranaki:

The Ngamotu rangatira Poharama told the Spain Commission in 1844 that Pumipi was one of those absentees with interests at Ngamotu. In 1850 it was reported that 200 Ngāti Maniapoto were at Tongaporutu en route to Taranaki for the uhunga for Purangi, the mother of Pumipi. She would thus seem to be of Taranaki and was perhaps to be buried there.

But Pumipi lived and fought with Kāwhia and Mōkau hapū:

On his death in 1897 his mere pounamu was broken by his kin and cast into a deep hole in the Mokau River, near the south head, 'for it was considered that none were worthy to use the weapon after Pumipi's death'. This indicates his close ties to Mokau, while other sources show he was living at Kawhia in the 1850s with other

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231. See, for example, Larry Crowe, transcript 4.1.5, p 196 (Ngā Kōrero Tuku Iho hui, Maniaroa Marae, Mōkau); doc A147 (Stirling), pp 4–10.

232. Document A28, p 20.

233. Document A147(b), pp 7–8.

234. Document A147(b), p 16–19.

235. Document A147(b), p 8, Turton journal, in *Taranaki Herald*, 1 August 1855, p 3.



Ngati Maniapoto rangatira (such as Tuhoro and Eketone), and in 1860 he led a Ngati Maniapoto taua involved in fighting at Taranaki before returning to Kawhia.<sup>236</sup>

Also of note is John White's remark that Te Rangitāke was related to Tainui through Ngāti Toa.<sup>237</sup>

Links between Te Ātiawa and Ngāti Maniapoto did not end with the Taranaki raupatu. In 1867, the daughter of the Mōkau-based Ngāti Maniapoto rangatira Tikaokao married Eruera, son of Rawiri Rauponga of Waitara. This union was later described by civil commissioner Robert Parris as 'a peace offering'.<sup>238</sup> Harold Maniapoto also pointed out that Te Rangitāke later 'reciprocated and provided assistance' to Rewi Maniapoto.<sup>239</sup>

Thus, in terms of Te Rohe Pōtae groups and leaders, there is evidence which supports Tamihana's explanation that kin relationships played a role in the decision to provide armed assistance to Taranaki kin when attacked by the Crown in 1860. While this explanation is less evident in the written sources about the war, its importance should not be discounted. In addition to kin relationships, there was a complex history of intervention by Ngāti Maniapoto in neighbouring Taranaki affairs prior to 1860, sometimes encouraged by the Crown. This also played a role in the events of 1860, and we turn to that issue next.

#### 6.4.2.3 *Strategic considerations*

A number of claimant witnesses emphasised the importance of protecting Ngāti Maniapoto's 'southern-most lands'<sup>240</sup> or 'southern boundaries'<sup>241</sup> as a reason for intervention.

According to the claimants' evidence, those interests were of two kinds: in the Poutama district, from Mōkau south to about Pukearuhe; and 'less well-defined' interests further south of that which have never been formally investigated.<sup>242</sup> At the outset, we acknowledge that we did not hear from Ngāti Tama or indeed any other iwi and hapū with interests in this region aside from Ngāti Maniapoto. For our purposes here, what is important is the role that Ngāti Maniapoto played in Taranaki affairs up to the late 1850s, and the Crown's acceptance or even encouragement of that role. We examine the extent of the interests claimed when we discuss confiscation (section 6.9).

Thomas Te Whiwhi Maniapoto told us:

Our kōrero is that Ngāti Paretekawa and other Ngāti Maniapoto went around 1863 to Taranaki to fight at Waitara and in the region of the Bell block. They went to join their relations, but above all they went to protect their southern boundaries.

236. Document A147(b), pp 8–9.

237. Document A23, p 353.

238. Parris to Native Minister, 19 May 1870 (doc A147(b), pp 6–7).

239. Document K35, p 20.

240. Document K23 (McDonald), p 13.

241. Document K15 (Maniapoto), pp 5–6, 19–20.

242. Document A147(b), pp 4–10.

They assisted with the Taranaki iwi as they saw the Crown was attacking in the region where the Taranaki and Maniapoto iwi meet. They saw an attack that would spread into their lands. This was the ‘thin edge of the wedge’.

Rewi Maniapoto and his cousin Te Huia Raureti were there. Raureti’s father Paiaka Raureti was killed in one of the battles and has been buried in a communal grave in Patea.<sup>243</sup>

Kāwhia Te Murāhi made a similar point:

It was unacceptable from a strategic perspective to allow a threat to the southern door to go unchallenged. An aggressive defensive posture was required and that resulted in a decision to check the advance of the settlers into North Taranaki by way of armed support of Te Rangitaake whose take had been found to be a legitimate one.<sup>244</sup>

Harold Maniapoto also gave evidence about the decision to fight in Taranaki:

Ngāti Paretekawa and Ngāti Maniapoto had no choice but to resort to defensive strategies to protect its interests and those of its kin. The Runanga of Hui Te Rangiora in 1860 moved to support Wiremu Kingi and his Te Atiawa people in the defence of their homelands in Taranaki and sent a contingent under Manga [Rewi Maniapoto] and others to Waitara to assist them under the parting words of Te Wherowhero the first king . . .<sup>245</sup>

We also note the evidence of Morehu McDonald:

It was important for Rewi and the Kingitanga to become engaged in Taranaki because of the proximity of Kingi’s tribe, Te Atiawa, to Rewi’s tribe. If Kingi and Te Atiawa were to fall, the southern-most Ngāti Maniapoto lands would be endangered. To have ignored Kingi in his struggle against the settlers would have left Rewi isolated and without allies when it was his turn to face the brunt of European expansion. Furthermore, Te Atiawa’s pleas for assistance gave Rewi the opportunity to work to preserve the collective security of his own territory by containing the spread of colonialism in Taranaki.<sup>246</sup>

In chapter 2, we described how, by 1840, as a consequence of repeated Waikato–Maniapoto incursions (section 2.5.2.8), most of the former inhabitants of the northern Taranaki coast had either retreated south or been taken north. To assess the importance of Ngāti Maniapoto involvement in the lands south of Mōkau to

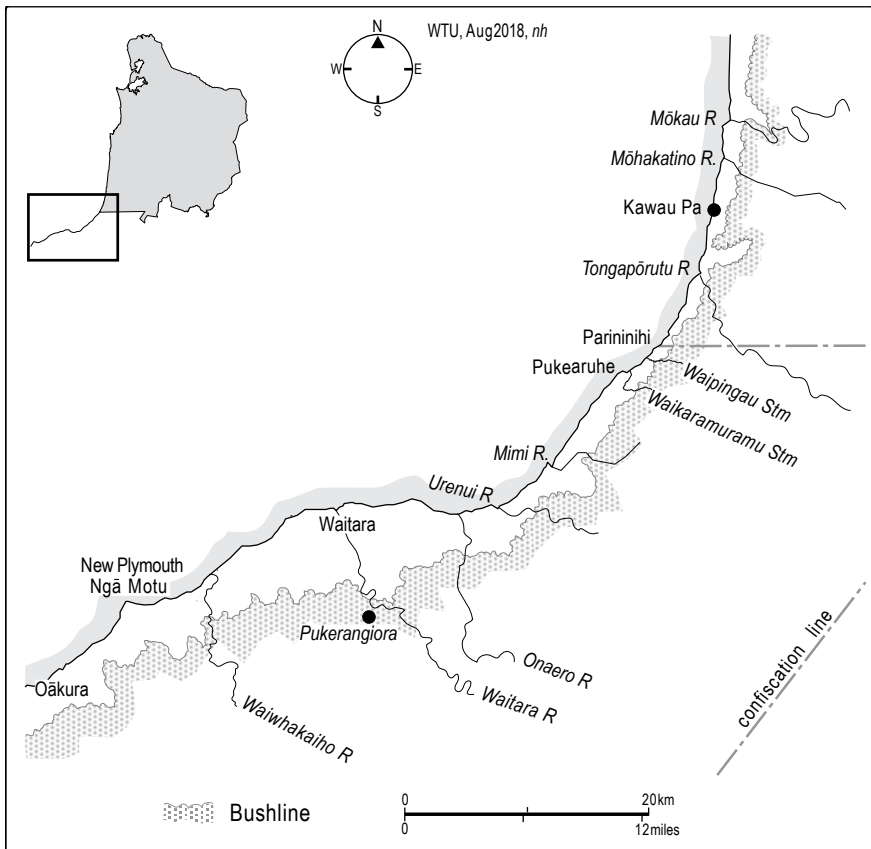
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243. Document K15, pp 5–6.

244. Document K29 (Te Muraahi), p 10.

245. Document K35, p 19.

246. Document K23, p 13. See also document K23(a), pp 92–105.



Map 6.1: The northern Taranaki and Poutama coast

their decision to intervene at Waitara, it is necessary to briefly review the relevant events over the following 20 years.

In the 1840s, some Ngāti Maniapoto leaders were involved in early attempted purchases of land in the district. These included the New Zealand Company's supposed purchases of much of northern Taranaki in February 1840. Bruce Stirling argued that a 'substantial share' of the New Zealand Company's payment made its way to Ngāti Maniapoto.<sup>247</sup> Meanwhile, former Wesleyan missionary William White arranged a 'purchase' of the land between the Whanganui and Mōkau Rivers on 28 January 1840, from Waikato–Maniapoto rangatira at Kāwhia. Historian Paul Thomas argued that the arrangement constituted 'a new form of tribal rivalry', but

247. Document A147(b), p.11. Stirling said Poharama, a 'Ngamotu man' was at Kāwhia when he received a share of the company's payment, thus it could only have come from Maniapoto).

said those who signed would never seriously have imagined it ended their tribe's connection with the land.<sup>248</sup>

In January 1842, Governor Hobson purported to purchase whatever interests Te Wherowhero and Waikato peoples had in Taranaki by a payment of £150, two horses, two saddles, two bridles, and 100 blankets.<sup>249</sup> In April, Hobson visited Kāwhia. There, Governor Browne later recorded, Hobson met Ngāti Maniapoto rangatira and told them of his agreement with Te Wherowhero. Hobson consented to Ngāti Maniapoto occupying land within the boundary of the agreement as far south as Urenui, so long as they did not intrude upon the 'English boundary' of the New Plymouth settlers.<sup>250</sup> In Dr O'Malley's view, 'Browne's statement constitutes important official recognition that whatever interests Ngāti Maniapoto may have had in Taranaki had never been formally acquired by the Crown.'<sup>251</sup> When Protector of Aborigines Thomas Forsaith visited Kāwhia in 1844, Ngāti Maniapoto left him in no doubt that they regarded the land as far south as Urenui as being theirs 'by right of conquest and some part of it by possession' and that 'Te Wherowhero had a perfect right to sell his own or his tribe's interest, but not ours.' They continued: 'we might insist on our right to a payment equal to Te Wherowhero, but we are not so very anxious about that; we want Europeans.'<sup>252</sup>

Many Ngāti Tama and Te Ātiawa returned during the 1840s – both those who had been taken north to Waikato or Te Rohe Pōtae, and those who had migrated south during the 1830s. The chiefs of Kāwhia and Ngāti Maniapoto explained to Forsaith: 'We sent the present occupants of Taranaki home to the land of their fathers; we did so from Christian principles.'<sup>253</sup> Dr Parsonson considered that it was clear, from missionary John Whiteley's reports of his discussions with Kāwhia rangatira, 'that they regarded the taurekareka as representatives of their own claims at Taranaki.'<sup>254</sup> By contrast, and as later noted by McLean, those like Wiremu Kīngi Te Rangitāke who had retreated south to the Kapiti district in the early 1830s were viewed with disdain. Taonui Hikaka, the great Ngāti Maniapoto rangatira of the upper Mōkau, warned that 'when the bird once deserts its nest, it never again returns to it.'<sup>255</sup>

That view softened in the late 1840s. Mr Stirling and Mr Thomas cited accounts that suggested Wiremu Nera Te Awaitaia of Ngāti Mahanga and Te Wherowhero endorsed the return of Taranaki exiles from the south.<sup>256</sup> In April 1848, a tense and lengthy hui took place at Pukearuhe, where Te Ātiawa led by Wiremu Kīngi

248. Document A28, p 26.

249. Document A23, p 98.

250. Browne to Colonial Secretary, 4 December 1860, Turton (comp.), *Epitome, F. – On the Tenure of Native Lands*, p 33 (doc A23, p 100).

251. Document A23, p 101, also pp 102–103.

252. Document A147(b), p 14; doc A23 [O'Malley], p 102.

253. Document A28, pp 61–62.

254. Parsonson, 'He Whenua Te Utu', p 236; doc A22, pp 629–630.

255. Donald McLean, draft letter, 22 January 1848, McLean papers, MS-papers-0032-0123, ATL (doc A23, p 115).

256. Document A147(b), pp 27–28; doc A28, pp 61–62. Ngāti Tama later argued to the Native Land Court that their mana over Poutama was restored by Te Wherowhero's invitation to return.

were hosted by Takerei Waitara and other Ngāti Maniapoto. The result of weeks of debate, according to later Ngāti Maniapoto accounts, was that a border was established between Taranaki and Ngāti Maniapoto hapū at Waikaramuramu.<sup>257</sup> In December 1848, around a dozen of the first Te Ātiawa to return from Waikanae were reported to be felling timber and clearing land near New Plymouth with 25 Ngāti Maniapoto, supervised by Mōkau rangatira Waitara, Te Kaka, and Te Kaharoa.<sup>258</sup> This agreement did not mean that Ngāti Maniapoto relinquished all interests south of the new border. Taonui and others made ‘sporadic’ offers during the 1850s to sell to the Crown the land south of Pukearuhe as far as Waitara (as did Taranaki Māori to the lands north, to Mōkau). In Mr Thomas’s view, ‘primarily, these would seem to have been inter-tribal assertions of rights over the disputed land.’<sup>259</sup>

In 1856, the Mōkau rangatira Tikaokao, Ngatawa (Te Kaka), Takerei, and Wetini heard that Ngāti Tama and Ngāti Mutunga at the Chatham Islands were offering to sell land on the Poutama coast between Parininihi and Mōkau. They wrote to Governor Browne and Donald McLean: ‘Now, listen both of you . . . we do not agree to this boundary being given at Mokau. Take note, Poutama and Parininihi are not to be taken, our boundary is at Waikaramuramu, for it is a Red Sea for us, and for ever and ever and ever.’<sup>260</sup>

The Red Sea analogy was drawn, of course, from Exodus 14, and echoed what the chiefs of Kāwhia and Ngāti Maniapoto told Forsaith in 1844: ‘We sent the present occupants of Taranaki home to the land of their fathers; we did so from the influence of Christian principles.’<sup>261</sup> It would be repeated by Wētere Te Rerenga in his 1882 evidence to the Native Land Court. He added: ‘Our land extended to Paritutu [in New Plymouth], but we gave the land back as far as Waikaramuramu.’<sup>262</sup>

Despite the setting of the ‘Red Sea’ boundary, evidence already reviewed makes it clear that some Ngāti Maniapoto continued living further south, often taking wives from the returning tribes. In short, the ‘Red Sea’ line was in practice more a traditional ‘soft’ boundary than a ‘hard’ European-style one.

South of Waitara two decades of civil strife followed Hobson’s efforts to secure land for New Plymouth settlers in the early 1840s, as the Crown attempted to purchase land in the face of determined resistance from the returned Te Ātiawa leaders.<sup>263</sup> Both Dr O’Malley and Mr Stirling provided evidence that settlers and Crown officials looked to Ngāti Maniapoto and Waikato leaders to help maintain order in the New Plymouth settlement, especially during protracted disputes among groups of Te Ātiawa and Ngāti Ruanui (often the result of land purchase

257. Document A28, p 62, see also pp 71–75.

258. Document A147(b), pp 27–28.

259. Document A28, p 69.

260. Te Motutapu Te Karoa, Tikaokao, Ngatawa Te Kaka, Takerei, and Te Wetini, Mokau, to Governor and McLean, 26 December 1856 (doc A147(b), p 29).

261. Forsaith to Fitzroy, 22 October 1844 (doc A23, p 103).

262. Evidence of Wētere Te Rerenga Takerei, 6 June 1882, 8 June 1882, Mokau-Waitara MLC Minute Book, no 1, in document A28(a) [Thomas supporting papers], vol 2, pp 433, 437.

263. See Waitangi Tribunal, *The Taranaki Report*, chapter 2.

negotiations). In 1854, McLean praised the influence of Te Awaitaia, who warned Taranaki Māori he would come to the defence of settlers if they were threatened. The following year, the presence of Tikaokao and Te Kaka from Mōkau prevented gunfire during the siege of Ninia pā west of Waitara. Wesleyan missionary Henry Turton wrote of the Mōkau Ngāti Maniapoto that ‘it is not in the *number*, so much as in the *name*, that our security consists’ (emphasis in original).<sup>264</sup> The influence and reputation of Ngāti Maniapoto served as a powerful reassurance for Europeans in a potentially unstable region. Then, in August 1859, five months after Te Teira offered to sell the governor the Pekapeka block at Waitara, what Mr Stirling described as a ‘formal peace-making between the Taranaki disputants’ was witnessed at Waiwhakaiho (New Plymouth) by Tikaokao, Wetini, and 400 Ngāti Maniapoto.<sup>265</sup>

Dr O’Malley concluded:

Subsequent [post-1844] attempts to purchase further land at Taranaki for the settlers proved contentious, provoking conflicts between different Te Atiawa hapū. But the Ngāti Maniapoto and Waikato tribes continued to take a keen interest in events at Taranaki, and Crown officials sometimes found it convenient to call upon their assistance in the district. Ngāti Maniapoto had (with the full support and blessing of the government) played such a role as late as 1858, though when they did so again two years later at Waitara they were accused of brazenly interfering in a district and in a matter that was of no concern to them. The apparent double standard in this instance arose from the fact that they had aligned themselves with those disputing the government’s purported purchase of Waitara lands.<sup>266</sup>

The evidence is clear that Ngāti Maniapoto maintained their involvement in northern Taranaki after 1840 and continued to assert interests there. Crown officials knew this. But, considering there were greater advantages to be gained from encouraging European settlement, the Mōkau Ngāti Maniapoto rangatira in particular acted strategically to prefer a peaceful return, according to tikanga, of the people they had driven away.

The Crown’s efforts to purchase land at Mōkau in the 1850s provide further important context to explaining Ngāti Maniapoto involvement in the Waitara conflict. As we discussed in chapter 5, by the end of the decade the Crown’s efforts to purchase land at Mōkau–Awakino had stalled amidst disquiet at the shortcomings of the process employed by officials and the lack of European settlement. The most prominent European at Mōkau, the missionary Schnackenberg, left with his family in 1858.<sup>267</sup> Although we lack definitive evidence on this point, we consider it probable that for Ngāti Maniapoto the Crown’s actions at Mōkau would have had

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264. Document A23, pp121–122; doc A147(b), pp30–31; Turton’s Journal in *Lyttelton Times*, 26 September 1855, p 5.

265. Document A147(b), p 31; ‘Taranaki’, *Te Karere*, 30 September 1859, p 2.

266. Document A23(c), p 5.

267. Document A28, p 131.

a bearing on their decision to intervene at Waitara. The governor's willingness to enforce a disputed minority sale by using the British army, and in the face of opposition from such a senior rangatira as Te Rangitāke, must have been very worrying.

Although by no means all Mōkau Māori supported Taonui and the inland Mōkau rangatira who led opposition to land sales, the apparently unstoppable nature of colonisation and excessive Māori land loss were important reasons for the establishment of the Kingitanga. Missionary John Morgan observed that even those he characterised as 'moderate' wanted no more land purchases 'within the boundaries of the Maori King'. The 'extreme Maori King party', he wrote, 'are opposed to any land at Waitara or at any other place (however clear Teira's title or the title of any other chief may be to his land) being sold to the Government.'<sup>268</sup> This kind of observation took no account of Ngāti Maniapoto's own history of involvement in the lands around Waitara and northern Taranaki more generally.

The prospect of a road being built from New Plymouth to Mōkau underlined the concerns about self-defence which the Taranaki war created for the residents of northern Taranaki. Mōkau was a major communication route, providing inland Ngāti Maniapoto access to the coast.<sup>269</sup> Some Mōkau chiefs had supported the building of the road (through Poutama) before the war, based (in Thomas's view) 'on the desire for economic development and improved access to markets.'<sup>270</sup> In December 1859, Robert Parris reported that Mōkau rangatira had agreed to the construction of part of the road, on which their people would work. But the outbreak of war on their doorstep in 1860 transformed their view of what such a road might mean. Not all Mōkau chiefs supported the Kingitanga by any means, but Pukearuhe became the crucial path for 'transporting men and resources to the fight'. Mōkau was used as a staging area throughout the Taranaki war. Tikaokao and others took an active part in the fighting, while some Mōkau chiefs remained neutral and continued to trade with the settlers at New Plymouth.<sup>271</sup> As a result of the Crown's attack on Waitara and the outbreak of war in Taranaki, the need to defend Mōkau in its own right and as an access route to Te Rohe Pōtae and the Waikato became a key consideration:

For good reason, roads were now seen by at least some Mokau Maori as more of a military threat than a practical advantage. While the Government's 1859 plans to build roads and a tunnel through Parininihi had been stalled, Tikaokao in 1862 issued a warning that the Governor was planning roads stretching north from Waitara into Mokau to assist a possible military campaign. He instructed Hakari, a Mokau chief at Pukearuhe, to stop all Pakeha 'who may come up that way, and turn them back, as they may be surveying the line of a new road.' Schnackenberg, visiting Mokau in April

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268. Morgan to Browne, 8 May 1860 (doc A23, p 328).

269. Document A28, p 12.

270. Document A28, p 136.

271. Document A28, pp 138–142.

1863 as war resumed in the south, found ‘a good deal of sympathy’ for Wiremu Kingi’s faction of Taranaki.<sup>272</sup>

Dr O’Malley’s research indicated that ‘geographical proximity and other strategic considerations’ reinforced the point that Ngāti Maniapoto were ‘vitaly interested . . . on a number of levels, including the[ir] long history of involvement in Taranaki, shared whakapapa and other connections.’<sup>273</sup> To this, we would add that ongoing Te Rohe Pōtae Māori involvement in Taranaki had been frequently encouraged by the Crown. That involvement underpinned claims to customary rights south of Mōkau.

Governor Grey noted in April 1863 that Māori viewed the Taranaki war as a ‘struggle for house and home’, regardless of where those houses and homes were actually located.<sup>274</sup> He explained:

the almost universal belief of the Native race was, that a new system of taking lands was to be established, and that if they did not succeed by a general and combined resistance in preventing their houses and lands being taken by the Government from the Natives of the Waitara, they would have been each in their turn despoiled in detail of their lands.<sup>275</sup>

This important observation by the governor of the colony was clearly relevant to the tribes of Te Rohe Pōtae and their decision to assist Te Rangitāke at Waitara.

Having discussed the various causes of intervention, we will next discuss the forms that intervention took, focusing on the loss of life for Te Rohe Pōtae Māori in the various engagements which took place, and on the peace-making initiative in 1861.

#### **6.4.2.4 Military assistance to Te Ātiawa in Taranaki, 1860–61**

##### **6.4.2.4.1 PUKETAKAUERE**

Waikato parties from the north, led by Ngāti Maniapoto rangatira Epiha Tokohihi, took part in their first significant engagement against Crown soldiers at the end of June 1860. Puketakauere and its neighbouring pā Onuku-kaitara lay on Te Ātiawa territory, two kilometres inland from where the British had established a military camp on the Pekapeka block. They were strengthened during the cessation in hostilities ordered by Browne after 20 April 1860. A British scouting party approached the pā and was fired on – an incident that some contemporaries and historians thought was deliberately engineered by the British as justification for a resumption of hostilities.<sup>276</sup>

272. Schnackenberg letter, 9 April 1863 (doc A28, p142).

273. Document A23, p323.

274. Grey, ‘Memorandum by His Excellency stating reasons for abandoning Waitara Purchase’, 22 April 1863 (doc A23, p440).

275. Grey, ‘Memorandum by His Excellency stating reasons for abandoning Waitara Purchase’, 22 April 1863, AJHR, 1863, E-2E2, p8.

276. Belich, *The New Zealand Wars*, p92.



Major Thomas Nelson launched an ill-fated attack on 27 June. The result was disastrous for the British: 30 troops were killed and 34 wounded, or 18 per cent of the 350-strong force. Some of the wounded were left on the field. Just five Māori defenders appear to have been killed. While Ngāti Maniapoto were prominent in some of the fiercest fighting, Tāmati Ngāpora later told the governor that ‘the number of Waikatos, exclusive of men from Kawhia, was only 140, and that of that party not one was killed.’<sup>277</sup> J C Richmond reported ‘Tuma of Waikato’ among the five dead, and that 12 were wounded.<sup>278</sup> James Cowan recorded that Pahata Te Kiore, who had been sent from Hui Te Rangiora to determine the facts of the dispute, was killed at Puketakauere.<sup>279</sup>

#### 6.4.2.4.1 MĀHOETAHI, HUIRANGI, REDOUBT 3, TE ĀREI

Many of the northerners who had assisted the defence of the pā at Puketakauere returned to their homes in late August 1860 to plant crops for the coming summer. In October, John Morgan wrote to Browne from Ōtāwhao that Rewi Maniapoto had left for Taranaki; he claimed that between 500 and 1,000 men would soon join Rewi. Cowan wrote that, after the death of Pōtatau, the interdiction on those north of the Pūniu travelling to fight in Taranaki began to be disregarded. Among the ‘Waikato’ hapū and iwi said to have gone to Taranaki were Ngāti Maniapoto, Ngāti Hikairo, Ngāti Hinetu, Ngāti Apakura, Raukawa, Ngāti Mahuta, Te Patuhoko, Ngāti Ruru, Ngāti Hauā, Ngāti Ngamuri, Ngāti Koroki, Ngāti Koura, Ngāti Kahukura, and Te Urikopi.<sup>280</sup>

Ngāti Hauā rangatira Te Wetini Taiporutu, with perhaps 150 men, occupied an old pā site at Māhoetahi near the road between New Plymouth and the military camp at Waitara. Te Wetini sent what the new British commander Major-General Thomas Pratt called an ‘insulting letter’ (Cowan, later, said it was a chivalrous challenge): ‘Fish fight at sea – come inland and stand on our feet’. On 6 November, Pratt took 670 troops from New Plymouth and forced Te Wetini east into swampland; reinforcements from Camp Waitara then put the Māori ‘betwixt two fires’, Robert Parris reported, and forced a retreat inland to a pā at Huirangi near the bush edge. British losses were four dead and 16 wounded; six prisoners were taken. While Pratt claimed as many as 100 Māori were killed, Parris listed 31 dead in his report, including Te Wetini, Wharangi of Ngāti Apakura, and Hakopa of Ngāti Koura. These three rangatira were taken to New Plymouth and buried at St Mary’s church; the others were interred in a mass grave at Māhoetahi. These were unlikely to have been the only casualties: the *Taranaki Herald* reported that three prisoners died of their wounds and a further 11 bodies were found in the

277. Memorandum of Ngapora statement, Purchas to Browne, 27 September 1860, BPP, 1861, vol 41 [2798], p 150 (IUP, vol 12).

278. J C Richmond to CW Richmond, 2 July 1860 (Scholefield, *The Richmond-Atkinson Papers*, vol 1, p 607); see also Belich, *The New Zealand Wars*, pp 95–96.

279. Document A23, p 333.

280. Document A23, pp 334–335; Cowan, *The New Zealand Wars*, vol 1, pp 193–194.

fern, adding that Te Paetae and Mokau of Ngāti Paretekawa, and Timoti of Ngāti Mahuta, died ‘after getting near to, and at Huirangi.’<sup>281</sup>

Cowan named Te Paetai Te Mahia of Ngāti Maniapoto, Hakopa of Ngāti Ruru (Ōtāwhao), and Mokau Te Matapuna of Raukawa (Ōrākau) as the principal men of those groups who were killed. Te Huia Raureti said that when the survivors returned, ‘the grief of our people at this disaster was intense, and it was felt that the defeat could never be avenged in full.’<sup>282</sup> While the taua was not made up only of Ngāti Hauā, they seem to have been the mainstay and suffered the greatest losses. The Reverend Benjamin Ashwell recorded the following month that Wiremu Kīngi had given Waitara to Wiremu Tamihana and Ngāti Hauā ‘in consideration of those who fell in battle.’<sup>283</sup>

Mindful of the debacle of Puketakauere, Pratt adopted sapping – advancing by digging trenches under covering fire – as his principal offensive strategy. Between 29 December 1860 and the end of fighting on 18 March 1861, the British dug their way inland, establishing eight redoubts as they went to hold the ground they gained. Initially, as Belich pointed out, Māori were content to evacuate their positions, abandoning Matarikoriko and then Huirangi soon after they were attacked. Matarikoriko was evacuated on the night of 30 December after fighting in which three British died and 22 were wounded, and perhaps six Māori were killed including Karira of Ngāti Maniapoto.<sup>284</sup>

On 23 January 1861, a surprise attack on the No 3 Redoubt, led by Rewi Maniapoto, Epiha Tokohihi, and Hapurona, was repelled with significant loss of life. The attacking party was estimated at 140-strong, with flanking support from others in rifle pits. Native commissioner George Hay listed 36 killed in the battle, including three who died of their wounds. Principal rangatira who lost their lives were Paora Te Uata of Ngāti Tūkōrehe, Te Retimana of Raukawa, Wiremu Hoeta Kumete of Ngāti Mahuta, and Hami (or Hemi) Te Hui and Werahiko of Ngāti Maniapoto. Of the remainder, 18 were not able to be identified. The British suffered five dead and 11 wounded.<sup>285</sup>

But the pā at Te Ārei, on the edge of the bush above the Waitara River and near the old battle site of Pukerangiōra, was ‘defended with the greatest possible tenacity’. In mid-March 1861, the Ngāti Rangatahi rangatira Te Ngarupiki was wounded and later died.<sup>286</sup> The war ground towards stalemate, and Belich wrote that it was

281. Document A23, p 337; *New Zealand Gazette*, 7 November 1860, no 33, pp 189–190; *Taranaki Herald*, 10 November 1860, pp 2, 3.

282. Cowan, *The New Zealand Wars*, vol 1, pp 198–199.

283. Report from Rev Benjamin Ashwell, 3 December 1860 (doc A23(b) (O’Malley), vol 2, p 470); doc A23, pp 337–338.

284. Document A23, p 338; Cowan, *The New Zealand Wars*, vol 1, pp 201–204; Belich, *The New Zealand Wars*, pp 110–113.

285. Cowan, *The New Zealand Wars*, vol 1, p 205, 210; ‘Further Papers relative to the Native Insurrection’, AJHR, 1861, E-1A, pp 10–13.

286. *Taranaki Herald*, 23 March 1861; doc K26, p 3.

the lack of any clear military success that made the British willing to discuss terms of peace.<sup>287</sup>

We summarise what is known about casualties in section 6.4.3.1. We turn next to how the cessation of hostilities in Taranaki was arranged in March 1861.

#### 6.4.2.5 *The making of peace in 1861*

It is important to stress that one of the key interventions of the Kingitanga leadership, including Te Rohe Pōtae rangatira, was the negotiation of peace in Taranaki in March 1861. This brought an end to the Taranaki war, although it proved in the long run to be more of a truce than a full peace-making.

In February 1861, King Matutaera's uncle, Tāmami Ngāpora, and a group of rangatira from around the North Island met with Governor Browne to propose peace terms. This group included at least two Waikato chiefs, and the deputation was said to have followed previous hui at Waikato to 'discuss the question of peace'.<sup>288</sup> The terms sought by the rangatira were: the Waitara should be set aside and investigated later by a court or inquiry; and the governor should 'not hold to or bear in remembrance' but rather forgive any and all matters concerning 'men, the land, or murder or property'.<sup>289</sup> The governor flatly refused to do so, stating (among other things) that 'Waikato had gone down to Taranaki without a cause' and 'taken up arms against the Queen'. Why, after joining in an 'insurrection' and 'spilling so much blood', should they expect an 'unconditional peace, which would leave them at liberty to renew hostilities when they pleased'?<sup>290</sup> The chiefs' reply was essentially that the fighting must cease at once, and the negotiation of an appropriate resolution could come afterwards. Browne responded that 'Waikato' should return home immediately, and the chiefs should propose better terms (with more security for continued peace).<sup>291</sup>

In March 1861, Ngāti Hauā rangatira Wiremu Tamihana followed up on the results of this February hui. Sir William Martin, Bishop Selwyn, and a number of CMS missionaries, he said, had written to him about ending the conflict. With the agreement of their iwi, Tamihana and Tioriori went to Taupō to consult Te Heuheu before coming to Taranaki.<sup>292</sup> Tamihana's intention was to 'use [his] influence to separate the combatants'.<sup>293</sup> His proposed solution to the quarrel was essentially what had been proposed in February: to end the fighting and then have an inquiry into Waitara. Tamihana wanted the inquiry to be conducted by a 'good man from the Queen' sent by the British Government.<sup>294</sup>

287. Belich, *The New Zealand Wars*, pp 112–113.

288. 'Notes of Interviews between His Excellency Governor Gore Browne, CB, and Certain Native Chiefs on the Subject of the Restoration of Peace', February 1861, BPP, 1862, vol 37 [3040], p 29 (IUB, vol 13).

289. 'Notes of Interviews', p 29.

290. 'Notes of Interviews', p 29.

291. 'Notes of Interviews', pp 30–31.

292. Stokes, *Wiremu Tamihana*, pp 195–196, 237, 320.

293. Tamihana to Ashwell, not dated (Stokes, *Wiremu Tamihana*, p 195).

294. Tamihana to Fox, 21 January 1862 (Stokes, *Wiremu Tamihana*, pp 195–196, 267).

When Tamihana arrived in Taranaki, he wrote to the commander of British forces, General Pratt, to seek an immediate three-day ceasefire in which he would hold discussions with Te Rangitāke and the Waikato leaders. Tamihana's hui with these rangatira produced a consensus in favour of peace.<sup>295</sup> Te Rangitāke 'placed the disposal of Waitara in Tamihana's hands'. This decision was supported by Hapurona, nephew of Te Rangitāke, as well as the Ngāti Maniapoto leaders Epiha Tokohihi and Rewi Maniapoto.<sup>296</sup> Tikaokao also supported the request for peace.<sup>297</sup> It is important to stress this because of the way in which Rewi Maniapoto and his iwi were painted as inveterate warmongers. As claimant Hari Rapata told the Tribunal, Rewi Maniapoto 'could have but he did not try to get in Tamihana's way'. Rather, he demonstrated his 'political acumen and diplomacy' and 'handed the situation over to Tamihana'.<sup>298</sup> The decision to accept Tamihana's proposals – to cease fighting, withdraw from Taranaki, and await an investigation of the Waitara – was a consensus decision by the Kingitanga leadership present in Taranaki, represented by Tamihana, Rewi Maniapoto, and Epiha Tokohihi.<sup>299</sup>

Interpreter George Hay conducted negotiations with Tamihana on behalf of the general. He reported:

Wm Thompson stated that he had come to make peace; that he had seen Te Rangitake; that the following conditions were what he proposed:—

Waikatos return to their own country.

Wm King to Mataitawa.

The troops withdraw to Waitaki.

Waitara land to remain undisturbed until some final decision was arrived at.<sup>300</sup>

Hay went on to say that he was not prepared to discuss 'the question of Maori title' to Waitara. That, Hay said, 'would form an after consideration', but he immediately proceeded to hector Tamihana: 'I told him that I considered him to blame personally as the prime mover in the land league'.<sup>301</sup> That Tamihana understood Waitara as a test of policy with implications that extended beyond Taranaki is shown by his reported response to Hay:

that if the Governor would not give them peace, they must all fight, young and old; that if peace were made here, and a similar case occurred elsewhere in the purchase of

295. Stokes, *Wiremu Tamihana*, pp 197–198.

296. Document A23, pp 342–343.

297. Document A23, p 345.

298. Document K13 (Rapata), p 11.

299. Stokes, pp 200–201, 235–238. Stokes reproduced two accounts of this hui, one by Gorst and one by Heta Tarawhiti (as told to Benjamin Ashwell). See also *Wiremu Tamihana to General Pratt*, 11 March 1861, AJHR, 1865, E-11, p 2.

300. Hay to Browne, 15 March 1861, BPP, 1862, vol 37 [3040], pp 28–29 (IUP, vol 13) (doc A23, p 343).

301. Hay to Browne, 15 March 1861, BPP, 1862, vol 37 [3040], pp 28–29 (IUP, vol 13) (doc A23, p 343).

land, he would fight there, and wherever land was sold by the wrong people, he would fight.<sup>302</sup>

On 13 March, Tamihana wrote to Pratt, setting out Te Rangitāke's proposal for peace terms which read, in part:

Ko ta te Rangitake kupu tenei ki au, ae, kia hoki mai Waitara kia au katahi ka mau te rongo me nga hoia hoki me hoki atu ki Waitoki ko nga Maori o Waikato me hoki ano ki Waikato ko te Rangitake me noho ki nga wahi kihai I pakangatia, me waiho Waitara kia takoto noa ana ma te ture ia e tiaki. Tenei te take i waihotia ai ma te ture e tiaki kia tae atu tetehi kupu kia tau ai te rangatira o te runanga nui o te Kuini mana e ki mai kia ruku ka ruku mana e ki mai kia puea ka puea.

This was Te Rangitake's word to me,—Yes, when Waitara comes back to me then only will I make peace; and the soldiers also must go back to Waitoki. Let the Waikatos go back to Waikato, Te Rangitake to stay on the parts which have not been fought upon, and leave Waitara open in care of the law. This is why it should be left to the care of the law, that we may wait for a word from the head of the great Runanga of the Queen. If she says we are to dive, we will dive, and if she says we are to rise to the surface, we will rise.<sup>303</sup>

General Pratt claimed the offer was 'inadmissible'. His terms were:

Let the Waikato return to his own country, and Wm. King to Mataitawa and remain there. The Queen's troops will occupy Te Arei and Pukerangiora for the present. Let Wm. Thompson proceed in a man-o-war steamer to Auckland, accompanied by Mr Hay, and treat in person with the Governor, who alone can decide on the matter of peace.<sup>304</sup>

It is no doubt correct that lasting peace was a matter for the governor to negotiate. But Tamihana was not prepared to trust his person to the governor in Auckland, recalling how Te Rauparaha had been kidnapped by Governor Grey in 1846 and held without charge for 10 months. Instead, Tamihana proposed a meeting at Tuakau (the effective boundary between Queen's and King's territory) or Ngāruawāhia. A letter from Tamihana to Browne was sent by steamship to Auckland, but Pratt rejected the idea of the truce being extended to allow time for a response.<sup>305</sup>

At this point, the Crown was ready to accept what Dr O'Malley called an 'indefinite truce' in Taranaki.<sup>306</sup> The 'continued failure of the troops to achieve anything

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302. Hay to Browne, 15 March 1861, BPP, 1862, vol 37 [3040], pp 28–29 (IUP, vol 13) (doc A23, pp 343–344).

303. Wiremu Tamihana to General Pratt, 11 March 1861, AJHR, 1865, E-11, p 2.

304. Pratt to Tamihana, 13 March 1861, BPP, 1862, vol 37 [3040], p 31 (IUP, vol 13).

305. Document A23, p 344; Stokes, *Wiremu Tamihana*, pp 202–204.

306. Document A23, p 346.

of significance' had resulted in a loss of public support for the war, and the conviction that a decisive victory should be looked for elsewhere – that is, in Waikato.<sup>307</sup> Browne was in favour of returning to Taranaki immediately to resume talks, but was dissuaded: 'my Executive Council considered that the anxiety for peace which such a course might appear to indicate would be more likely to retard than advance the desired object.'<sup>308</sup>

A further consideration seems to have been the Crown's desire not to negotiate collectively, lest that be seen as countenancing a collective Māori political stance. After concluding an agreement with Te Ātiawa the following month, Browne told Newcastle:

In conducting these negotiations, your Grace will also observe that I have insisted on treating with each party separately, because the Waikatos have repeatedly announced both in public and private interviews with myself that they interfered in King's quarrel, not on account of any special sympathy with him, but because he had acknowledged the sovereignty of their king. It was, therefore, most important that I should not admit their interference in any transactions between myself and Her Majesty's native subjects.<sup>309</sup>

Native Secretary Donald McLean was sent south and arrived on 18 March 1861. A further truce was arranged; Tamihana repeated his peace proposal, emphasising, in McLean's account, 'that the occupation of Waitara was the sole cause in the present instance of their taking up arms', that he wished for peace, and was prepared to wait until the governor was ready to conclude an agreement. This position was supported by Epiha, who said 'the king movement was not mixed up with it'. The two issues, Waitara and the King, needed to be considered separately, and 'his interference arose from the decision come to long before, that no more land should be alienated by the Maories'. With respect to the greater issues – 'the questions which had been agitating the native mind', as McLean put it – Tamihana sought to return to Waikato to discuss a way forward with other Waikato rangatira. Tamihana departed for Waikato on 20 March.<sup>310</sup>

McLean sailed for Auckland the following day, after meeting Te Rangitāke. At that hui, the speakers 'recited several incantations, which are never used except upon very important occasions, when they repeat them to express the sincerity of their intentions, and of their earnest desire to secure a lasting and permanent peace.'<sup>311</sup>

On the basis, as Browne put it, that Te Rangitāke was now able to negotiate for his people without 'interference' from Waikato, the governor, Attorney-General, Native Minister, Tāmami Wāka Nene, and Tāmami Ngāpora travelled to Waitara.

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307. Belich, *The New Zealand Wars*, pp 113–115.

308. Browne to Newcastle, 7 April 1861, BPP, 1862, vol 37 [3040], p 34 (IUP, vol 13, p 48).

309. Browne to Newcastle, 12 April 1861, BPP, 1862, vol 37 [3040], p 39 (IUP, vol 13, p 53).

310. McLean to Browne, 22 March 1861, BPP, 1862, vol 37 [3040], pp 36–37 (IUP, vol 13, ppp 50–51).

311. McLean to Browne, 22 March 1861, BPP, 1862, vol 34 [3040], p 37 (IUP, vol 13, p 51).

Not all 'Waikato' had left, however. This fact was glossed over by Browne, who noted merely that on 6 April Rewi, 'a Waikato Chief', brought him a musket, 'which belonged to the Government, stating that it was the only one in this district, and intimated his intention of returning to his own tribe.'<sup>312</sup>

This seems to us more likely than not to have been Rewi Maniapoto. Rewi's intent is not entirely clear from the governor's account: there must be a strong suspicion that something was lost in translation. It would not be fair on the governor to say that this passing mention was intended as a slight, but an offer of giving up arms, on the part of Rewi, was unlikely to have been enacted without careful consideration of its symbolic weight.

Rewi Maniapoto had remained behind to protect Te Rangitāke, to whom he offered sanctuary at Kihikihi. John Gorst took his usual negative view of Maniapoto, writing that Rewi had 'stayed behind to hatch mischief' by carrying Te Rangitāke off to Kihikihi before his quarrel with the governor could be resolved.<sup>313</sup> There is no evidence for this claim. Te Rangitāke had already indicated his consent to peace at Waitara before he left, and he told Browne that the reason for going to Waikato was 'to hear the words of the tribes who died (whom evil befel) in my presence; because the cause by which they died was mine.'<sup>314</sup> Rewi and Te Rangitāke travelled north together. Before leaving Waitara, Rewi told Browne that the leaders of Waikato intended to meet at Ngāruawāhia and then come to Māngere for a formal conference with the governor. 'Since then,' Browne wrote in July 1861, 'they have changed their minds.'<sup>315</sup> The reason for that change of heart, it can safely be said, was the governor's ultimatum to the Kīngitanga and tribes of Waikato, dated 21 May 1861. We discuss this ultimatum in the next section.

### 6.4.3 What were the consequences of the Taranaki war for Te Rohe Pōtae Māori?

#### 6.4.3.1 Te Rohe Pōtae participation and casualties

By October 1860 there were 2,359 rank and file troops in Her Majesty's service in Taranaki; the number reached 3,500 in 1861. The governor, assessing his opponents, wrote: 'The strength of the insurgents, as far as I can learn from the best information, has never exceeded two thousand men, and it was not until after the Waikato contingent (supposed to amount to three hundred men) arrived, that they appeared at all in considerable numbers.'<sup>316</sup> Belich, however, seems to have thought Te Ātiawa only a minority of the warriors. He put the number of Waikato at about 500 in the weeks after Puketakauere. From their return in late October 1860, until the end of fighting in March 1861, Belich estimated the number of 'Waikato' never fell below 400 and reached as high as 800: this is the basis for his claim that at least 1,200 but more likely 1,500 'Waikato' took part in the northern

312. Browne to Newcastle, 7 April 1861, BPP, 1862, vol 37 [3040], p 35 (IUP, vol 13, p 49).

313. Gorst, *The Maori King*, p 165 (doc A23, p 350).

314. Te Rangitake to Browne, 8 April 1861, BPP, 1862, vol 37 [3040], p 39 (IUP, vol 13, p 52).

315. Document A23, p 350.

316. Browne to Newcastle, 2 October 1860, BPP, 1861, vol 41 [2798], p 143 (IUP, vol 12); Belich, *The New Zealand Wars*, p 115.

Taranaki conflict.<sup>317</sup> Belich, of course, included Te Rohe Pōtae peoples in his term of 'Waikato' or 'core-Kingite' fighters.

In all, Belich estimated that during the course of the Taranaki war about 200 Māori were killed or wounded, against a British figure of 238. The Māori number, however, contained a higher proportion of deaths and appears to have been a higher overall proportion of combatants. Their hapū were less able to sustain such losses.<sup>318</sup> We referred earlier to the lament of Hokepera of Ngāti Maniapoto. This was written for those who fell in just one battle, at Māhoetahi. On the information available to us, it is not possible to state how many of those killed were of Te Rohe Pōtae iwi, although we can safely state that some were from the peoples of our inquiry district.

There is also the impact of injuries to be considered on the well-being of individuals and their communities. A correspondent for the *Daily Southern Cross* wrote in July 1863 that the Waikato tribes were disinclined to 'go to war with the troops'. This was 'greatly owing to the losses the tribes of that district sustained during the Taranaki war three years ago', but also: 'One can scarcely find a village in the Waikato without a cripple in it; one has got his lower jaw shot away, and has since subsisted on spoon diet; a second is lame, and great numbers are disfigured more or less.'<sup>319</sup>

In our inquiry, the Crown acknowledged that 'the war in Taranaki had an impact on Rohe Pōtae Māori to the extent that men who went to fight in Taranaki were killed or injured, and resources were expended to supply them.'<sup>320</sup>

#### **6.4.3.1 Impact on the Crown's relationship with the Kingitanga generally and Ngāti Maniapoto in particular**

Premier Edward Stafford wrote that Taranaki, alone, did not pose any real danger: 'it is the support which they expect and partially receive from the Tribes of the Waikato which constitutes their strength and our danger'. Further, in the 'repulse' at Puketakauere 'the Maoris had also severely suffered, especially the Waikato contingent, upon whom the brunt of the fight fell, there was but too good reason to fear the effect upon the Tribes to which they belonged.'<sup>321</sup> There is no doubt that the involvement of iwi and hapū from Waikato was a crucial factor in the success enjoyed by Māori in the first Taranaki war.

According to James Belich:

The Battle of Puketakauere, was the most important action of the Taranaki War, with profound strategic and political effects on its course. Despite the relatively small

317. Belich, *The New Zealand Wars*, pp 102–103.

318. Belich, *The New Zealand Wars*, p 116; doc A23, p 338; *New Zealand Gazette*, no 5, 28 January 1861, pp 21–23.

319. *Daily Southern Cross*, 6 July 1863 (doc A23, p 478).

320. Submission 3.4.300, p 15.

321. Stafford, memorandum, 30 July 1860, AJHR, 1861, E-1A, pp 6–7.



scale of the forces involved it was one of the three most clear-cut and disastrous defeats suffered by Imperial troops in New Zealand.<sup>322</sup>

It was also the first significant engagement to involve Kīngitanga forces, many of whom were Ngāti Maniapoto.<sup>323</sup> In the view of Dr O'Malley, the enduring image of Ngāti Maniapoto as an extremist element of the Kīngitanga can be traced to Puketakauere and 27 June 1860. This perception was employed, initially, to cast the Crown's military endeavours in a defensive light. It also served as a basis from which to claim divisions among Kīngitanga-aligned Māori. According to Dr O'Malley:

The predominant viewpoint has it that Rewi Maniapoto and other 'extremists', mostly belonging to Ngati Maniapoto, ignored all injunctions to the contrary from the King and other moderates such as Wiremu Tamihana and immersed themselves in the conflict, whether out of pure hatred of the Pakeha or in hopes of provoking an even bigger showdown. There have been multiple variations on this argument, many of which depict Ngati Maniapoto as almost fanatical in their obsession to become involved at Waitara.<sup>324</sup>

This view has led, in turn, to a suggestion that the participation of Waikato (in the broadest sense) in the Taranaki war was limited to a handful of renegade extremists. Both Belich and O'Malley dismissed this assertion,<sup>325</sup> and we have discussed above the evidence of the numbers involved. O'Malley argued that reliance on a dichotomy of moderates versus extremists to depict the Kīngitanga risks 'losing sight of the extent to which its supporters shared common concerns.'<sup>326</sup>

Nevertheless, Puketakauere 'had a major negative impact upon settler and government perceptions of Ngati Maniapoto' and 'may be said to be the point at which Ngati Maniapoto began to be widely branded as notorious and obstinate "rebels"'.<sup>327</sup> The iwi became the colonists' 'favourite bogeymen'.<sup>328</sup>

Dr O'Malley summarised the crucial outcome for the Kīngitanga generally and Ngāti Maniapoto in particular. Speaking of Browne's and then Grey's preparations to invade the Waikato, he stated:

It was Waikato and Ngati Maniapoto involvement in the first Taranaki War of 1860–61 that had led to such preparations and heightened speculation that the invasion of the Waikato was now a question of when and not if. Both Browne and Grey, it has been suggested, realised following the intervention of the Kīngitanga in Taranaki that a showdown with the Waikato tribes – the very heartland of the King movement

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322. Belich, *The New Zealand Wars*, p 92.

323. Document A23, pp 333–334.

324. Document A23, p 358.

325. Document A23, pp 358–367; Belich, *The New Zealand Wars*, pp 102–104.

326. Document A23, p 367.

327. Document A23, pp 333–334.

328. Belich, *The New Zealand Wars*, p 145.

– was inevitable if New Zealand was to continue to be colonised on terms acceptable to Europeans. This was not solely a question of land, and much less so of the particular fate of the Pekapeka block at Waitara, so much as the fundamental question of whose will was to prevail in the future, summed up in Belich's description of this as a question of substantive sovereignty.<sup>329</sup>

The evidence we have reviewed strongly supports this conclusion. It is also clear that, while Waikato and Ngāti Maniapoto continued to have obligations and interests in Taranaki that they sought to meet and protect, that was not how the Crown saw things.

In section 6.3.3, we explained the Crown's approach to the Kingitanga prior to 1860, and the policy of 'non-intervention' that was adopted. This approach was beginning to fracture in April and May 1860, when Crown representatives attended hui in the Waikato which debated whether to intervene in Taranaki.

Both TH Smith (in April 1860) and Donald McLean (in May 1860) presented the Crown's position on Waitara and the outbreak of war at the hui. They and other officials (and missionaries) tried to persuade the Kingitanga leaders not to intervene. Smith reported back to Browne that, 'far from dying out', the Kingitanga was actually 'assuming proportions' which made it an object of serious concern. While the 'large majority' had no animosity towards Europeans, they were 'assuming a position whence to dictate to the Government on questions considered to affect the Maori race.' They believed that a separate Māori 'nationality may exist without any disagreement between the two races.' But, reported Smith, the idea of Māori independence also attracted those who wanted a 'pretext' to rise up in arms and 'drive the Pakeha out of the country.'<sup>330</sup>

McLean also now argued that it would be 'impossible to direct the present movement into any channel that would be productive of good'. Even if King Pōtatau accepted 'alliance with the Government on a different basis', he said, a less scrupulous and more violent 'agitation for national independence' was sure to follow.<sup>331</sup> O'Malley commented: 'The man who had at first professed not to care about the emergence of the Kingitanga now appeared to be genuinely unnerved.'<sup>332</sup>

Attitudes hardened after military assistance was sent to Taranaki in June 1860. When the governor opened Parliament on 30 July, he spoke of having been 'compelled reluctantly, and with much regret, to uphold Her Majesty's supremacy by force of arms'. He described 'a dangerous sympathy with the insurgents' displayed by 'the Waikato tribes', who had been 'for some years past the centre of the agitation for the establishment of an independent Maori State under a Native sovereign, and it is in furtherance of this project that aid from Waikato has been afforded to the insurgents.'<sup>333</sup> As we noted above, the governor now considered the 'Waikatos'

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329. Document A23, pp 357–358.

330. TH Smith, 'Narrative of a Visit to Waikato', not dated (doc A23, pp 323–324).

331. McLean to Browne, 31 May 1860 (doc A23, p 329).

332. Document A23, p 329.

333. Browne, 30 July 1860, NZPD, 1858–1860, p 165.

to be interfering gratuitously in another district, to have taken up arms against the Queen in support of insurgents, and to be 'insurgents' themselves. These attitudes would be reflected in the terms of his ultimatum to the Kingitanga in May 1861.

While the 'truce' was being established in March 1861, the Crown had decided to impose separate peace terms on Te Ātiawa, the southern Taranaki tribes, and the 'Waikatos'. In the governor's view, unconditional submission to all of his terms – rather than negotiation – was necessary to regularise the truce and turn it into a permanent peace. In April 1861, Browne began preparations to invade the Waikato. In the same month, he sent a letter to Wiremu Tamihana, which stated:

The Queen, or her Officers, or European subjects have never injured any Maories of Waikato, of Ngatihaua, or of Ngatimaniapoto. But some men of these tribes have defied the authority of the Queen, have broken the law, and have gone to fight against the Queen's troops at Waitara, where they have no land or property: those men have there, at Waitara, on several occasions attacked the Troops of the Queen, have plundered her subjects, and have destroyed and stolen the property of those who have never done them any harm. Now after all this wrong has been done contrary to law – after the peace has been broken by those men – you say that you wish for peace.

I am waiting to hear what amends those men will make for breaking the peace, and trampling on the law, and what guarantees they will give that there may be peace in future between the Queen and those men, and between the Queen's subjects, both European and Maori.<sup>334</sup>

Before a response was received, the governor had already issued his ultimatum, which was delivered to the assembled supporters of the King at Ngāruawāhia on 21 May 1861.<sup>335</sup> Because of its importance in showing the consequences of the Taranaki War for the claimants in our inquiry, we reproduce some parts of the text here:

In the year 1858 a portion of the Maori people, resident in Waikato, pretended to set up a Maori King, and Potatau was chosen for the office. He was installed at Rangiaowhia in the month of June in that year. On Potatau's death, in 1860, Matutaera his son was nominated his successor.

Diversity of opinion existed from the commencement as to what would result from this movement. Some were led to believe that its supporters desired only the establishment of order, and a governing authority amongst themselves; while others viewed with apprehension a confederacy which they deemed fraught with danger to the peace of the colony. The Governor at first inclined towards the more favourable view of the movement, but soon felt misgivings, which have been justified by the event.

The Governor however has not interfered to put down the Maori King by force. He has been unwilling to relinquish the hope that the Maoris themselves, seeing the danger of the course they were pursuing, and that the institution of an independent

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334. Browne to Tamihana, 25 April 1861 (doc A23, p 354).

335. Document A23, pp 355, 369.

authority must prove inefficient for all purposes of good, would of their own accord abandon that course.<sup>336</sup>

Among the acts said to have been conducted in the name of the King, the governor condemned the setting up of an authority which he now considered 'inconsistent with allegiance to the Queen, and in violation of the Treaty of Waitangi'. Secondly, a

large number of the adherents of the native King have interfered between the Governor and other native tribes in matters with which they had no concern; have levied war against the Queen, fought against her troops, and burnt and destroyed the property of her peaceful subjects.<sup>337</sup>

Thirdly, other 'adherents of the King have assisted, encouraged, and harboured the men who have committed these outrages.' The governor also accused the tribes of 'other offences [which] have been committed to the subversion of Her Majesty's sovereignty, and of the authority of the law'.<sup>338</sup>

The governor went on to state his terms of submission, which we discuss later in the chapter. Suffice to say here that the Taranaki war transformed the Crown's approach to the Kīngitanga in a very damaging way. Their decision to assist Te Rangitāke's people in what Crown counsel admitted was an unjust war placed the peoples of Waikato and Te Rohe Pōtae in danger. They faced either invasion or the voluntary dismantling of the Kīngitanga and its institutions, and the suppression of their mana Māori motuhake. It is possible, of course, that the Crown might have chosen to use force against the Kīngitanga eventually, even without the tragedy of the Taranaki war. But surely not so soon (just three years after the King was installed), and perhaps without such extremes as occupation and confiscation of the lands north of the Pūniu River.

In addition, Ngāti Maniapoto were singled out for particular scorn and blame. This is illustrated by the kind of unfounded allegations made by a local official, a premier, and a governor:

- ▶ Rewi Maniapoto, 'having seen the war mania fairly progressing in Waikato, threw off all disguise, and went down in person to Taranaki, to pursue his design of involving the whole Maori people in a contest for supremacy with their European rivals' (Gorst, 1864);<sup>339</sup>
- ▶ Rewi Maniapoto had not liked the 'stoppage of the war at Taranaki' and had 'striven from the very first' to recommence it (Gorst, 1864);<sup>340</sup>

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336. Browne, declaration 'to the Natives Assembled at Ngaruawahia', 21 May 1861 (doc A23, pp 369–370).

337. Browne, declaration 'to the Natives Assembled at Ngaruawahia', 21 May 1861 (doc A23, p 370).

338. Browne, declaration 'to the Natives Assembled at Ngaruawahia', 21 May 1861 (doc A23, p 370).

339. Gorst, *The Maori King*, p 146 (doc A23, p 358).

340. Gorst, *The Maori King*, p 287 (doc K23(a), p 16).

- ▶ Ngāti Maniapoto's losses in the Taranaki war were 'slight' compared to those of others, and they were charged with 'holding aloof from several fights from cowardice and treachery' (Gorst, March 1862),<sup>341</sup>
- ▶ Ngāti Maniapoto were warlike and had gone 'mad after soldiering' as a result of the Taranaki war, and they resisted magistrates because they preferred disorder and misdeeds to law and order (Gorst, March 1862),<sup>342</sup>
- ▶ Ngāti Maniapoto 'lost very few men' in Taranaki but had done 'all the house-burning' and had taken lots of plunder, setting 'all the rest of the Waikato Chiefs at defiance' in their determination to keep their 'booty' (Governor Grey, November 1861),<sup>343</sup>
- ▶ Ngāti Maniapoto were 'rebels' who 'burnt the greater part' of the settlers' houses in Taranaki and who took most of the plunder during the war, but could not be punished 'except after a general and successful war' (Premier Alfred Domett, May 1863),<sup>344</sup>
- ▶ Ngāti Maniapoto had 'less excuse to take up arms' in defence of Te Rangitāke than many of his Taranaki allies (Premier Alfred Domett, May 1863).<sup>345</sup>

These allegations point to a mindset which led the Crown to blame Ngāti Maniapoto for the resumption of war in Taranaki in 1863,<sup>346</sup> and provided one of the pretexts for invading the Waikato (as we discuss later in the chapter).

We turn next to draw our final conclusions and make Treaty findings.

#### 6.4.4 Treaty analysis and findings

In its deed of settlement with Te Ātiawa, the Crown acknowledged that the Taranaki war constituted an injustice and a Treaty breach, and that it unfairly treated Te Ātiawa as being in rebellion.<sup>347</sup> In our inquiry, the Crown repeated its acknowledgement that the Taranaki war was an injustice, but made no concessions of Treaty breach other than in respect of confiscation. Crown counsel argued that Te Rohe Pōtae Māori land interests 'were away from Waitara', and Crown actions in 1860 and 1861 'did not threaten Rohe Pōtae Māori directly'. The Crown drew a distinction between the Taranaki and Waikato wars; Ngāti Maniapoto were justified, it said, in taking up arms when Crown troops crossed the Mangatāwhiri, because they 'had strong ties to the land north of the Puniu river'. No such concession was made for Te Rohe Pōtae Māori and the Taranaki war of 1860–1861.<sup>348</sup>

In respect of Te Rohe Pōtae involvement in the Taranaki war, we received no evidence or submissions about the law of rebellion or the legal right of self-defence against unlawful Crown aggression. In our view, it is not necessary in any case to determine whether Ngāti Maniapoto and other Te Rohe Pōtae groups were

341. Gorst, 'Report on the State of the Upper Waikato District', March 1862 (doc A23, p 359).

342. Gorst, 'Report on the State of the Upper Waikato District', March 1862 (doc A23, p 359).

343. Grey to Newcastle, 2 November 1861 (doc A23, p 365).

344. Domett, memorandum to Grey, 2 May 1863 (doc A23, p 365).

345. Domett, memorandum to Grey, 2 May 1863 (doc A23, p 366).

346. See document A23, p 434.

347. Te Ātiawa and the Crown, 'Deed of Settlement of Historical Claims', 9 August 2014, p 29.

348. Submission 3.4.300, pp 1–2, 7–8.

legally in rebellion or legally exercising a right of self-defence. Our jurisdiction is a Treaty one and we make our findings accordingly. We do note the submission from counsel for Ngāti Tūwharetoa that the lawfulness of the Crown's actions is significant in respect of the seriousness of the Crown's Treaty breaches,<sup>349</sup> but it is not determinative.

Professor James Belich stated that the Kingitanga tribes 'entered the war reluctantly, cautiously, and with essentially defensive objectives in mind'.<sup>350</sup> This accords with our understanding of their motives and intentions, as outlined above in section 6.4.2. Ngāti Maniapoto and other Kingitanga tribes entered the war only after lengthy debate and careful inquiry as to who was in the wrong, and only after Te Ātiawa placed Waitara under the King's protection and sought their help. The question then arises: what were they defending and why?

We note first the findings of the Taranaki Tribunal in respect of Te Ātiawa's southern neighbours, Ngāti Ruanui:

To prevent the sale [of Waitara], Kingi obstructed the survey of the land. Troops were brought in, Kingi was attacked, and the war began. It must have been obvious that if Waitara could be taken that easily, despite the opposition of a major rangatira known as a former Government ally, Waitotara and other places could not be far behind. On that basis, the southern tribes could have had no option, if they wished to keep their land, but to oppose the Governor in the war. This, they did. For his part, Kingi adopted the politics of the southern tribes, calling upon a larger collectivity for support by placing his lands under the mana of the Maori King.

Given the background described, when the war began in the north, southern hapu had little practical option but to join in. The Governor's policy and intention were clear. They would not be able to retain their own homes or the status to which they were entitled under his policy and laws, and had thus to defend their own positions once Kingi was attacked.<sup>351</sup>

In our view, this same reasoning applies to the tribes to the north of Te Ātiawa. The whole of Taranaki was placed under martial law in February 1860.<sup>352</sup> No one could have predicted how far north the war might spread. Governor Grey's admission in 1863, quoted above in section 6.4.2, is also relevant. He argued that Māori believed a new system of 'taking lands' had been established by the Crown's seizure of Waitara. They believed, he wrote, that if 'they did not succeed by a general and combined resistance in preventing their houses and lands being taken by the Government from the Natives of the Waitara, they would have been each in

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349. Submission 3.4.281, p 27. This submission was made in relation to the Crown's concessions about the Waikato war.

350. Belich, *The New Zealand Wars*, p 89.

351. Waitangi Tribunal, *The Taranaki Report*, pp 59–60, 80.

352. Memorandum 3.1.162, p 6.

their turn despoiled in detail of their lands'.<sup>353</sup> This evidence from the time accords with the findings of the Taranaki Tribunal in respect of Ngāti Ruanui. For Ngāti Maniapoto, whose lands lay at the northern end of Taranaki, this threat was particularly important. The claimants told us that they fought against unjustified Crown aggression in Taranaki to defend their southern lands, and our view is that this was justified in Treaty terms.

We also note the relevant consideration for this Tribunal of customary law and customary kinship links. After careful inquiry, Ngāti Maniapoto and other Kingitanga tribes decided that Te Rangitāke was in the right, and that the governor and Te Teira were in the wrong. In those circumstances, tikanga and their tino rangatiratanga under article 2 justified them in coming to the defence of their kin who faced an unjust attack, which they duly did.

Lastly, Ngāti Maniapoto had a recent history of frequent interventions in Taranaki. These included seeking to negotiate the controlled return to the region of those iwi and hapū they had taken north or forced to migrate south. The lengthy negotiations in 1848 surrounding the return of Te Rangitāke's Te Ātiawa people to Waitara are evidence that Ngāti Maniapoto considered they had ongoing influence and interests there. This assertion of Ngāti Maniapoto interests continued to be convenient to the Crown on occasion, as late as August 1859. They did not perceive Taranaki as outside their proper sphere of interests and action, and three Taranaki tribes had placed the land in question under the King's protection and authority. Those tribes had sought assistance in defending themselves against unjust Crown aggression. All these circumstances point to a finding that the Crown breached the Treaty when it treated Ngāti Maniapoto (and affiliated Te Rohe Pōtae groups) as 'rebels'. We accept that the Crown did not attack those groups directly. Nonetheless, it was not consistent with the Crown's Treaty obligations of partnership and fairness to treat those groups as 'rebels' for fighting in defence of their southern lands and their kin (in response to an unjust attack by the Crown). This was especially the case after Te Rohe Pōtae and other Kingitanga leaders agreed with Wiremu Tamihana that peace should be established, and accordingly withdrew from the district. The Crown continued to perceive Ngāti Maniapoto and their leader, Rewi Maniapoto, in very negative terms as a result of the Taranaki war. It continued to label them as warlike 'rebels' up to the outbreak of the Waikato war in 1863 (see section 6.4.3.2). More generally, the Taranaki war had a similar consequence for the Kingitanga, including the Te Rohe Pōtae groups who supported it. The two wars are directly linked, not least for this reason, as we discuss in the following sections.

## 6.5 DID THE CROWN SEEK TO AVOID WAR IN WAIKATO?

Crown counsel submitted that the Treaty imposes a duty on both Treaty partners to 'seek to resolve issues between themselves peacefully'. The Crown also submitted

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353. Grey, 'Memorandum by His Excellency stating reasons for abandoning Waitara Purchase', 22 April 1863, AJHR, 1863, E-2, p 8.

that ‘the use of non-peaceful means to resolve issues between itself and its citizens, or any group of its citizens, should occur in exceptional situations only, and generally only after it has exhausted all reasonable peaceful means.’<sup>354</sup> The fundamental issue in this section of our chapter is whether the Crown met this test in respect of the invasion of the Waikato in 1863.

Crown counsel argued that Governor Grey met with the Waikato chiefs and offered them a form of self-government as an alternative to that which had ‘sparked their opposition to the Crown’. This included Grey’s ‘New Institutions’ and possibly the offer of a quasi-provincial government. In the Crown’s view, however, the Kīngitanga chiefs were unlikely to accept the governor having a veto over their laws, and communications had broken down on both sides by mid-1862. Crown counsel accepted, however, that Grey has been condemned for failing to work with and support Kīngitanga ‘moderates’.<sup>355</sup>

Additionally, the Crown submitted that ‘British sovereignty did not preclude all Māori authority . . . from having a legal status in the new colony’. Crown counsel accepted that ‘[w]hether the Crown constituted new forms of government in a way consistent with Treaty principles is a proper matter of debate’.<sup>356</sup> In the context of Grey’s governorship in 1861–1863, the Crown noted that native districts under section 71 of the Constitution Act (explained below) and the Māori King giving his assent to the laws of a State rūnanga were both debated during that period.<sup>357</sup>

In the claimants’ view the war was entirely avoidable. Claimant counsel cited Professor Ward, who condemned the Crown for ‘failing to support and work with Kīngitanga moderates’. Because the war was avoidable, the Crown’s resort to war against Māori communities was in breach of the Treaty.<sup>358</sup> The claimants also argued that Grey’s New Institutions did not recognise Māori authority but rather sought to control it. In Waikato and Te Rohe Pōtae, this was seen as a direct threat to the Kīngitanga, combined as it was with the governor’s construction of a military road from South Auckland to Mangatāwhiri and his plan to put armed steamers on the Waikato River. In fact, the claimants argued, Grey planned to invade the Waikato ‘almost from the moment he stepped off the boat in September 1861’.<sup>359</sup> He took none of the ‘many options available to the Crown to negotiate and avoid conflict’.<sup>360</sup> Those options included declaring native districts under section 71 of the Constitution Act 1852 or constituting Māori provinces. What was crucial was some form of negotiation to recognise and include the Kīngitanga in the machinery of the State. The Kīngitanga were willing to negotiate, the claimants said, but the governor ‘omitted to engage’ with them.<sup>361</sup>

354. Submission 3.4.300, p 8.

355. Submission 3.4.300, pp 10, 11.

356. Submission 3.4.312, p 1.

357. Submission 3.4.300, pp 10–11.

358. Submission 3.4.391, pp 4–5.

359. Submission 3.4.391, pp 6–7; submission 3.4.130(e), pp 12–13.

360. Submission 3.4.130(e), p 12.

361. Submission 3.4.281, pp 19–22.



Moreover, claimant counsel submitted that Te Rohe Pōtae Māori who supported the Kingitanga were simply exercising their tino rangatiratanga to manage their own lands and affairs by means of their own institutions, as they had a right to do under the Treaty. The governor had no right to resort to war and suppress these institutions by force.<sup>362</sup>

In this section of our chapter, we consider these issues and address the question of whether Governor Grey negotiated with the Kingitanga and sought a fair and reasonable accommodation with the Māori authority it represented. The issue of good faith is also relevant and hinges on whether Grey was getting ready to attack the Waikato while seemingly looking for a peaceful accommodation.

The first question to consider, however, is why – under first Browne and then Grey – war did *not* break out in 1861, given Browne's ultimatum to the Waikato.

### **6.5.1 Were there opportunities for the Crown to recognise Kingitanga authority in 1861?**

#### **6.5.1.1 Why did war not break out in 1861?**

Governor Browne was capable of recognising and providing for Māori authority in various ways. He was reluctant to use section 71 of the Constitution Act 1852, under which the Crown could set aside Māori districts in which Māori law would prevail (unless inconsistent with the principles of humanity). Partly, this was because Browne believed that it did not allow for Māori authorities to enact *new* laws, but this was incorrect according to legal opinion at the time (the chief justice in 1858) and since (Professor FM Brookfield in 1999). Browne also had no funds with which to assist separate Māori districts, which would operate outside the authority of the colonial government.<sup>363</sup> We agree with the Central North Island Tribunal that section 71 provided a means for the Crown to accommodate the autonomy sought by (and expressed through) the Kingitanga.<sup>364</sup> Browne did convene a kind of parliament of chiefs at Kohimarama in 1860, and planned to continue those conferences annually, but many of the most committed Kingitanga supporters were not invited.<sup>365</sup> Nonetheless, the governor was looking for ways to provide for some form of Māori authority.<sup>366</sup> By 1861, however, the Taranaki war had convinced him that the Kingitanga was incompatible with the authority of the Queen, and he was determined to secure its absolute and unconditional submission – militarily if necessary.

Professor Belich summarised the events of April–September 1861 as follows:

After the Taranaki War, it seemed clear to Browne that the Kingites had to be compelled to submit to British rule. He sent an ultimatum to the Movement's leaders, and when it was rejected, he decided to invade the Waikato. Though many settlers agreed

362. Submission 3.4.391, pp 4, 6–8.

363. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 226–228.

364. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 226–228.

365. Document A23, pp 277–279, 294–295, 302; Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 228–231; Wai 903 RO1, doc A143, pp 94, 99–100.

366. Document A23, pp 393–394.

that this was necessary, the more perceptive among them felt that the resources were not available. Browne remained determined. Then . . . he was dismissed and replaced by Grey.<sup>367</sup>

The issue of invasion was debated in April 1861. General Cameron was ‘eager’ to invade immediately.<sup>368</sup> He wanted to ‘punish the people “for their participation in the rebellion”’.<sup>369</sup> The Attorney-General (Frederick Whitaker) and the Native Secretary (Donald McLean) advised caution. Whitaker wanted the ‘Waikatos’ to have time to consider their response to the ultimatum, but agreed that force would be absolutely necessary if they chose not to submit to the governor’s demands.<sup>370</sup> According to Whitaker, however, an invasion would have to be much more than a raid; ‘the reduction of the Waikatos to submission by force’ would require occupation as well as invasion of the district. The Attorney-General was unsure whether there were enough troops – or it was the right season – for such an operation. McLean advised that poor roads and communication difficulties would make it very difficult.<sup>371</sup> The governor agreed that the forces available were insufficient and a winter invasion too tricky, especially since there had to be enough troops to protect the towns from any reprisals.<sup>372</sup> Browne decided to wait and proceed in September 1861, even though it was by no means certain that there would be enough troops by that time.<sup>373</sup>

The terms of the draft ultimatum were debated within the Government in April 1861. McLean and T H Smith advised Browne to soften his stance. The only change made in response to their advice was to delete the requirement that the King’s flag must be taken down at Ngāruawāhia. Dr O’Malley noted: ‘This modification to the original ultimatum was made not on the basis that it was acceptable for the flag to remain but because it was believed the requirement was covered by the demand for a general submission to the Queen’s authority.’<sup>374</sup>

The final text of the ultimatum was presented at Ngāruawāhia on 21 May 1861. We have already quoted the opening paragraphs of it in section 6.4.3.2. The ultimatum stated that if Māori set aside the authority of the Queen and the law, they would no longer be protected by the Treaty of Waitangi. The Treaty made the Queen ‘a protecting shade for the Maori’s land’ but when Māori forfeited that protection, ‘the land will remain their own so long only as they are strong enough to keep it; might and not right will become their sole title to possession.’<sup>375</sup> McLean and Smith argued that this sounded like a threat, and predicted that the

367. Belich, *The New Zealand Wars*, p 119.

368. Document A23, p 355.

369. Cameron to Browne, 15 April 1861 (Wai 686 ROI, doc A2 (Parsonson), p 62).

370. Wai 686 ROI, doc A2, p 61.

371. Whitaker minute, 13 April 1861 (doc A23, pp 355–356).

372. Document A23, p 355.

373. Document A23, p 356.

374. Document A23, p 373.

375. Stokes, *Wiremu Tamihana*, p 210 (AJHR 1861, E1-B, pp 11–12).

governor's demands would be rejected by the great majority of the iwi.<sup>376</sup> The specific demands were 'submission without reserve to the Queen's sovereignty' and the law (the text made it clear that retaining the King was inconsistent with this), the return of 'plunder', and compensation for any property which they destroyed during the war.<sup>377</sup>

Rewi Maniapoto, Wiremu Tamihana, Wiremu Kīngi Te Rangitāke, and other rangatira were already on their way to Ngāruawāhia for a 'great meeting'.<sup>378</sup> This may be the meeting which Rewi referred to when he met the governor at Waitara (see above), in which they had intended to prepare for discussions with the governor. The hui was diverted to discussion of Browne's ultimatum instead. According to Gorst, Tamihana expressed the views of all those assembled when he said that the King's flag was not intended to put aside either the Queen's supremacy or her protection of their 'rights and privileges'. Rather, it symbolised the agreement to part with no more land, and to establish their own institutions to 'suppress evil among themselves'.<sup>379</sup> Tamihana praised the results of those institutions in resolving disputes and regulating community concerns (such as adultery and the importing of alcohol). The good that Kingitanga institutions were doing was compared to the governor's 'evil' in starting the Taranaki war. Regarding the second term of the ultimatum, the rangatira agreed that very little 'plunder' had actually made its way to the Waikato. Further, they considered it unfair of the governor to demand compensation when he had offered none to the Te Ātiawa whose pā had been destroyed and whose property had been taken by the troops. Finally, the hui agreed that any attempt to survey the lands of Te Rangitāke's tribe or to move troops to the Mangatāwhiri would be considered a resumption of the war on the governor's part.<sup>380</sup>

The King's council sent a letter in reply to the governor on 7 June. The letter did not respond to the specific terms in the ultimatum. The rangatira said that they had heard of the general's eagerness for war, and they urged Browne not to be hasty but rather to wait and 'let the talk come first'. Warfare should be 'that of the lips alone', and the council assured the governor that they had no intention of fighting.<sup>381</sup> This was a plea for calm and a request for dialogue. Dr O'Malley suggested that Browne could hardly have received a more conciliatory response.<sup>382</sup> But it was not the submission without reserve that the governor had demanded.

Browne's view was that the Kingitanga tribes had refused to submit, since they would not agree to give up the King. Tamihana had written separately, urging the governor to 'leave this King to stand upon his own place'.<sup>383</sup> The governor refused

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376. Document A23, pp 372–373.

377. Stokes, *Wiremu Tamihana*, pp 209, 211 (AJHR 1861, E1-B, pp 11–12).

378. Gorst, *The Maori King*, p 173 (Stokes, *Wiremu Tamihana*, p 212).

379. Gorst, *The Maori King*, p 174 (Stokes, *Wiremu Tamihana*, p 226).

380. Stokes, *Wiremu Tamihana*, pp 225–226.

381. 'Runanga Maori' to governor, 7 June 1861, AJHR, 1861, E-1B, p 18 (Stokes, *Wiremu Tamihana*, pp 227–228).

382. Document A23, p 379.

383. Wiremu Tamihana, reply to the declaration, not dated (doc A23, p 374).

to accept this, arguing that it was ‘evident that if the Maoris will not submit this part of the colony must be abandoned by all who will not yield obedience to Maori law, of which the aptest symbol is the tomahawk.’<sup>384</sup>

Sir William Martin, the former chief justice, disagreed and advised the governor to work with the Kingitanga rather than trying to suppress it. In his view, the existence of the Kingitanga was not a challenge to the Queen’s sovereignty.<sup>385</sup> Nor did the British Government support the idea of a war to suppress the Kingitanga. The Secretary of State for the Colonies, the Duke of Newcastle, was puzzled by Browne’s decisions. The Duke had seen no evidence that Māori were threatening violence or insurrection in support of the King, and so long as they did not start a war he saw no reason why the Crown should do so. It appeared to him that ‘we are preparing to attack them in vengeance for a *name*’ (emphasis in original).<sup>386</sup> But the Colonial Office was usually wary of overruling the judgement of the man on the spot. The Duke of Newcastle surmised that a Māori ‘appeal to arms’ in the King’s name was in fact expected by the governor. The Secretary of State for the Colonies agreed that ‘force must be met by force’ if the King’s people started a war.<sup>387</sup>

From the evidence before us, it is clear that the Kingitanga was not planning a war in the King’s name. Far from it. Wiremu Tamihana, Rewi Maniapoto, Epiha Tokohihi, and other chiefs had agreed to make peace at Taranaki in March 1861, and Rewi Maniapoto had met with the governor at Waitara. Rewi had also agreed to a meeting of the chiefs and the governor to resolve matters. That never happened because of Browne’s ultimatum in May, to which the Kingitanga’s response was an appeal for calm and dialogue.

Governor Browne’s preparations for war continued in 1861 but were interrupted by two things: first, by a change of ministry in the colonial Parliament; and, secondly, by the arrival of the news that Browne was to be replaced by Sir George Grey. From that point on, Browne became a caretaker governor and could not commit his successor to a war. Dr O’Malley concluded:

By July 1861 his plans for the invasion of Waikato, timed to commence the following September, were well advanced. It was only the news that reached New Zealand towards the end of the month of Browne’s imminent replacement as governor by Sir George Grey which saw those plans put on hold.<sup>388</sup>

Crown counsel emphasised the importance of the change of ministry and Browne’s decision to call a second national conference of chiefs at Kohimarama:

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384. Document A23, p 375 (Browne to Newcastle, 6 July 1861).

385. Document A23, pp 375–376; submission 3.4.198, pp 12–13.

386. Document A23, p 376 (Newcastle, minute on Browne to Newcastle, 16 May 1861).

387. Document A23, p 376 (Newcastle, minute on Browne to Newcastle, 16 May 1861).

388. Document A23, p 388.

Historians generally consider that there was a very real possibility that war would break out at this point. By June 1861, preparations were being made by the Crown's forces to defend Auckland 'and to enforce the submission of the Waikato tribes, should they refuse to accede to the terms offered and to acknowledge the Queen's supremacy'. During the 1861 session of Parliament, however, a 'peace party' led by William Fox brought down the Stafford Government. Fox and his supporters largely shared Gore Browne's view of the Kingitanga and agreed with his plan to call a second Kohimarama Conference to discuss the Crown's policies with the Māori leadership to expedite the introduction of local government institutions for Māori. Fox insisted 'that before we go to war real negotiations, carried on by parties in whom the Natives had confidence, should be undertaken . . . to induce the Natives to submit to the authority of the Crown.'<sup>389</sup>

The idea of a second Kohimarama conference was discussed with Tamihana in July 1861. The Rotorua rangatira Wiremu Maihi Te Rangikaheke visited Peria and urged Tamihana to meet with the governor and attend the conference. According to Te Rangikaheke, Tamihana agreed that the Treaty of Waitangi recognised and protected the 'mana Maori' in respect of authority over both people and land:

Ko te Tiriti ki Waitangi, ara ko te whakaae tanga a te Kuini i te mana maori ki a tohungia mana tangata, mana whenua.<sup>390</sup>

The Treaty of Waitangi, that is, the Queen's consent to the 'mana' Maori being respected, in regard to the men and the land.<sup>391</sup>

Te Rangikaheke reported that there were many things to discuss, including 'the setting up of the king' and the 'Queen's setting up of the "mana" Maori' (and, presumably, how those two things stood in relation to one another).<sup>392</sup>

As a result of the overtures from Te Rangikaheke and missionary J A Wilson (who was sent to Tamihana by the governor in June 1861), Tamihana offered to meet with the governor at the forthcoming second Kohimarama conference. His intention was that he would put the Kingitanga's case to the assembled chiefs, Browne would put his, and the chiefs would judge between them.<sup>393</sup> The King's council, however, was not willing that he should go, and Browne became a 'lame-duck' governor when the news arrived that he was to be replaced.<sup>394</sup>

The 'peace ministry' or 'peace party' was not aptly named.<sup>395</sup> Professor Ann Parsonson pointed out that Premier Fox was 'ready to advise vigorous war

389. Submission 3.4.300, p 4.

390. Stokes, *Wiremu Tamihana*, p 242 (Wiremu Maihi Te Rangikaheke to Browne, 9 July 1861).

391. Stokes, *Wiremu Tamihana*, p 243 (Wiremu Maihi Te Rangikaheke to Browne, 9 July 1861).

392. Stokes, *Wiremu Tamihana*, p 244 (Wiremu Maihi Te Rangikaheke to Browne, 9 July 1861).

393. Stokes, *Wiremu Tamihana*, p 245.

394. Stokes, *Wiremu Tamihana*, pp 246–247; doc A23, p 386.

395. Wai 686 ROI, doc A2, p 64; Dalton, *War and Politics in New Zealand*, pp 132–133.

measures whenever Governor Gore Browne decided the time was ripe.<sup>396</sup> The new ministry did want to try to negotiate and to avoid war with the Waikato tribes if possible.<sup>397</sup> In Taranaki, however, they wanted to resume the war and ‘bring the Ngatiruanuis and Taranakis into submission’ so that the district could be widely settled.<sup>398</sup> The Fox Government planned to open talks with Wiremu Tamihana at Tuakau. ‘[I]f there proved to be a prospect of a satisfactory result’, wrote Fox, then the ministry intended to arrange meetings with Governor Browne. But the new Government found itself in the same situation as Browne; they had to suspend any operations (either towards peace or war) and wait for the newly appointed Sir George Grey to arrive.<sup>399</sup>

Grey arrived in Auckland on 26 September 1861. After consulting his Ministers and developing his plans, he wrote to the Colonial Office at the end of November that he did not intend to enforce Governor Browne’s ultimatum. The time for war was not right, he argued, because adequate preparations had not been made. The result of war at that time would be a ‘general war’ (not confined to the Waikato) which the governor considered would be ‘disastrous’ for the colonists.<sup>400</sup>

Thus, the invasion of the Waikato in 1861 was prevented largely by a change of governors and the lack of sufficient troops at that time.<sup>401</sup> In the next section, we turn to examine Grey’s policies and the question of whether the Crown genuinely attempted to avoid war and negotiate a reasonable accommodation with the Kingitanga during his governorship.

#### **6.5.1.2 Grey’s mandate from the Colonial Office**

By April 1861, the Colonial Office was mainly persuaded of the need for a new governor. Sir Frederic Rogers said that what was needed was someone who could get Māori to adopt a middle course. By this, he meant a course between ‘disclaiming the Queen’s supremacy & abandoning what they look on as the means of securing good Government & perpetuating the practical independence which they at present enjoy’.<sup>402</sup> The Colonial Office believed that Sir George Grey would be the right person, partly due to his supposed success in handling Māori during his first governorship. The Duke of Newcastle instructed Grey that his ‘primary mission was the “establishment of peace”’.<sup>403</sup> This was qualified by a statement that it would be better to prolong the war with all its evils than give Māori an impression that the Crown was weak. At that point, the British Government was not aware that

396. Wai 686 ROI, doc A2, p 64.

397. Document A23, pp 392–393.

398. Document A23(e), p 6 (‘Minute by Ministers on the position of the Colony at the date of the arrival of Sir George Grey: chiefly in relation to the Native insurrection’, 8 October 1861).

399. Document A23(e), p 3 (‘Minute by Ministers on the position of the Colony at the date of the arrival of Sir George Grey: chiefly in relation to the Native insurrection’, 8 October 1861).

400. Grey to Newcastle, 30 November 1861 (doc A23, p 396).

401. Document A23, p 356.

402. Rogers, minute, 13 April 1861 (Ward, ‘A “Savage War of Peace”?’; p 94); Dalton, *War and Politics in New Zealand*, p 138.

403. Newcastle to Grey, 5 June 1861 (Wai 903 ROI, doc A143), p 146).

fighting had already ceased in Taranaki as a result of the truce arranged in March 1861.<sup>404</sup> In terms of the Kingitanga, Grey was given a 'mandate to seek a modus vivendi with the Kingitanga and avoid war'.<sup>405</sup> This is crucial for the claims before us, for it was the governor's failure to do this which resulted in the Waikato war.

### 6.5.1.3 *Grey's choice of native policy: the 'New Institutions'*

What tools were available to assist a new governor in his primary mission to establish peace from a position of strength, not weakness, and to persuade Kingitanga leaders to adopt Rogers' middle course? The Secretary of State advised Grey that the Crown's most important power had not yet been exercised: the power to declare 'native districts' under section 71 of the Constitution Act 1852 (discussed above). Use of this tool would remove Māori from the power of the colonial assemblies and enable them to live under the power of their own institutions and laws. In both private and public instructions, the Colonial Office urged this on the new governor, although the final discretion was once again left to the man on the spot.<sup>406</sup>

Another tool available to the new governor was the Kohimarama conference, which Browne (and the settler Parliament) had agreed should be an annual event.<sup>407</sup> Browne envisaged the conference as a means of bringing the chiefs together from around the country in a 'sort of Maori parliament'.<sup>408</sup> This would give them a degree of power and influence at the central government level if used effectively.

Also available was the idea of local state institutions of self-government, recognised as lawmakers by both the Crown and tribal communities, but not as separate as districts set aside under section 71. A Pākehā commissioner or magistrate could work alongside official rūnanga at the district and community levels, with Māori assessors and a Māori police force. The New Zealand Parliament had already passed legislation which could provide for this in 1858 but it had not been progressed by the Government – largely because Parliament was not prepared to fund it – but Browne had been interested in trialing it in Muriwhenua.<sup>409</sup>

Of these tools, Sir George Grey chose the third and rejected the other two out of hand. The claimants have condemned Grey for refusing to declare native districts under section 71 and for cancelling Browne's plans for national conferences.<sup>410</sup> He told the Colonial Office that he doubted the wisdom of calling 'a number of semi-barbarous Natives together to frame a Constitution for themselves'.<sup>411</sup> Professor Ward commented that Grey did not convene 'an annual assembly of rangatira' at

404. Wai 903 ROI, doc A143), p146.

405. Ward, 'A "Savage War of Peace"?', p 94; submission 3.4.300, p 10.

406. Document A23, pp 149–151, 234, 381–382.

407. Document A23, p 295; Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 178–179.

408. Loveridge, 'The Development and Introduction of Institutions for the Governance of Maori' (Wai 903 ROI, doc A143), p 94 (Browne to Denison, 27 June 1860).

409. Document A23, pp 260–262, 393–394, 407.

410. Submission 3.4.281, pp 20–21; see also document A23, p 394.

411. Document A23, p 394 (Grey to Newcastle, 30 November 1861).

Kohimarama because neither ‘he nor his ministers wanted a rival central Maori authority to develop’.<sup>412</sup> As far as we are aware, Grey never explained his decision not to use section 71 of the Constitution Act. It is likely that he saw his very different proposals for State rūnanga as an acceptable alternative – especially to the settlers. He did not want to give the Kīngitanga a separate district (virtually its own province), independent of settler authority, because it would give the Kīngitanga a secure base from which to ‘continue its campaign to win support among Maori everywhere’.<sup>413</sup> It would also shut out any form of land sales, so it would not be acceptable to the settlers on that ground. The governor of New South Wales, Sir William Denison, had suggested that the passage of time would persuade Māori to sell voluntarily so long as a full market price was paid, but this advice was not tested.<sup>414</sup>

Grey did accept, however, that Māori should have the same rights as Pākehā to govern themselves by their own assemblies and to make their own laws.<sup>415</sup> His plan involved the creation of ‘New Institutions’, using the Native Districts Regulation Act 1858 and Native Circuit Courts Act 1858, to offer a form of State-sanctioned self-government to Māori communities at the local level. In brief, he intended to divide the North Island into 20 districts, each supervised by a Pākehā civil commissioner working with a district rūnanga. The district rūnanga would be elected by smaller community-level rūnanga, and would have the power to make bylaws for the governor’s assent, build hospitals and schools, and control land sales. The authority of the commissioner, magistrates, and rūnanga would be supported by a Māori police force, recruited and paid by the Crown.<sup>416</sup> The immediate questions which arose for our inquiry district were: would there be a role for the King in the State rūnanga, and would the Kīngitanga tribes accept these official rūnanga (along with Pākehā magistrates) in place of their own? These questions could only be answered by negotiations between the governor and Kīngitanga leaders, likely requiring some time and build up of trust before an accommodation could be reached. But, as noted above, Grey’s mandate from the Colonial Office was to reach some kind of workable accommodation with the Kīngitanga and avoid war.

#### **6.5.1.4 Discussion of the New Institutions in the Waikato, December 1861**

Governor Grey did not immediately approach the Kīngitanga or open talks with leaders of the Waikato and Te Rohe Pōtae. He started with Northland, where he felt assured of a good response to his New Institutions.<sup>417</sup>

In December 1861, John Gorst was sent to the Waikato as civil commissioner for the upper districts, appointed before any discussions had been held at all. His initial role was to sell Grey’s plan for State-sanctioned institutions. The Government instructed him to point out that self-constituted tribal rūnanga and magistrates

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412. Ward, ‘A “Savage War of Peace”?’; pp 94–95.

413. Ward, ‘A “Savage War of Peace”?’; p 95.

414. Ward, ‘A “Savage War of Peace”?’; pp 92, 95.

415. Stokes, *Wiremu Tamihana*, p 255.

416. Document A23, pp 394–395.

417. Document A23, p 396.



**An Exchange between Governor Grey and Tipene Tahatika, Taupiri,  
16 December 1861**

Tipene: Then I will ask a question. Are you opposed to my King?

The Governor: I do not care about him; but I think it is a thing that will lead to trouble. It will be stopped by such means as I have adopted, and will die out.

Tipene: If the King is brought to nought by your plans, well and good. You say, 'What is the King to you?' We say, 'It is a thing of importance to us.' And the reason why we say so is this, that we have seen the good of it. The quarrels of the Maories amongst themselves have, for the last two years, diminished; and now, by means of it, many evils that have arisen have been put down without war. And therefore I say, the King is an important thing to us. Now I ask you, Are you altogether opposed to my King? If you consent to my question, we shall then work quietly; for we are not the chief cause of the King, whereas you have the final decision about your own system. So I ask you, Are you altogether opposed to my King? That you may say whether you are so or not.

The Governor: If you ask me as a friend, I tell you I think it a very bad thing.<sup>1</sup>

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1. Gorst, *The Maori King*, pp 229–230

were by definition 'lawless,' but that the Government was sympathetic and wanted to give them a lawful form of authority instead. In early December, Gorst visited Wiremu Tamihana and Ngāti Hauā. He reported a great deal of interest in the governor's proposals, but the sticking point was the King. They wanted their rūnanga to pass laws that required the King's assent as well as the governor's; on that basis, Tamihana was prepared to agree to the new system – but not before discussions had been held directly with Grey. Another issue was the settlers in the district (mostly traders and missionaries) and the enforcement of a ban on traders importing alcohol. Some inquired whether all settlers should not come under the King as well as the governor.<sup>418</sup> Privately, 'many chiefs told Gorst that Tamihana approved of the proposal that the governor and Maori King should together agree to the laws of the rūnanga, and if Grey could only bring such a scheme to fruition all would agree.'<sup>419</sup>

These exchanges between Gorst and Ngāti Hauā in December 1861 showed the key fundamentals needed for an agreement between the Crown and the Kingitanga tribes. It was by no means clear that all the Kingitanga leaders and iwi would have accepted the accommodation discussed by Tamihana, but they would certainly not have settled for less. Key requirements included: the assent of both the

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418. Document A23, pp 397–398.

419. Document A23, p 398.

King and the governor would be necessary for laws passed by the rŭnanga; the rŭnanga's laws would apply to the handful of settlers living in Kingitanga districts (such as a ban on importing alcohol); and final decisions on this matter could only be reached in a direct dialogue between the rangatira and the governor.

Later in December 1861, Governor Grey came at last to the Waikato but he only visited two lower Waikato settlements, Kohanga and Taupiri. Grey used what Dr O'Malley called a 'mixture of thinly veiled threat and pacific promises', which 'perhaps reflected the fact that Grey was not simply preparing for peace but was also *simultaneously planning for war*' (emphasis added).<sup>420</sup> At the hui, Grey stated variously that:

- ▶ he did not mind whether a chief was called a king because he would look upon all chiefs as the kings of their tribes, and those kings who would work with him would be 'wealthy kings, and kings of wealthy peoples' (all the others he would 'not care for');<sup>421</sup>
- ▶ he had been sent to New Zealand with a very large force of troops, and he would be able to obtain as many more troops as were necessary to establish law and order, but he also promised that he would never attack the 'people of Waikato' first, and they could 'rest in peace and quietness';
- ▶ if a tribe or tribes called their chief a king and raised a flag he thought it was nonsense and would not mind it, but because 'the name of king has been mixed up with many troubles and is much disliked by many people', he would 'get rid of it, and find some other name';
- ▶ he was going to 'conquer and kill' the supporters of the King with good; and
- ▶ the 'king movement' should be stopped and would be by the plans (for New Institutions) that he had just explained to them.<sup>422</sup>

Grey's statement paraphrased in the final bullet point above was made during a debate between the governor and Tipene Tahatika, one of two envoys sent by the Kingitanga to the hui at Taupiri (see sidebar).

Thus, Grey did not see his New Institutions as a means to negotiate a *modus vivendi* with the Kingitanga. A role for the King in the New Institutions was not a topic he would permit for discussion and agreement. Rather, the governor planned to offer the New Institutions to neighbouring tribes as a way of starving the Kingitanga of potential support.<sup>423</sup> Any such offer to the Waikato and Te Rohe Pōtae tribes would require them to put aside the King. Grey assumed that they would do so once they saw the advantages of his new system. Dr O'Malley pointed to a letter to the Secretary of State for the Colonies, in which Grey stated:

Thus by degrees I hope the King movement will be eaten out, and, when the inferiority of their form of government is seen side by side with the superior one which

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420. Document A23, pp 398–399.

421. Grey, speech to Waikato chiefs at Kohanga, 12 December 1861 (doc A23, pp 398–399).

422. Grey, speech to Waikato chiefs at Taupiri, 16 December 1861 (doc A23, pp 398–400).

423. Belich, *The New Zealand Wars*, p 120.

will be given to them, that the whole will at last readily embrace offers which are so advantageous to them.<sup>424</sup>

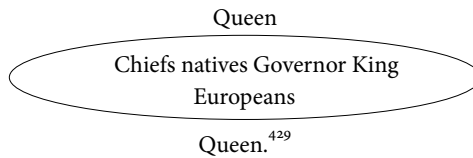
Meanwhile, Gorst recorded that the Kingitanga chiefs were left wondering what Grey intended to do with the large army that he had boasted about, and which he had said he could ‘increase indefinitely’.<sup>425</sup>

The Colonial Office, however, expected Grey to reach a *modus vivendi* with the Māori King.<sup>426</sup> In the British Government’s view, the use of force to extract a temporary ‘admission of the Queen’s rights’ would be pointless, while a war to break the power of the Kingitanga tribes implied a ‘desperate, tedious, and expensive war, to which it is impossible to look forward without horror’. Grey was instructed: ‘[T]he armed force should not be used for the mere purpose of exacting from the Maoris a verbal renunciation of the so-called King’.<sup>427</sup>

Gorst’s reports of his December 1861 meetings were forwarded to Britain, outlining the potential for a Crown–Kingitanga agreement if both King and governor assented to the rŭnanga’s laws. The Duke of Newcastle responded: ‘I see no difficulty, if they desire it, in requiring the assent of one of their Chiefs, whether [King] Matutaera or any other person, to the laws passed by the Runanga.’ The Duke wrote to Grey that: ‘Such an assent is in itself no more inconsistent with the sovereignty of Her Majesty than the assent of the Superintendent of a Province to laws passed by the Provincial Council.’<sup>428</sup>

This communication from the British Government fed the hopes of some for peace (see section 6.5.3.2). Nor does it seem irreconcilable with what Tamihana told the Reverend Ashwell in May 1861:

we will have but one Tikanga (rule) one Ture (law) and the Queen is a Fence for us all (Maoris and Pakehas, i.e. Europeans) ‘ohia me waiho te Kingi kia tu’ i.e. ‘but leave the King, let him stand’ ‘na me he mea he mahi he tana ki te Kuino [*sic*] me turaki ki raro’ (i.e. If he does any wrong against the Queen – then thrust him down) (inaianeī – he ingoa kau) – It is only a name – but let that name stand – he then drew a line and said the line is the Queen a Fence for all – thus



424. Document A23, p 400 (Grey to Newcastle, 6 December 1861).

425. Document A23, p 400; Gorst, *The Maori King*, p 231.

426. Ward, ‘A “Savage War of Peace”?’ p 94.

427. Newcastle to Grey, 22 September 1861, BPP, 1862, vol 37 [3040], p 95 (IUP, vol 13, p 109); Belich, *The New Zealand Wars*, p 123.

428. Document A23, p 398 (Newcastle to Grey, 16 March 1862); submission 3.4.300, p 11.

429. Document A23, pp 367–368 (Ashwell to Church Missionary Society, 1 May 1861, Ashwell letters and journals, qMs-0089, ATL).

Te Kingi, Tamihana said, was only a name: 'he ingoa kau'. Neither Browne, nor Grey who followed, could accept this. Nothing that Grey proposed between 1861 and 1863 came close to satisfying what the colonial authorities in London acknowledged was a reasonable request.

### 6.5.2 Preparing for war: roads, redoubts, and armed steamers

After visiting two lower Waikato settlements in December 1861, the governor went no further into the interior. This meant that he failed to engage with any Kingitanga centres or leaders. This was his only visit to the district until January 1863. For the whole of 1862, the governor refused to meet with or engage directly with the Kingitanga authorities. There were no negotiations at all, let alone good faith negotiations in search of an accommodation or 'modus vivendi'. Crown counsel accepted criticism that the Crown failed to work with and support 'moderate' Kingitanga leaders.<sup>430</sup> The fact is that the Crown did not try to work with or support *any* Kingitanga leaders.

In our hearings, some weight was given to Grey's statements in September 1861 that he intended to 'take the Waikato'.<sup>431</sup> At the end of September, Grey stayed with the outgoing governor for a week before Browne departed to Australia. Browne annotated a copy of Gorst's 1864 book, *The Maori King*, stating that he had invited the King's uncle, Tāmami Ngāpora, to come and visit Grey. But, 'he remained aloof for some time. I told Grey I did not think this looked well. He replied I think it is well for I want an excuse to take the Waikato.'<sup>432</sup>

Harriet Gore Browne, the governor's wife, wrote in January 1862: 'I heard him with my own ears tell Col Browne he hoped the natives would not submit as it would be much better for both races that they should be conquered.'<sup>433</sup> We do not think too much weight should be placed on these statements. Grey may not have spoken frankly with his predecessor.

The more important point is that, when Grey returned from his visit to Waikato in December 1861, he immediately ordered General Cameron to begin building a military road from Drury to the Waikato River – the Great South Road – and to construct fortifications on the border of the Waikato district.<sup>434</sup> The latter included the Queen's redoubt, able to hold 1,000 troops. This fort was completed in March 1863, and was located about a mile and a half from the Mangatāwhiri River.<sup>435</sup> A fort was also constructed to overlook (and command) the Waikato River at Te

430. Submission 3.4.300, p 11.

431. Transcript 4.1.12, pp 841–845; submission 3.4.281, p 29.

432. Browne, notes on Gorst, *The Maori King*, p 203 (doc A23, p 298).

433. Document A23(f)(i) (O'Malley), p 4 (Harriet Gore Browne to CW Richmond, 10 January 1862).

434. Grey to Newcastle, 7 January 1862, AJHR, 1862, E-1, sec 3, p 48; Grey to Cameron, 19 December 1861, AJHR, 1862, E-1, sec 3, p 49.

435. Document A23, p 420.

Ia.<sup>436</sup> Grey established a 'Commissariat Transport Corps' for logistical purposes, and sent an order for armed steamers to use on the Waikato River.<sup>437</sup>

The Taranaki Tribunal suggested that Grey maintained 'the policy of promoting peace while preparing for war'.<sup>438</sup> Belich argued that it is difficult to avoid the conclusion that Grey planned the invasion of the Waikato well in advance of its execution, suggesting that the governor had a simultaneous 'peace policy' and 'war policy'.<sup>439</sup> For his part, O'Malley suggested that

While Grey had cancelled his predecessor's plans for an 1861 invasion of the Waikato district, he commenced almost immediate preparations for a future confrontation. Those preparations [included] the construction of the Great South Road, the erection of a large fort just north of the Mangatawhiri River, plans for a further road intended to run from Whaingaroa across to the Waipa district, and the introduction of armed steamers on the Waikato River . . .<sup>440</sup>

Grey informed the Colonial Office in April 1863 that, when he had arrived in New Zealand for his second governorship, it was clear that an invasion would be foolhardy in the present circumstances:

I soon found that from the dense forests, and impassable swamps, which intervened between Auckland and the country inhabited by the Waikato tribes, and from the want of roads or other means of communication, it was impossible to commence operations against them with any hope of success. On the contrary, they had become so confident in their own strength and resources, and were so encouraged and emboldened by the events of the recent war that the question was, how we could protect the country round Auckland from the attack they might at any moment make on it, and which they were certain to make if we began a war at Taranaki, or in any other part of the North Island.<sup>441</sup>

Grey described his preparations for war in 1862 as capable of being either defensive or offensive. He justified them as necessary for the defence of the Auckland district in the event of an attack from the Waikato. Professor Belich, however, argued that this was not the case because Grey's "defensible frontier" pointed the wrong way – it ran north-south instead of east-west.<sup>442</sup>

The evidence strongly suggests that the delay in starting a war was more for logistical reasons than a desire to negotiate or discover alternatives to war. Belich described the Waikato campaign as 'one of the best-prepared and best-organized

436. Gorst, *The Maori King*, p 289.

437. Belich, *The New Zealand Wars*, pp 124–127.

438. Waitangi Tribunal, *Taranaki Report*, p 88.

439. Belich, *The New Zealand Wars*, pp 119–222, esp p 120.

440. Document A23, pp 420–423, 508; see also pp 358, 389–390, 391–419, 424–427, 504.

441. Document A22, p 25 (Grey to Newcastle, 6 April 1863, no 37, pp 353–354, CO 209/172, Archives New Zealand).

442. Belich, *The New Zealand Wars*, p 124.

ever undertaken by the British army.<sup>443</sup> If politics determined the purpose of the invasion, logistics seem to have determined almost every other aspect of the campaign: the start, the progress up the river, the march on Rangiaowhia, and, finally, the decision not to advance further into Maniapoto territory.

### **6.5.3 Were there opportunities for the recognition of Kingitanga authority in 1862–63?**

#### **6.5.3.1 Growing fear of attack in the Waikato**

When the Waikato peoples heard of the intention to build the Great South Road and station troops at the junction of the Mangatāwhiri and the Waikato, they were very alarmed that the Crown intended to attack them.<sup>444</sup> The intention to place armed steamers on the river reinforced this alarm.<sup>445</sup> Claimant Harold Maniapoto stated:

Our Tupuna and other Maniapoto chiefs strongly suspected that the Crown intended to wage war on them to get what it wanted, land and total authority. They were in no doubt that this meant that the Crown sought the demise of their beloved Kingitanga and forfeiture of their customary land rights. A number of events were to finally allay any doubts that they may have had and finally convince them of their worst fears.<sup>446</sup>

One of those events was the construction of the Great South Road by about 2,300 troops in 1862.<sup>447</sup> Gorst suggested that this was fatal to any building of trust, because the rangatira ‘could never be misled as to what (was) the real design of this military undertaking’. From the moment they heard of it, he said, ‘they never swerved from the opinion that Sir George Grey’s ultimate intention was . . . war.’<sup>448</sup> Morehu McDonald told us that it pained him to drive down the Great South Road today, knowing that it was ‘built originally to carve, to drive a wedge right through our whenua, and that is what it was, a military road’.<sup>449</sup>

In addition to the Great South Road, Grey offered money to lower Waikato chiefs to build a road inland from Raglan to Whatawhata on the Waipā River – this time on Māori land. This caused great consternation in the Waikato, as the road would lead directly into Kingitanga territory. Rewi Maniapoto and Wiremu Tamihana agreed that this road must not be permitted. They succeeded in preventing its construction beyond the Queen’s land at Whāingaroa. Rewi was prepared to use force to stop this road but it proved unnecessary because the chief involved (Wiremu Nera Te Awaitaia) realised that he had united the whole Waikato against

443. Belich, *The New Zealand Wars*, p 127.

444. Document A23, pp 404–405.

445. Gorst, *The Maori King*, pp 304–305.

446. Document K35, p 7.

447. The figure of 2,300 troops working on the road comes from Cameron to Grey, 24 December 1861, AJHR, 1862, E-1, sec 3, p 50.

448. Document K35, p 9 (Gorst, *The Maori King*, p 232).

449. Transcript 4.1.1, p 212.

him.<sup>450</sup> The claimants told us that Te Awaitaia's tribe, Ngāti Mahanga, were left deeply divided by the Crown's actions in trying to get a military road into the Waikato.<sup>451</sup>

### 6.5.3.2 *The Peria hui, October 1862*

Was it too late for the Crown to reach an accommodation with the Kingitanga by offering to recognise its authority in a reasonable and meaningful way? A great hui was called at Peria in October 1862 to discuss the growing sense of crisis among Kingitanga leaders. Dr O'Malley noted:

Rumours of bullet-proof steamers which would soon be patrolling the waters of the Waikato River, along with speculation that a landing port being constructed at the Queen's Redoubt was in fact the first phase of a planned bridge across to the King's territory, created considerable alarm and panic among the Waikato tribes in the middle months of 1862.<sup>452</sup>

The Peria hui was attended by tribal leaders from throughout the central North Island. Astonishingly, at this crucial point, the Native Minister refused an invitation to attend. Instead, he sent Gorst as the Crown's representative but with instructions to say nothing. Nor did the governor attend. The Native Minister, Francis Dillon Bell, wrote: 'I decided (and Grey quite concurred) that we should puzzle them and do best by saying nothing at the present moment.'<sup>453</sup> This was hardly a constructive approach, let alone a responsible one, given the growing tensions and fears of a military attack by the Crown.

It was left to Bishop Selwyn to try to seek an accommodation or *modus vivendi* in the absence of a Crown initiative. The bishop drew the attention of the hui to the despatch from the Duke of Newcastle, mentioned above, in which the Colonial Office agreed to a formal role for the King in approving laws, similar to that of a provincial superintendent in his district. Selwyn reported to the Government that it would still be possible to negotiate a compromise based on the Duke's proposal (which had, in turn, been based on Gorst's hui with Tamihana in December 1861). Given the wide attendance at the Peria hui, including that of Rewi Maniapoto and other Ngāti Maniapoto representatives, this ought to have been an important consideration for the Crown in the coming months. The people, reported Selwyn, also agreed that there should be one law for both races but that there was a 'Duality of Mana', and they were in no way prepared to give up the mana of the Kingitanga. There was no hatred of Pākehā evident at the hui.<sup>454</sup>

The resolutions of the Peria hui were sent to Premier Fox on 1 November 1862. These included that the Great South Road must stop at the Mangatāwhiri, no

450. Stokes, *Wiremu Tamihana*, pp 281–284.

451. Submission 3.4.249(c), p 18.

452. Document A23, p 421.

453. Document A23, p 424 (Bell to Mantell, 23 October 1862).

454. Selwyn, report, 27 October 1862 (doc A23, pp 424–426). For a full discussion of accounts of the Peria hui, see Stokes, *Wiremu Tamihana*, pp 288–312.

steamer should be placed on the Waikato River, Pākehā living in the district would be well treated, and the governor would be invited to the Waikato so that matters could be settled with him. If agreement could be reached, the rangatira would agree to an investigation of the Waitara.<sup>455</sup> Trying to work out a final settlement at Taranaki had become another sticking point between the Kingitanga and the colonial Government. In brief, the leadership would not agree to an investigation of Waitara while the land remained under military occupation and the governor seemed to be threatening war against the Kingitanga.

### 6.5.3.3 *Grey's visit to the Waikato, January 1863*

In November and December 1862, Grey was invited repeatedly to come to the Waikato and enter into discussions with the chiefs. Nearly all of the speakers at Peria had expressed grave concerns about the Crown's intentions but wanted to maintain friendly relations with the settlers and the Government. Dr O'Malley commented:

Under such circumstances, some kind of meaningful reassurance from senior government officials, along with a great deal of patience and a willingness to seriously address the concerns expressed by Waikato and Kingitanga leaders, was called for. Grey, though, avoided all direct dealings with the Kingitanga for the remainder of the year.<sup>456</sup>

In November 1862, the governor refused invitations to visit the Waikato in the wake of the Peria hui. When a delegation came to Auckland and asked him not to put a steamer on the river, he replied that as a result of their objections he would put on two instead of one. Grey was unmoved by objections that the Waikato River belonged to Māori, not the Queen. A second invitation followed the first, sent jointly by King Matutaera and Rewi Maniapoto. Grey refused this invitation as well, stating that he might come in a few months if things remained quiet.<sup>457</sup>

Remarkably, the governor then made an unannounced visit to the Waikato on New Year's Day 1863. His explanation to the Duke of Newcastle was that he had heard of plots to kill all the local settlers as soon as a steamer was placed upon the river.<sup>458</sup> The lack of warning meant that there was no opportunity for all the chiefs to arrange to meet with him. When the governor reached Ngāruawāhia, hardly anyone was there. The King and his rūnanga were with Ngāti Maniapoto at Hangatiki, and many did not make it back in time to see the governor. Grey was welcomed enthusiastically by all he encountered, and a hui was held at Taupiri at which some Kingitanga rangatira, including Wiremu Tamihana, were present. Neither King Matutaera nor Rewi Maniapoto was able to attend.<sup>459</sup>

455. Stokes, *Wiremu Tamihana*, pp 311–312.

456. Document A23, p 426.

457. Document A23, pp 426–427.

458. Grey to Newcastle, 6 February 1863, AJHR, 1863, E-3, section I, pp 6–7.

459. Gorst, *The Maori King*, pp 322–323; 'Extract from *New Zealander*', AJHR, 1863, E-3, pp 7–8.



No official account or minutes of this meeting have survived, but it was a crucial meeting in terms of whether the Crown could or would avoid war by recognising the authority of the Kīngitanga in a fair and reasonable way. There are several accounts available to us, including: Grey's description of part of the meeting to the Duke of Newcastle in February 1863; an article in the *New Zealander* of January 1863; Gorst's account in his 1864 book; and a later account of part of the meeting by Grey in 1869. From the various accounts, there are three key issues. First, the people asked the governor not to put an armed steamer on their river, but he was adamant that he would do so – and that it would be for their economic benefit.<sup>460</sup> Secondly, the question of Taranaki was discussed, including the possibility of the Crown 'taking possession' of Tataraimaka.<sup>461</sup> Thirdly, there was the matter of whether the governor was willing to agree to a formal role for the King and the King's rūnanga in self-government institutions, on which everything hinged. On this, the accounts differ.<sup>462</sup>

The newspaper article (published on 14 January 1863) is the closest account in time to the meeting. In that article, it was reported that the people told the governor:

they would elect from amongst their chiefs those who were most learned, to frame rules and laws for the good government of the people; these laws will be handed by [King] Matutaera to the Governor for his sanction, and, if assented to by the Governor, they should become law.<sup>463</sup>

This was the solution discussed by Gorst and Tamihana in December 1861, approved by the Duke of Newcastle in March 1862, and which Selwyn said was still possible at the widely attended Peria hui in October 1862. Grey replied that, 'so far as he understood their King movement, as they were now conducting it, nothing but evil would result'.<sup>464</sup> The governor then said that they should send a deputation of 'principal chiefs' to Auckland to give a 'full and minute' explanation of the Kīngitanga, after which he would give them a definitive answer.<sup>465</sup>

Tamihana had been unwilling to risk his person in Auckland in 1861, and it was unlikely that the principal Kīngitanga leaders would be more likely to risk detention in the circumstances of early 1863. The chiefs held a meeting at Ngāruawāhia overnight and their response was that Grey should visit the whole of the district and all its rangatira.<sup>466</sup> They presumably hoped to resolve matters face to face. The governor, however, fell ill and had to go back to Auckland. A man on horse-back

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460. 'Extract from *New Zealander*', AJHR, 1863, E-3, pp 7–8.

461. Gorst, *The Maori King*, p 325. Tamihana urged the governor to wait and to allow him time to persuade the occupying Māori force to 'surrender the land quietly'.

462. For Dr O'Malley's discussion of this issue, see document A23, pp 428–434. For Professor Ward's, see 'A "Savage War of Peace"?', pp 99–101.

463. 'Extract from *New Zealander*', AJHR, 1863, E-3, p 8.

464. 'Extract from *New Zealander*', AJHR, 1863, E-3, p 8.

465. 'Extract from *New Zealander*', AJHR 1863, E-3, p 8.

466. 'Extract from *New Zealander*', AJHR 1863, E-3, p 8.

galloped beside Grey's waka, carrying letters from the rangatira urging him to return and visit the whole of the people throughout the district.<sup>467</sup>

The second account was dated 6 February 1863. In a letter to the Colonial Office, forwarding the newspaper article cited above, the governor added that something had been missed from the newspaper account. He claimed that he and the rangatira had actually agreed at the meeting that the 'so-called Maori King should be the head of a Native council' and should send the council's laws to the governor for assent. But the chiefs 'subsequently withdrew from this arrangement' because Waitara had not been settled, saying they would not come under the Queen's authority again.<sup>468</sup>

This was a remarkable contradiction: the newspaper account said that the rangatira had asked for this arrangement but the governor replied that it would result in evil and they should come to Auckland for a minute inquiry into the Kingitanga first; whereas Grey claimed to have agreed to the arrangement, following which the chiefs changed their minds and rejected it.

The next account is Gorst's, published in 1864. Gorst reported that the governor told the people that 'he never went to bed at night without thinking what he could do to pull down the Maori King.' He said to them: 'I shall not . . . fight against him with the sword, but I shall dig round him till he falls of his own accord.'<sup>469</sup> Gorst commented that these words made a deep impression and were 'quoted as the special thing which the Governor had said at the meeting.'<sup>470</sup> Missionary Robert Maunsell interpreted for Grey at the meeting and he also stated that these were Grey's words at the hui.<sup>471</sup> Given that, it is hardly likely that Grey's version (rather than the newspaper's) was correct.

There was a further account in 1865. A Crown official, James Mackay, said at a meeting with Tamihana that Grey had offered to recognise the King as head of a rūnanga, which would make laws and submit them to the governor for approval. Tamihana, claimed Mackay, had 'rejected the offer and preferred war'. Tamihana denied that the governor had made any such offer.<sup>472</sup> Professor Alan Ward commented that Tamihana's reputation for integrity and Grey's reputation for 'gilding the lily' leads to the conclusion that Tamihana's account was correct.<sup>473</sup>

The next account comes from a few years later. In 1869, Grey wrote to the Colonial Office that he had 'offered to constitute all the Waikato and Ngatimaniapoto country a separate Province, which would have had the right of electing its own Superintendent, its own Legislature, and of choosing its own Executive Government, and in fact would have had practically the same powers and rights as any State of the United States now has.'<sup>474</sup> Grey argued that '[t]

467. 'Extract from *New Zealander*', AJHR, 1863, E-3, p 8.

468. Grey to Newcastle, 6 February 1863, AJHR, 1863, E-3, p 6.

469. Gorst, *The Maori King*, p 324.

470. Gorst, *The Maori King*, p 324.

471. Ward, *A Show of Justice*, p 157.

472. *Daily Southern Cross*, 27 December 1865, quoted in Ward, 'A "Savage War of Peace"?', p 100.

473. Ward, 'A "Savage War of Peace"?', p 101.

474. Grey to Lord Granville, 27 October 1869, AJHR, 1870, A-1B, p 81.

here could hardly have been a more ample and complete recognition of Maori authority', as this arrangement would have given them 'the exclusive control and management of their own affairs'. The Kīngitanga rejected this offer, he said, because it did not give 'absolute recognition' to the Māori King as completely independent from the Crown.<sup>475</sup>

Grey's story became more elaborate still a month later, when in November 1869 he added that the offer was 'not only once but *repeatedly* made to create all the upper Waikato and Ngatimaniapoto districts into a separate native Province' (emphasis added).<sup>476</sup>

In our view, this was pure fiction. Grey was trying retrospectively to justify his actions at the January 1863 hui and even more so his invasion of the Waikato in July 1863, by arguing that he had in fact done what he so clearly should have done. The 1862 newspaper account was the closest in time and very likely correct. A former Attorney-General said that he believed it was based on an official report.<sup>477</sup> The governor was aware that he could and should have accepted the offer made by the rangatira at Taupiri in January 1863. Indeed, the Crown had the power to constitute a self-governing native district under section 71, and should have exercised it by January 1863 at the latest. If Grey had indeed 'repeatedly' offered to constitute a 'native province' for the Waikato and Ngāti Maniapoto, surely there would have been some mention of this before 1869? Henry Sewell, the former Attorney-General, was correct when he wrote in 1864 that the Government had lost a 'golden opportunity' in January 1863 for 'settling our native difficulties, at least with the Waikatos.'<sup>478</sup>

Not only did Grey not make an offer of self-government at Taupiri in January 1863, the governor rejected the compromise offered by the chiefs. He had insisted that he would put armed steamers on the river, and said that he thought constantly about how to pull down the King – and would dig around him until he fell. We agree with Dr O'Malley:

Grey's clear and open acknowledgement of his overriding obsession with toppling the King (which rather ran contrary to suggestions he was prepared to more or less grant provincial status to the Kīngitanga) left a profound impression on the Waikato tribes.<sup>479</sup>

The outcome was not solely the governor's fault. The Domett ministry, which disclaimed responsibility for native affairs, took no action either to negotiate with the Kīngitanga leadership or get Grey to do so.<sup>480</sup>

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475. Grey to Lord Granville, 27 October 1869, AJHR, 1870, A-1B, pp 81–82.

476. Document A23, p 431 (Grey to Dealtry, 4 November 1869).

477. Document A22(i), p [11] (Henry Sewell, *The New Zealand Native Rebellion: Letter to Lord Lyttleton*, 1864, p 15 (Hocken Library Facsimile Series)).

478. Document A22(i), p [11] (Sewell, *The New Zealand Native Rebellion*, p 15).

479. Document A23, p 434.

480. Dalton, *War and Politics in New Zealand*, pp 151–153, 155–157, 169–170, 174–175.

Crown counsel pointed out that Kingitanga chiefs might not have accepted the governor as well as the King having power to assent to their laws.<sup>481</sup> From the evidence available to us, it is clear that at least some rangatira offered to accept such a role for the Crown in January 1863. It must be remembered, too, that the military road, the fortifications, and the planned steamer all pointed to an immediate threat of invasion. Gorst painted a poignant picture of riders galloping along the riverbank after the governor's waka as he left the Waikato, 'begging that he would return.'<sup>482</sup> The newspaper carried a similar account.<sup>483</sup> These were people who wanted to come to some form of agreement with the governor, which allowed them to keep the King and their independence while also retaining the protection of the Queen. It was the governor who was not prepared to compromise, not the chiefs.

#### 6.5.4 Treaty analysis and findings

Crown counsel submitted:

The Crown accepts that the Treaty imposes on both Treaty partners – the Crown and Māori – a responsibility to seek to resolve issues between themselves peacefully. Although the Treaty does not displace the Crown's power to use coercive force in appropriate circumstances – in order to maintain the peace within society, for example – the Crown accepts that the use of non-peaceful means to resolve issues between itself and its citizens, or any group of its citizens, should occur in exceptional situations only, and generally only after it has exhausted all reasonable peaceful means.<sup>484</sup>

Did the Crown meet this test in dealings with Waikato and Te Rohe Pōtae chiefs of the Kingitanga in 1861–1863? Had the Crown exhausted all reasonable peaceful means?

Our analysis set out in section 6.5 shows that it had not. Governor Browne decided in 1861 that the authority of the Kingitanga was incompatible with that of the Queen, and was planning an invasion of the Waikato timed for September 1861. The extent of Grey's preparations in 1862–63 suggests that the result would have been a disaster for the British if Browne had kept to his plan. But war was narrowly avoided in 1861 because the British Government replaced Browne just in time (section 6.5.1).

The new governor, Sir George Grey, was sent with a 'mandate to seek a modus vivendi with the Kingitanga and avoid war.'<sup>485</sup> In particular, the Colonial Office urged him to use section 71 of the Constitution Act 1852, which provided for autonomous native districts in which Māori authority and law would prevail.

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481. Submission 3.4.300, p 11.

482. Gorst, *The Maori King*, p 326.

483. 'Extract from *New Zealander*', AJHR 1863, E-3, p 8.

484. Submission 3.4.300, p 8.

485. Ward, 'A "Savage War of Peace"?', p 94; submission 3.4.300, p 10.

But, in our view, Grey did not even try to carry out his mandate from the British Government, or did so so half-heartedly as to ensure failure.

First, as we explained in sections 6.5.1 and 6.5.3, the nucleus of a just solution existed: in December 1861, October 1862, and January 1863, it appeared that Kīngitanga chiefs were prepared to accept a compromise that was also acceptable to the Colonial Office: they would make their own laws through their rūnanga; the King would have the power to assent to those laws; and the governor would also have the power to assent. Such an accommodation could have reconciled the authority of Māori (tino rangatiratanga or mana motuhake) with the authority of the Crown (kāwanatanga). Grey later said in 1869 that he had repeatedly proposed just such a solution, by offering to establish self-governing native provinces in Kīngitanga districts. This shows that he knew what he could and *should* have done (section 6.5.3.3). To have reached such a compromise would have been consistent with the Treaty partnership and the principle of autonomy, but the Crown failed to do so in 1861–63. This was a deliberate omission on the part of the Crown and was thus a breach of the partnership and autonomy principles.

Secondly, neither the governor nor his colonial Ministers actually tried to negotiate with the Kīngitanga and avoid war. Some of their behaviour was both inexplicable and irresponsible. Examples included the refusal to attend the Peria hui in 1862 or allow any information about the Crown's position to be conveyed (section 6.5.3.2), and Grey's surprise visit to the Waikato in January 1863 which meant that the King, Rewi Maniapoto, and many others could not meet with him (section 6.5.3.3). Instead of touring the district, meeting with the chiefs, and opening a dialogue, the governor indulged in sporadic visits to just the lower Waikato and on just two occasions. We agree with the claimants that the Crown should have negotiated with the Kīngitanga to avoid war but failed to do so.<sup>486</sup> This was a clear breach of the Crown's obligations under the Treaty of Waitangi, including the partnership principle.

Thirdly, Grey adopted a strategy of digging around the King until he fell (see section 6.5.1.3). This was the true intent of his New Institutions – at least for the Kīngitanga districts if not elsewhere. We agree with the claimants that the governor intended the New Institutions to control Māori in the Waikato and Te Rohe Pōtae, not as means for protecting and providing for their tino rangatiratanga.

Fourthly, the governor pursued a policy of preparing for war while waiting for his New Institutions to do the work of digging around the King. Those preparations for war are set out in section 6.5.2. Again, the governor's approach seems cavalier or reckless if his actual intent was to avoid war. He did not attempt to meet with or negotiate a peaceful solution with the Kīngitanga leaders. Nor did he seek to allay their concerns about his very visible military preparations aimed at their district, apart from that brief, abortive visit to the Waikato on New Year's Day 1863.

All of this added up to a serious failure on the part of the Crown at a time when war could likely still have been avoided. It is not possible to say so with absolute certainty, of course, but the Crown did not even try. Some claimants argued that

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486. Submission 3.4.130(e), p 12.

the Crown actively wanted a war to subdue the Kingitanga and open up their lands for settlement. The evidence shows that Governor Browne was indeed determined on war (sections 6.4.3.2) and 6.5.1.1). The evidence is less clear with Grey, whose real intentions are often extraordinarily difficult to pin down. All we can say is that he carried out very thorough preparations aimed at an offensive in the Waikato, and he did not try to negotiate with the Kingitanga. It was possible, however, that he genuinely intended to wait and see if his New Institutions would undermine the Kingitanga and make a military solution unnecessary. If so, he was very reckless in his dealings with the Kingitanga, such as they were (the visits in December 1861 and January 1863, and his responses to their invitations and embassies). One incident stands out: when Kingitanga envoys came to Auckland to express their fears about having an armoured steamer on their river, his reply was that he would have not one but two (section 6.5.3.3). This was hardly the response of a governor intent on conciliation and peace.

In sum, we do not accept that the Crown 'exhausted all reasonable peaceful means' in its dealings with the Kingitanga leaders in 1861–63. It failed in the most obvious means for peace, which was to provide for or protect Māori tino rangatiratanga, as the Treaty required it to do. Options included setting aside section 71 districts or native provinces or some other mechanism which would reconcile the authority of Māori (tino rangatiratanga) and the Crown (kāwanatanga). This was despite the overt willingness of at least some Kingitanga leaders to accept such a compromise in 1861–1863. The Crown, in fact, did not actually try to negotiate with the Kingitanga and avoid war at all in any serious way. Rather, the Crown was preparing for war in such an open and threatening manner as to significantly exacerbate the sense of crisis in the Waikato.

We agree with the Crown that the exercise of force may be necessary in exceptional circumstances (such as the Tribunal found in *Te Urewera* regarding the pursuit of Māori leader Te Kooti).<sup>487</sup> But such extreme circumstances did not exist in the Waikato and Te Rohe Potae in this period. Further, the Crown failed in its Treaty duty to respect tino rangatiratanga and to try reach a peaceful accommodation. We do not feel it is anachronistic to say that an accommodation could have been made, since even the British Colonial Office thought that it could be and urged its governor to use section 71 of the Constitution Act for that purpose.

We therefore find that the Crown breached the principles of partnership and Māori autonomy. Nor did the Crown actively protect the interests and authority of its Māori partner as the Treaty required. These Treaty breaches had very serious consequences, as we discuss in sections 6.7 and 6.9 below.

The question remains: did an exceptional emergency arise between January and June 1863, such that the Crown was justified in its resort to war in July 1863? The Crown said that it did, arguing that threats from the Kingitanga led to war even whilst conceding that its invasion of the Waikato was an injustice. We turn to that issue next.

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487. Waitangi Tribunal, *Te Urewera*, 8 vols (Wellington: Legislation Direct, 2017), vol 1, pp 292–293

### 6.6 WAS THE WAIKATO WAR PARTLY CAUSED BY MĀORI?

The Crown has conceded that it acted unjustly and in breach of the Treaty ‘in sending its forces across the Mangatawhiri in July 1863’, and in unfairly labelling Te Rohe Pōtae Māori as ‘rebels’ as a result of that invasion. Crown counsel stated that this concession applied to Te Rohe Pōtae Māori under two headings:

- ▶ first, as members of the Kīngitanga (regardless of whether they had customary interests in the Waikato district); and,
- ▶ secondly, as ‘justified in taking up arms in defence of their lands and homes’ (the Crown having accepted that they had interests north of the Pūniu River).<sup>488</sup>

These concessions, however, still left serious issues in contention between the parties. The Crown argued: ‘In 1863 some Māori were seen to be threatening settlers and Māori who supported the Crown, and this led to the Crown’s invasion of the Waikato.’<sup>489</sup> Despite having conceded that the invasion was unjust, the Crown essentially argued that it *was* justified by threats made by Māori (especially a credible threat of an attack on Auckland).<sup>490</sup> Crown counsel also argued that, before the outbreak of war in 1863, the Crown did attempt to negotiate an accommodation with the Kīngitanga but the negotiations broke down on both sides.<sup>491</sup>

The claimants were critical of the Crown’s position, arguing that its closing submissions ‘attribute, in part, the responsibility for these wars on Māori of the region.’<sup>492</sup> They argued that the Crown’s concessions do not obviate the need for full reporting to determine responsibility for the war and its consequences. In their view, they fought in the Waikato in defence of their homes and of their tino rangatiratanga, the authority of their laws and governance institutions, against Crown aggression and attempts to suppress their ‘ability to exercise their tikanga.’<sup>493</sup> The supposed threat of an attack on Auckland was ‘trumped up’ by the governor to justify his actions, and had no credibility.<sup>494</sup>

This Tribunal accepts the Crown’s concession that its invasion of the Waikato was unjust and in breach of Treaty principles, and that it unfairly labelled Te Rohe Pōtae Māori as rebels for fighting in defence of the Kīngitanga and their ‘lands and homes.’ That concession is fully justified by the evidence presented in our inquiry. We also accept, however, that we need to address the question of whether there was a credible threat of an attack on Auckland. As Dr O’Malley explained, Governor Grey ‘claimed that Auckland was in serious danger of an imminent attack from the Waikato tribes’ to justify the 1863 invasion as a ‘reluctant pre-emptive strike intended to eliminate such a threat.’<sup>495</sup> This justification was included in despatches to the Colonial Office as well as the ultimatum to the Waikato chiefs to submit and

488. Submission 3.4.300, pp 1, 8.

489. Submission 3.4.300, p 3.

490. Submission 3.4.300, pp 3, 6–7.

491. Submission 3.4.300, pp 9–11.

492. Submission 3.4.391, p 3.

493. Submission 3.4.391, pp 3–4.

494. Submission 3.4.130(e), p 14; submission 3.4.208, pp 6–7.

495. Document A23, p 510.

surrender to the Queen's forces. Crown counsel still relied on this alleged threat in closing submissions in our inquiry.

We begin by exploring the question of whether there were 'moderate' and 'extremist' factions in the Kingitanga, which has often been used to explain the threat of an attack on Auckland and the containment of that threat by the 'moderate' majority. We then consider the expulsion of Civil Commissioner Gorst from the Waikato and the resumption of the Taranaki war in April 1863, both of which were blamed on Ngāti Maniapoto and used at the time to help justify the invasion. Finally, we examine the evidence used by the governor to conclude that an attack on Auckland was imminent before drawing our conclusions on this matter.

### **6.6.1 Were there 'moderates' and 'extremist Kingites', one side wanting peace and the other war?**

Historians who have dealt with the events of 1860–63 have mostly agreed that there were 'moderate' and 'extremist' Kingitanga factions, represented by Ngāti Hauā and Ngāti Maniapoto respectively. The question of a threat to Auckland is usually discussed in terms of whether the moderates might lose control of the extremists, who supposedly were champing at the bit to attack Auckland and start a war.<sup>496</sup> Some claimant witnesses, including Morehu McDonald, disagreed with this interpretation.<sup>497</sup> So have some historians.<sup>498</sup> At the time, Governor Grey tried to persuade the Colonial Office that a group of extreme Kingites were in fact planning an attack, and the invasion of Waikato was necessary to prevent it. William Fox went further in 1866, claiming that the governor 'was barely able to drive back' the 'invading Waikatos' with 'nearly 15,000 men and two years' preparation.<sup>499</sup>

The idea of moderate and extremist factions (one barely restrained by the other) was a powerful explanatory device. Gorst, Morgan, Buddle, and many other Pākehā at the time used it. First, the explanation was developed because these observers expected the King to behave like a European-style monarch. They were puzzled by the fact that he did not issue orders that were instantly obeyed, especially by Ngāti Maniapoto. Secondly, these Pākehā observers tended to favour particular policies or views. Whether consciously or unconsciously, they slanted their narratives in certain ways and praised the 'faction' which they understood to promote the views they preferred. Wiremu Tamihana of Ngāti Hauā was usually described as the main 'moderate' leader, mistrusted by the Government yet committed to peace, Christianity, and friendship with the Pākehā. Rewi Maniapoto, on the other hand, was portrayed as a fanatical Kingite who paradoxically ignored the King's wishes.

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496. See, for example, Ward, 'A "Savage War of Peace"?', pp 102–108; Ward, *A Show of Justice*, pp 158–159.

497. Document K23, pp 17, 18–20.

498. Document A23, p 361. Dr O'Malley stated that those historians who have articulated an alternative interpretation to this 'most fully' are Ann Parsonson, James Belich, and Morehu McDonald. Belich, for example, said that the terms 'moderates' and 'extremists' were 'contemporary misnomers': Belich, *The New Zealand Wars*, p 76.

499. William Fox, *The War in New Zealand* (London: Smith, Elder and Company, 1866), pp 38–40.



We have to bear in mind that much of the portrait of Rewi in the early 1860s was painted by Gorst, especially in his 1864 book *The Maori King*, but also in his official reports to the Government. Gorst was by no means a disinterested commentator. He was Rewi's political opponent in the Waikato, and he was expelled in 1863 by Ngāti Maniapoto. Also, Rewi's motives have often been assumed or misrepresented, especially because so few letters by him have survived.

The reality of Kingitanga politics at the time was that the King and other leaders needed consensus from hui and rūnanga to persuade the autonomous iwi of the Kingitanga to a common course. We have seen this process in action in previous sections of this chapter. For example, hui in April and May 1860 brought iwi and rangatira together to try to work out a consensus on whether to intervene in Taranaki. The process of reaching agreement could take months and was not always successful. Other times, a single hui would suffice. For example, a hui at which the principal leaders were Wiremu Tamihana, Rewi Maniapoto, Epiha Tokohihi, Wiremu Kingi Te Rangitāke, and Hapurona agreed to end the war in Taranaki in March 1861 (see section 6.4.2.5).

Wiremu Tamihana and Rewi Maniapoto were both powerful rangatira with great mana. They disagreed on some issues but agreed on others. Tamihana was not simply an idealist who supported only peace, and nor was Rewi a warmonger who advocated only for war. Tamihana argued passionately at times for the right of the Kingitanga to have intervened and fought in Taranaki, while Rewi Maniapoto agreed to peace in Taranaki and offered to meet and negotiate with the governor in March–April 1861 (see section 6.4.3.5).<sup>500</sup>

To state that there were Kingitanga moderates who controlled or restrained an extremist faction led by Rewi Maniapoto is to mistake or distort a more complex reality. This point is well illustrated by two crises which preceded the July 1863 invasion of the Waikato. In the early months of 1863, it was reported that Ngāti Maniapoto had incited a second war in Taranaki and had gone to fight there, and that Rewi Maniapoto drove Gorst out of Te Awamutu and was only narrowly stopped from killing him. Both of these incidents were referred to at the time by the Crown as reasons for its invasion.<sup>501</sup> We discuss each of these briefly in turn.

### 6.6.2 The expulsion of Gorst

The threat of war loomed over the Waikato in March 1863. Grey did not return for further discussions with the rangatira after he recovered from his illness in January. His final word to the chiefs was taken as his statement that he would dig around the Kingitanga until it fell. In the meantime, both Rewi Maniapoto and Wiremu Tamihana 'looked round to see where some of the digging was going

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500. See, for example, Stokes, *Wiremu Tamihana*, pp 220–222; doc A23, pp 343–344, 350; doc A23(c), p 14.

501. See, for example, document A23, p 470.

on.<sup>502</sup> It seems to have been agreed by a number of hui and rŭnanga that Gorst and his 'school' at Te Awamutu were 'some of the spades'.<sup>503</sup>

John Gorst had been appointed civil commissioner under Grey's New Institutions, but he was not able to introduce those institutions. He did establish what was described as an industrial school at Ōtāwhao (Te Awamutu), on land which had been the subject of a *tuku* to the Church for the purposes of a school. The Church agreed that the land should be used by the Crown to establish a government school. Originally, though, Gorst's 'school' had been used to recruit and train young Māori for a police force. The intention was to eventually convert it into a police station.<sup>504</sup> This use (or abuse) of gifted land at Ōtāwhao was a matter of grievance to the claimants, as explained by Harold Maniapoto.<sup>505</sup> We consider that grievance in chapter 5. Here, we note that by early 1863 Gorst had established a printing press at the school, which he used to produce a newspaper called *Te Pihoihoi Mokemoke i Runga i te Tuanui*.<sup>506</sup> Pitched as a rival to the King's *Te Hokioi*, it only lasted for five issues, but even the first, with an article entitled 'Te Kino o te Mahi Kingi' (the evil of the King's work), was enough to make its intention plain.<sup>507</sup> Gorst later recorded (with apparent satisfaction) that the 'chiefs of Ngaruawahia' were very angry about what they saw as its 'bad, mocking style'.<sup>508</sup>

Gorst was also involved in Wiremu Te Wheoro's attempt to erect a courthouse at Te Kohekohe, which was intended to double as a blockhouse. Grey, who was planning for war, wanted to use it as a potential military outpost 'the possession of which might prove of very great advantage to us in a military point of view'.<sup>509</sup>

By April 1863, the Crown had not attempted to discuss or agree to a general settlement with Kīngitanga leaders, or the basis on which Crown institutions might be introduced to the district. The people were not opposed to schools per se, nor to Gorst personally. Rewi Maniapoto told Gorst that he would have been welcomed as a missionary or trader rather than as a magistrate.<sup>510</sup> In the absence of discussions or agreement, however, Gorst's actions increased the sense of alarm felt by Kīngitanga leaders. Even at the best of times, a magistrate who published a politically partisan newspaper which incensed local chiefs would surely have been replaced. In the circumstances of the Waikato, Professor Ward stated that establishing a printing press there was 'foolhardy'.<sup>511</sup>

502. Document A23, p 454 (Gorst to Bell, 1 April 1863).

503. Document A23, pp 454–455 (Gorst to Bell, 1 April 1863).

504. Document A23, pp 443–446, 458.

505. Document A23, pp 443–445; doc K35, pp 6–7, 8, 9–10, 16–19.

506. Document A23, pp 443–451. *Te Pihoihoi Mokemoke i Runga i te Tuanui* translated as 'The lonely sparrow upon the roof': doc K35, p 13.

507. *Te Hokioi o Niu Tireni e Rere atu na*: 'The war bird of New Zealand in flight to you': doc K35, p 12; *Te Pihoihoi Mokemoke i Runga i te Tuanui*, no 1, 2 February 1863, pp 2–3, accessed on 12 June 2018 via <https://paperspast.natlib.govt.nz/newspapers/pihoihoi-mokemoke-i-runga-i-te-tuanui/1863/2/2>.

508. Gorst, *The Maori King*, p 337 (doc K35, p 13).

509. Document A23, pp 445–446 (Grey to Cameron, 30 June 1862); Wai 686 RO1, doc A2, pp 89–90.

510. Gorst, *The Maori King*, p 254.

511. Ward, 'A "Savage War of Peace"?', p 102.

It seems that rŭnanga and hui discussed what to do about the situation, and all were agreed that Gorst must be sent away from the district.<sup>512</sup> Rewi Maniapoto was prepared to carry out this decision and later expressed bewilderment at the criticism he received from other Kīngitanga leaders for doing so.<sup>513</sup> The timber for the Te Kohekohe courthouse/blockhouse was seized and floated back down the Waikato River to the Queen's land at Te Ia. The printing press at Ōtāwhao was also seized. Gorst himself was given three weeks to communicate with the Government and obtain permission for him to leave his post. Wiremu Tamihana and other leaders were concerned about Ngāti Maniapoto's threat of force to secure Gorst's departure, but it could not be concealed from Gorst that everyone (including the King) had agreed that he must leave. The Queen's property was not stolen: the timber for the courthouse, the printing press (and Gorst) were simply sent back.<sup>514</sup> The results do not indicate a deep split within the Kīngitanga, as Gorst tried to argue. The King, Wiremu Tamihana, and Rewi Maniapoto all agreed that Gorst must go. They differed, however, as to how this should be achieved.

Rewi Maniapoto sent a letter to the governor. Because we have few surviving explanations in his own words, we reproduce it here in full:

Kua mate a Te Kohi i au. Kua riro i au te Perehi. Ko aku tangata enei nana i tango, e waru te kau takitahi; tu tonu i te pu enei tangata. Ko te take he pana ia Te Kohi kia hoki ki te taone, na te nui hoki o te pouri ki tana tukunga mai ki konei noho ai, whakawai ai, na to kupu hoki tetahi, mau e kerī i nga taha ka hinga to kingitanga. E hoa whakahokia a Te Koti [sic] ki te taone. Kauga e waiho ki au kia noho i te Awamutu: heioano, ka ki keo ki te waiho, ka mate. Heioano, kia tere mai to pukapuka tiki mai i nga wiki e toru.

Mr Gorst has suffered (*mate*) through me. The press has been taken by me. These are my men who took it – eighty armed with guns; the reason whereof is to turn off (*pana*) Mr Gorst, in order that he may return to the town; it is on account of the darkness occasioned by his being sent here to stay and deceive us, and also on account of your word, 'by digging at the sides, your King movement will fail.'

Friend, take Mr Gorst back to town; do not let him stay with me at Te Awamutu. Enough; if you say that he is to stay, he will die (*ka mate*). Enough; send speedily your letter to fetch him in three weeks.<sup>515</sup>

Rewi explained that this was not a literal threat to harm or kill Gorst but rather to remove him forcibly if he decided to stay.<sup>516</sup> The Government gave Gorst permission to leave if he felt his life was in danger, but also hoped that other tribes would oppose Ngāti Maniapoto.<sup>517</sup>

512. Document K23(a), p 133; doc A23, pp 451, 453–456.

513. Document A23, p 455.

514. Document A23, pp 445–456.

515. Document A23, pp 452–453 (Rewi Maniapoto to Grey, 25 March 1863).

516. Document A23, p 456.

517. Document A23, p 453.

Claimant witnesses pointed to another factor behind Rewi's decision to expel Gorst by force if necessary, and the manner in which he went about it (which garnered much criticism from other Kingitanga leaders). This was the question of customary rights and authority at Te Awamutu. According to Harold Maniapoto, this issue underlay the dispute as to how exactly Gorst should be made to leave, and who should decide the manner of it. He told the Tribunal that Gorst's expulsion was rooted in Māori politics: Rewi was reasserting Ngāti Paretekawa and Ngāti Maniapoto interests in the Ōtāwhao district. The expulsion of Gorst was a demonstration of the 're-establishment' of the mana of Ngāti Paretekawa on 'its ancestral domain': 'Despite the challenges of all of Waikato, all of Ngāti Hauā, all of Apakura and all the others that opposed the sacking of Gorst, Manga stood his ground on his ancestral lands, and made the rules that applied at the end of the day.'<sup>518</sup>

Both the Reverend Ashwell and James Fulloon were aware of these dynamics. 'There are wheels within wheels,' wrote Ashwell.<sup>519</sup> Fulloon wrote that the real issue was 'propriety to the land, to te Awamutu.'<sup>520</sup>

This explanation fits with our understanding of the purpose for which the Kingitanga was established: to ensure a space within which chiefly authority, rangatiratanga, could continue to be exercised. This included the coming together of autonomous iwi and their leaders to debate and reach a common course on matters to do with the Crown, which inevitably involved some internal disagreements and tussles along the way.

### 6.6.3 How did the Kingitanga respond to the Crown's resumption of war in Taranaki?

Perhaps more important than the expulsion of Gorst, the resumption of war in Taranaki resulted in a crisis. This crisis was clearly of the Crown's making. Governor Grey wanted to return Waitara to Te Ātiawa but hesitated while he tried to get Ministers to share the responsibility for doing so.<sup>521</sup> He also wanted to get the Tataraimaka block back. Tataraimaka had been sold to the Crown in the 1840s but then reoccupied by Māori during the Taranaki war. They refused to leave while the Crown still occupied Waitara and other Māori lands.<sup>522</sup> Grey retook Tataraimaka several weeks before returning Waitara, instead of the other way around.<sup>523</sup> But this was not only an issue of timing. When Grey visited Waikato in January 1863, he told the assembled chiefs of his intention to take back Tataraimaka. Wiremu Tamihana, who had acted as mediator in 1861, offered to do so again. The governor rejected this offer, unwilling to admit a role for the Kingitanga in Taranaki.<sup>524</sup> Professor Ward argued that Grey's approach showed he was not trying to work

518. Transcript 4.1.10, p 667.

519. Ashwell, journal, 13 April 1863 (doc A23, p 457).

520. Fulloon to Native Minister, 30 March 1863 (doc A23, p 458).

521. Ward, 'A "Savage War of Peace"?', p 101.

522. Waitangi Tribunal, *Taranaki Report*, pp 44, 87–89; doc A23, pp 348, 434–435.

523. Dalton, *War and Politics in New Zealand*, pp 165–171.

524. Document A23, p 433.

with the Kingitanga or avoid war. Ward also suggested that an exchange of Waitara for Tataraimaka could have been managed peacefully.<sup>525</sup>

The governor's decision to send troops onto the Tataraimaka block in early April was not met with immediate resistance. The central and southern hapū of Taranaki chose to retreat. A few weeks later, however, when Waitara still had not been returned, they ambushed and killed nine soldiers who were on Māori land at Ōakura.<sup>526</sup> Even then, they gave several warnings before carrying out the attack.<sup>527</sup>

The Crown blamed both the ambush and the resumption of fighting on Ngāti Maniapoto. According to Gorst, a messenger from Taranaki brought news of the Tataraimaka seizure to Hangatiki and was sent back with an instruction from Rewi Maniapoto to 'kill the pakehas'.<sup>528</sup> Importantly, this was one of Grey's pretexts for invading Waikato.<sup>529</sup> Grey stated in his July 1863 ultimatum: 'By the instigation of some of you, officers and soldiers were murdered at Taranaki. Others of you have since expressed approval of these murders.'<sup>530</sup>

Dr O'Malley pointed out that the killings at Ōakura were retaliation for the seizure of Tataraimaka; it is not credible to blame either the killings or the resumption of war on Rewi Maniapoto.<sup>531</sup> We agree.

Also in April and May 1863, there were multiple reports that large numbers of Ngāti Maniapoto had gone to Taranaki to join the fighting.<sup>532</sup> The reports were completely untrue. No one from Waikato or Te Rohe Pōtae went to Taranaki.<sup>533</sup> As late as 21 June 1863, it was still believed in Auckland that 'the great bulk of the Ngatimaniapoto' had gone off to Taranaki to fight.<sup>534</sup> In fact the Kingitanga took no role in what is now known as the second Taranaki war.

The false reports of Ngāti Maniapoto involvement at Taranaki persisted because the Crown had few reliable sources of information about what was happening in Waikato. The Crown made no attempt to open regular communications with the Kingitanga, let alone negotiate an accommodation. The Native Minister did send a Crown purchase agent, John Rogan, to Ngāruawāhia in May 1863. Rogan's purpose was not to open discussions or follow up on the chiefs' offer to Grey at Taupiri in January 1863. Rather, the Government sent him to obtain a formal condemnation of the Ōakura ambush. It was around this time that the Kingitanga leaders seem to have met at Rangiaowhia and decided a collective position on the renewed war in Taranaki. Rewi, who had offered sanctuary to Te Rangitāke, argued for

525. Ward, 'A "Savage War of Peace"?', p 101. See also Dalton, *War and Politics in New Zealand*, p 171.

526. Waitangi Tribunal, *Taranaki Report*, p 89.

527. Ward, 'A "Savage War of Peace"?', p 103.

528. Document A23, p 436. (Gorst to Bell, 16 April 1863).

529. Wai 686 RO1, doc A2, p 3; doc A23, p 492.

530. Document A23, p 492 ('Notice to Chiefs of Waikato', 11 July 1863). See also doc A23, p 438.

531. Document A23, pp 438, 509. See also Wiremu Tamihana's letter to the Native Minister on 15 June 1863, which explains Ngāti Ruanui's reasons for carrying out the Ōakura ambush (Stokes, *Wiremu Tamihana*, p 334).

532. Document A23, pp 435–437.

533. Document A23, p 435.

534. Henry Sewell, diary entry, 21 June 1863 (doc A23(a), vol 2, pp 735–736).

intervention but did not go against the consensus after the hui. This consensus was summed up by King Matutaera at Ngāruawāhia with the words: ‘Waikato, takoto’ (lie still).<sup>535</sup>

In short, the rangatira of the Kīngitanga continued to debate and decide matters in concert. Those debates were increasingly tense and there were certainly arguments between leaders. The Kīngitanga leadership knew that an invasion of Waikato was on the horizon and they were genuinely uncertain as to what course to follow. Some wanted to avoid anything that might be interpreted by the Crown as provocation, while others believed that some form of military confrontation was now inevitable.

We agree with Dr O’Malley’s conclusion:

Observers then and since have identified this ‘extremist’ faction with Rewi Maniapoto specifically and Ngāti Maniapoto more generally, often suggesting that it was through their actions that Waikato lands were subsequently confiscated. That argument comes dangerously close to legitimising the Crown’s invasion and confiscation of Waikato but is a viewpoint that has been critiqued throughout [O’Malley’s] report. For one thing, the depiction of the Kīngitanga not as a coherent whole but instead as a factionalised and deeply divided movement loses sight of the extent to which it was driven by shared objectives and concerns. Rewi Maniapoto and Wiremu Tamihana had more in common than divided them. Moreover, the former rangatira undoubtedly had a greater appreciation of the realpolitik of 1860s New Zealand than did Tamihana, great Christian idealist of his age that he was.<sup>536</sup>

#### 6.6.4 Was there a credible threat of an attack on Auckland?

There can be no doubt that the resumption of war in Taranaki intensified the sense of crisis in Waikato. The governor had built his road to Mangatāwhiri, had constructed redoubts and fortifications, had tried to establish outposts inside Waikato (disguised as a courthouse and a school), and was now using British troops in Taranaki. Telegraph cable was laid to ensure fast communication between Auckland and the forward posts at the Waikato River. Finally, troops were recalled from Taranaki to Auckland in June 1863 for use in Waikato (despite the renewal of war in the Taranaki district).<sup>537</sup> By this time, Kīngitanga leaders were already anticipating an attack and had begun to prepare. Rewi Maniapoto was reportedly preparing earthworks at Rangiriri in the days after news arrived of the Ōakura ambush.<sup>538</sup> Most but not all settlers left the Waikato district in May 1863.<sup>539</sup> From the evidence available to us, those who left at this time were not driven out by

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535. Ward, ‘A “Savage War of Peace”’, p103; document A23, pp 435, 437–438, 461–464. There was a tense interchange between Rewi Maniapoto and Wiremu Tamihana at the Rangiaowhia hui: see Stokes, *Wiremu Tamihana*, pp 328–329.

536. Document A23, p522. For Dr O’Malley’s detailed discussion of the moderate/extremist debate, see doc A23, pp 358–367.

537. Wai 686 ROI, doc A2, pp 77, 87, 94, 97.

538. Document A23, p 438; Gorst, *The Maori King*, p362.

539. Document A23, pp 459–461, 464.

force, as the governor claimed in his July 1863 ultimatum. Some were advised to leave by Māori neighbours because their safety could no longer be guaranteed.<sup>540</sup> Some Māori wives and half-caste children were also fetched away at this time, by their hapū, from lands deemed to be at risk. In some instances it was for temporary safekeeping and they were later returned. In others, the splitting up of these mixed families became permanent. We have no reliable information, however, about whether any Māori wives and children were kidnapped, as claimed by Crown officials such as Premier Alfred Domett.<sup>541</sup>

Harold Maniapoto told us:

Manga, and other Ngāti Paretekawa and Maniapoto chiefs did not seek conflict with the Crown over possession of their lands and resources in the district, they sought what they believed was nothing more than their right as tangata whenua under ‘Te Tiriti o Waitangi’. However, the actions and disrespect displayed by Gorst and the Crown left them without doubt, that the Government intended to take their (authority) Tino Rangatiratanga and lands by force and they would have no other choice than to stand and defend them.<sup>542</sup>

Crown counsel submitted that ‘debate remains as to how real the threat to the Auckland district actually was’ in mid-1863, but that the risk was taken very seriously by settlers and officials.<sup>543</sup> The threat of an attack on Auckland was mentioned by Grey in his ultimatum of 11 July 1863 (which actually followed rather than preceded the invading army).<sup>544</sup>

The first point to note is that alarms and rumours of an attack on Auckland had been a constant refrain among settlers and officials from the 1840s onwards. Governor Browne told the Colonial Office in 1856 that Auckland existed ‘on the forbearance of a race of savages.’<sup>545</sup> The interests of the two races were ‘antagonistic’<sup>546</sup> and the consequence of failing to settle disputes amicably ‘would probably be the burning of some small settlement, or even Auckland itself (which being built of wood could be fired with ease, as has been more than once threatened).’<sup>547</sup> Yet while Browne reported that Māori had discussed ‘the feasibility of burning Auckland and destroying the Europeans’, he admitted the proposal ‘has invariably been negated by the influence of wise and friendly chiefs, and is likely always to

540. Document A23, pp 459–461, 464–465, 470, 492.

541. Document A23, pp 464, 470; John Barrett, *Ngāti Te Maawe: the Barretts of Waiharakeke, Kawhia, New Zealand* (Wainuiomata: Ngāti Te Maawe, 1986), p10. According to Gorst, several children were taken from their Pākehā fathers but were all later returned. Gorst does not mention any wives: *The Maori King*, pp 355, 361. Benjamin Ashwell, however, said that he encountered several (whole) families who were leaving Te Awamutu and Upper Waipa: doc A23, p 458.

542. Document K35, p 17.

543. Submission 3.4.300, p 6.

544. Stokes, *Wiremu Tamihana*, pp 336–337; doc A23, pp 493–495.

545. Browne, minute, 25 September 1856 (doc A23, p 218).

546. Browne to Molesworth, 14 February 1856 (doc A23, p 151).

547. Browne to Labouchere, 15 April 1856 (doc A23, p 152).

be so.<sup>548</sup> What the inconsistencies implicit in Browne's comments point to is a fear that Māori politics could not be controlled. Wisdom and friendship were always, to his mind, at risk of being overrun by more deeply ingrained savagery.

Fear of attack renewed after the outbreak of war in Taranaki in 1860. There were intermittent rumours of impending attack from that point on. Browne reported that such rumours 'had caused a panic as general and extreme as it was groundless'. Nevertheless, Browne and Colonel Mould authorised the supply of arms to militia, a defensive garrison, and defensive blockhouses around Auckland; further stockades were built at Panmure, Ōtāhuhu, Onehunga, and Whau.<sup>549</sup> Despite better defences, the Government was concerned that there might not be enough troops in Auckland to defend it.<sup>550</sup> The rumours could be quite far fetched, including one in 1861 that Catholic priests were plotting with Waikato tribes to evict the English and invite the French to take possession.<sup>551</sup> There was further panic in mid-1862 that a pre-emptive attack on the troops or on Auckland was imminent.<sup>552</sup> Dr O'Malley said the re-occupation, in April 1863, of Tataraimaka in Taranaki by British troops ignited fresh rumours of, variously, attacks on Raglan, Te Ia, and Auckland, or even widespread rebellion by Māori throughout the North Island.<sup>553</sup> This is the context in which Governor Grey's 1863 claims that Auckland was under imminent threat of attack need to be understood.

It seems highly likely that a pre-emptive strike was debated by Kīngitanga leaders in mid-1863. The potential targets varied, including Auckland, outlying settlers, and the military fortifications north of the Waikato River. The evidence is also clear that Rewi Maniapoto was a leading figure in those debates, arguing in favour of a pre-emptive attack of some kind.<sup>554</sup> Professor Ward suggested that all that was discussed was a possible raid to rescue Aporo Taratutu, who had been arrested in Auckland.<sup>555</sup> According to Morehu McDonald, Auckland was an unlikely target for attack given its strong new defences and the large number of British troops,<sup>556</sup> although some of those troops were in Taranaki until early June.<sup>557</sup> According to Dr O'Malley, Rewi 'was known to favour a pre-emptive action against the troops at Te

548. Browne to Labouchere, 18 October 1856 (doc A23, pp 218–219).

549. Browne to Newcastle, 24 April 1860, BPP, 1861, vol 41 [2798], pp 30–31 (IUP, vol 12).

550. Document A23, pp 297, 329.

551. Document A23, p 232.

552. Document A23, p 421.

553. Document A23, p 456.

554. Document A23, pp 465–466; Ward, *A Show of Justice*, pp 158–159.

555. Ward, 'A "Savage War of Peace"?', p 104; Gorst, *The Maori King*, pp 373, 393.

556. Document K23, pp 18–19.

557. Ward, 'A "Savage War of Peace"?', p 104. Aporo Taratutu had been involved in the seizure of Gorst's printing press and was arrested in June 1863 when he came to Auckland to trade. Sewell speculated that he could hardly be charged with treason (doc A23(a)(v2), p 736). In the event he was charged with theft about three months later, found guilty, and imprisoned in the Auckland jail for two years. Gorst was scathing about the circumstances of Aporo's trial, pointing out that at his trial Aporo had no lawyer to defend him, was unable to call any witnesses (they being under attack in the Waikato), and was tried by a jury made up of 'enemies' who hated him (Gorst, *The Maori King*, pp 372–373).



Ia, believing that war was now inevitable and wishing to strike at an advantage.<sup>558</sup> Morehu McDonald argued:

He understood better than most of his contemporaries the uncompromising power and ambitions of European colonialism. . . . What Rewi attempted to confer on Maori political leaders in this period was the realistic course of facing European aggression and preparing for the inevitability of war in defence of their homelands.<sup>559</sup>

Amidst these heightened tensions, Rewi's support for a pre-emptive strike was easily presented as fanaticism and the dominant current in the Kingitanga.

Thus, when the Crown's plans for the invasion were agreed in June 1863, they were couched in the rhetoric of self-defence. Premier Alfred Domett drew on the expulsion of Gorst in April 1863, the supposed fact that Ngāti Maniapoto had caused the Ōakura ambush in Taranaki, and the rumours of impending attack on Auckland, to justify the Crown's invasion of the Waikato:

The expulsion of the civil commissioner Mr Gorst, and his scholars from Government land at Awamutu; the seizure of property; the driving away of all Europeans married to Maori women, and the kidnapping and abduction of their wives and half-caste children; the complicity of these tribes in the murders at Oakura, of which they were the prompters, and their adoption of the cause of the murderers; the abundant evidence of their attempts, to a considerable extent successful, to organise a general conspiracy to expel, or murder, the European population throughout the Northern Island; these things shew that it is no longer at the option of Government to choose between Peace and War – but that the Natives have determined to force the latter upon us.<sup>560</sup>

In the 1860s, the colonial Government constantly argued this idea that war had been forced upon them. The premier here claimed that there was 'abundant evidence' that Waikato chiefs had successfully organised a general conspiracy to expel or murder the entire Pākehā population of the North Island – this was clearly false yet this kind of invention became the basis for justifying the Waikato invasion.

John Gorst, whose former residence in Te Awamutu made him better placed than most to judge, gave no credence to claims of a plan to attack Auckland:

It is, without doubt, highly probable that an attack on Auckland was proposed and discussed at war meetings. It would be strange had it been otherwise. We had often proposed and discussed an attack upon Waikato ourselves. But that the Waikatos would have crossed Mangatawhiri to assail us, I utterly disbelieve. Such an act was

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558. Document A23, p 465.

559. Document K23(a), pp 20–21 (Brian Morehu McDonald, 'Rewi Manga Maniapoto: A Study in the Changing Strategies of Nineteenth Century Maori Political Leadership', MA Thesis, University of Auckland, 1977, pp 10–11).

560. Document A23, p 470. (Domett to Grey, 24 June 1863).

contrary to their principles, and could not have been carried out without a serious division amongst themselves.<sup>561</sup>

This is the nub of the matter. Rewi Maniapoto expelled Gorst in April 1863 because he held that his was the authority to decide matters in Te Awamutu, and because a consensus had been reached (by way of rūnanga and hui) that Gorst must be sent away. In May to July 1863, he was clearly not prepared to go against the consensus of Kingitanga leaders on such an important matter as a pre-emptive attack, whether on Auckland or the troops at Te Ia or some other target. The prospect of a split in the Kingitanga over this was unthinkable, especially at a time of such danger.

The crucial question then arises: what was known to the Crown in June 1863, when the governor and Ministers made the final decision to invade the Waikato? In an attempt to cast the Crown's military intervention in a pre-emptive light, it appears that Grey collated letters from missionaries and officials outlining Kingitanga activities and supposed intentions. He forwarded these letters to the Colonial Office.<sup>562</sup> Dr O'Malley considered the letters created a weak case:

most of those letters were received by [Grey] after the decision to invade Waikato had already been made, so cannot have influenced that decision. Concrete evidence was missing from the letters, most of which consisted of little more than vague warnings to be on the alert and some of which were contradicted by other information received by Grey. One letter, for example, told the governor that a meeting of Waikato Maori held weeks earlier had debated whether to strike against the British military post at Te Ia, but that the proposal had been rejected by the majority of those present.<sup>563</sup>

Rewi himself, whose supposedly imminent attack on Auckland was used as justification when troops crossed the Mangatāwhiri on 12 July 1863, was reported to be attending a tangi at Taupō at the time.<sup>564</sup>

In addition to Vincent O'Malley's detailed assessment, other historians – including Ann Parsonson, James Belich, B J Dalton, and Alan Ward – have agreed that Grey's 'evidence' of an attack was almost all gathered after the Crown's decision was made to invade, and formed little more than a pretext.<sup>565</sup> Indeed, Dr Parsonson and Professor Belich both accused Grey of a 'campaign of misinformation', in which he extorted troops from the Colonial Office by claiming that there was a general conspiracy to attack and destroy all the settlements of the North Island.<sup>566</sup> Professor Ward accepted that a threat to attack Auckland had to be con-

561. Gorst, *The Maori King*, p 377.

562. Document A23, pp 470–471. For more on this correspondence see pp 470–476.

563. Document A23, p 510.

564. Document A23, p 481.

565. Document A23, pp 470–481; Ward, 'A "Savage War of Peace"?', pp 104–105; Wai 686 ROI, doc A2, pp 97–107; Dalton, *War and Politics in New Zealand*, pp 176–178; Belich, *The New Zealand Wars*, p 124.

566. Wai 686 ROI, doc A2, pp 94–96; Belich, *The New Zealand Wars*, pp 123–125.

sidered seriously by the governor and his Ministers, but he pointed out the obvious alternatives available to them:

Grey's reluctance to accept the risk of having out-settlers killed is understandable. Yet he did not take the last chance of contacting Ngaruawahia, supporting Tamihana's efforts, or at least receiving accurate intelligence as to how they were progressing. Had he done so he would have found that Rewi had already abandoned his design for an attack in the direction of Auckland and gone off to Taupo for the interment of the bones of Te Heuheu Iwikau who had died the previous year. It did not appear that the Governor was anxious to avoid war.<sup>567</sup>

The failure to properly investigate rumours or send envoys in June and July 1863 highlights the fact that the governor never seriously attempted to negotiate an accommodation with the Kingitanga, even though the Colonial Office had authorised him to do so. The Kingitanga did send an envoy to Auckland to negotiate with the governor in mid-June 1863 but Grey had him thrown out of Government House for the temerity of claiming 'joint sovereignty' over the Waikato River and seeking the recall of the Taupō magistrate.<sup>568</sup>

The governor and Ministers made their final decision to invade the Waikato by 24 June 1863 at the latest. Their plan was to conquer and occupy the district, subjugate the people, and confiscate their land (partly to enable settlement and partly to help pay for the war). A string of forts would be built all the way to Tauranga, and military settlers placed on the land.<sup>569</sup>

On 9 July 1863, Māori communities in the South Auckland district were ordered to surrender any arms and swear allegiance to the Queen, or leave their homes and return to the Waikato. This was understood as an order to leave and was enforced as such. The Crown's objective was to clear out all the Māori people living between Auckland and the Mangatāwhiri before the invasion took place. Whole communities were ejected, including the King's uncle, Tāmami Ngāpora, who had said in May 1863 that he would remain at Māngere as a 'hostage for peace.'<sup>570</sup> No resistance was offered. The governor tried to find evidence of plots to massacre outlying settlers but could find none – a group of 12 Māori men, seven women, and three children were seized and then held without trial because no evidence could be found against them.<sup>571</sup> The former Attorney-General, Henry Sewell, condemned the wholesale expulsion of these communities. He commented in August 1863: 'I am bound to say that beyond rumour and suspicion nothing has yet come to my knowledge to justify such severe measures.'<sup>572</sup>

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567. Ward, *A Show of Justice*, p 159.

568. Sewell, journal, 14 June 1863 (doc A23, p 465).

569. Document A23, pp 469–470.

570. Document A23, p 489. Te Wherowhero also lived at Māngere for a time. When he returned to the Waikato, his place was taken by Tāmami Ngāpora.

571. Document A23, pp 483–491.

572. Document A23, pp 488–489 (Sewell, journal, 2 August 1863).

Following the expulsion of these people (and some plundering and destruction of their homes and property), the troops crossed the Mangatāwhiri on 12 July 1863. The Waikato war had begun.

## 6.6.5 Treaty analysis and findings

### 6.6.5.1 Myth making

In 1864, the Crown gave the following explanation of the Waikato war to the Aborigines Protection Society, an influential group of British humanitarians:

At the commencement of the present unhappy struggle, they appear to have entertained a firm conviction that they could drive the Europeans out of the island, and they commenced by a desperate attack upon Auckland, the seat of Government. Early in the struggle, Thompson [Wiremu Tamihana], who may be regarded as the leader of the rebel party, announced in writing under his own hand, his determination to carry the war to the utmost extremity, not even sparing unarmed persons. Acting in this spirit, the Maoris threw themselves into the heart of the settled districts of the Province of Auckland, murdering and destroying the settlers within 17 miles of the town, cutting down the Government flagstaff at the Manukau, the western harbour of the City of Auckland itself, and driving from their farms and homesteads a tolerably dense population of agricultural settlers over a space of some twenty miles square. So sudden was their onslaught, and so completely did they succeed in getting possession of the country close around Auckland, that it was not till after the fall of Rangiriri, five months at least after the struggle commenced, that they were driven back and routed out of the wooded ranges to such an extent that even the city and the immediate suburbs of Auckland could be considered safe.<sup>573</sup>

A completely mythical account of how the war began was thus already taking hold. And this myth was used by the Crown not merely to justify its invasion of the Waikato but also confiscation. Fox discussed the confiscation plans with a CMS missionary, John Morgan, in February 1864, telling him: ‘They ought not to grumble, they played a game to get Auckland and if instead we have taken Waikato, they cannot complain.’<sup>574</sup>

Usually these kinds of myths cannot withstand serious historical inquiry, but they can be very damaging. Aspects of them can turn up in orthodox historical accounts. One such myth was that Ngāti Maniapoto’s actions caused the war.

In the lead-up to the invasion, the Crown accused the Kīngitanga of expelling the civil commissioner, driving away and plundering settlers living in the Waikato and kidnapping their wives and children, instigating the attack on soldiers in Taranaki, and ‘constantly threatening to come down the river to ravage

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573. William Fox, ‘Memorandum of Ministers in reply to the Aborigines Protection Society’, 5 May 1864, AJHR, 1864, E-2, p 18. For a discussion of the Crown’s allegation that Tamihana intended to carry the war ‘to the utmost extremity’, see Stokes, *Wiremu Tamihana*, pp 455–472.

574. Document A22, p 139 (Morgan to Thomas Gore Browne, 29 February 1864).

the settlement of Auckland, and to murder peaceable settlers.<sup>575</sup> Much of this was blamed on the supposed violent extremism of Ngāti Maniapoto, and the cause of the invasion was attributed to it. We have already discussed these allegations above, but it is necessary here to note the way in which aspects have made their way into the history books, leading many (including some Māori) to blame Ngāti Maniapoto for provoking a war. Vincent O'Malley and Morehu McDonald set out this process in their evidence so we need not repeat the detail of it here. Suffice to say that historians have sometimes attributed responsibility for the war to Rewi Maniapoto and his iwi (at least in part), accompanied by a view that they got off 'scot-free' when it came to confiscation.<sup>576</sup> More generally still, the Kingitanga has been blamed for provoking the Crown's attack, including in the Crown's closing submissions in this inquiry.

One example of the damage that these kinds of myths caused is to be found in the Sim commission report of 1927. According to Dr O'Malley's research, the commission was strongly influenced by the historical work of William Pember Reeves, whose account in *Long White Cloud* was largely based on Grey's despatches.<sup>577</sup> We will deal with the commission later in the chapter, but here we simply note that it concluded:

If in the circumstances the Natives had contented themselves with providing for their own defence when attacked, with providing also for the establishment of law and order in their midst, and for the regulation of sales of Native land, they might have been declared to be blameless. But they were not content to do that, and formed a plan for the destruction of Auckland and the slaughter of its inhabitants. This was to be part of a general attack in the North Island, and a party of Natives had actually set out on the march north to attack the pakehas before General Cameron had crossed the Mangatawhiri Stream. In view of these facts . . . we are not justified, we think, in saying that the tribes who took part in the Waikato war ought not to have suffered some confiscation of their lands as a penalty for the part they took in the rebellion.<sup>578</sup>

As will be evident from our discussion in sections 6.6.1 to 6.6.4, it is time for these myths to be laid to rest.

### 6.6.5.2 Treaty findings

The Taranaki Tribunal wrote: 'No one understands the wars and confiscations who does not also see the centrality of the Kingitanga in the relevant events, the significance of the symbolism it evoked, or the burden that it bore for the Maori

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575. Stokes, *Wiremu Tamihana*, pp 336–337 (Grey to the Chiefs of Waikato, 11 July 1863); doc A23, pp 470, 493–495.

576. See document A23, pp 358–363; doc K23, pp 18–21; doc K23(a), pp 15–24.

577. Document A22, p 807.

578. Document A22, p 807; 'Confiscated Lands and Other Grievances: (Report of the) Royal Commission to inquire into confiscation of Native lands and other grievances alleged by Natives', AJHR, 1928, G-7, pp 1–40.

people.<sup>579</sup> The Tribunal also found that the right of Māori to retain their authority and their lands was affirmed and guaranteed by the Treaty of Waitangi, and that the Kingitanga – which stood for both – was thus ‘an affirmation of the Treaty’s terms.’<sup>580</sup> But the Crown at the time was not prepared to understand the Kingitanga message because it was not prepared to share power with Māori, nor was it prepared to accept a movement which ‘might restrict the ready acquisition of Maori land.’<sup>581</sup> We endorse those findings, and we also agree with the Taranaki Tribunal that Māori autonomy was an essential term of the Treaty, and that through ‘war, protest, and petition, the single thread that most illuminates the historical fabric of Maori and Pakeha contact has been the Maori determination to maintain Maori autonomy and the Government’s desire to destroy it.’<sup>582</sup> This was nowhere more evident than in the Waikato war of 1863, where the Crown set out to destroy the authority and institutions of the Kingitanga by military force.

In our inquiry, the Crown conceded that its invasion of the Waikato was an injustice and a breach of the principles of the Treaty of Waitangi.<sup>583</sup> ‘It follows,’ we were told, that ‘certain Crown actions in the opening of hostilities . . . in the Waikato in 1863 were unjust.’<sup>584</sup> Further, the Crown’s ‘representatives and advisers acted unjustly and in breach of the Treaty of Waitangi and its principles in its dealings with the Kingitanga, which included iwi and hapū of Te Rohe Pōtae, in sending its forces across the Mangatawhiri in July 1863.’<sup>585</sup>

We agree that these concessions are appropriate and fully justified by the evidence that we have heard in our inquiry. We find that the Crown attacked the Kingitanga and Te Rohe Pōtae Māori in breach of the Treaty principles of partnership, active protection, and autonomy. In the next section we discuss the tragic loss of life and destruction which resulted from this Treaty breach.

There is an additional point to consider. As explained earlier, the Crown also submitted that in 1863 ‘some Māori were seen to be threatening settlers and Māori who supported the Crown, and this led to the Crown’s invasion of the Waikato.’<sup>586</sup> More specifically, the Crown argued that a threat of attack on the Auckland district was rightly taken seriously, that ‘some Kingitanga Māori (notably Rewi Maniapoto)’ made threats of such an attack, and that the Crown’s proclamations on 9 and 11 July 1863 ‘focused squarely on this issue.’<sup>587</sup>

The claimants argued correctly that the Crown’s closing submissions ‘attribute, in part, the responsibility’ for the war to Māori.<sup>588</sup> The Crown has also continued the long-established habit of singling out Rewi Maniapoto for blame.

579. Waikato Tribunal, *Taranaki Report*, p 63.

580. Waitangi Tribunal, *Taranaki Report*, p 64.

581. Waitangi Tribunal, *Taranaki Report*, p 64.

582. Waitangi Tribunal, *Taranaki Report*, pp 5–6; submission 3.4.391, p 8.

583. Submission 3.4.300, p 1.

584. Statement 1.3.1, p 45.

585. Submission 3.4.300, p 1.

586. Submission 3.4.300, p 3.

587. Submission 3.4.300, p 6.

588. Submission 3.4.391, p 3.

Our analysis of evidence in section 6.6 shows that these allegations are unfounded. While Rewi may have suggested a pre-emptive strike, he supported the collective decision-making that underpinned the Kingitanga and acceded to the consensus against such action. There was no credible threat of an attack on Auckland. At the time, the Crown seized upon certain documents (mostly received after the decision to invade had already been made) to try to legitimise its unjust war. In our inquiry, the Crown has come worryingly close to doing the same thing.

We agree with the claimants that

There is a marked contrast between the considered debate that took place between Maori groups over the expulsion of just one Pakeha official, Gorst, with the rush to war by Grey and Domett and a few key Ministers, against the entire Maori population of the Waikato . . . This action is explicitly linked to their private plans to use confiscated lands for Pakeha settlement.<sup>589</sup>

The Crown's goal was to crush the Kingitanga, to conquer and occupy the territory of those iwi who had placed their lands under its protection, and to confiscate land for settlement. The expulsion of Gorst, the reopening of the Taranaki war (wrongly said to have been instigated by Rewi Maniapoto), and the threat of an attack on Auckland were pretexts used by the Crown in mid-1863. They were not causes of the Crown's invasion.

In our view, the Crown's arguments do not mitigate or lessen either the Crown's degree of responsibility for the Waikato war or the finding that the Crown attacked the Kingitanga (including Te Rohe Pōtae Māori) in breach of Treaty principles.

It is a very serious thing for the Crown to make war on those it claims to be its citizens. The gravity of the Treaty breach is accordingly great. Prejudice is considered later in the chapter.

We turn next to the Crown's conduct of the Waikato war.

## **6.7 WAS THE CROWN'S CONDUCT OF THE WAR DISPROPORTIONATE OR EGREGIOUS?**

The Crown has conceded that once its troops crossed the Mangatāwhiri, Te Rohe Pōtae Māori were justified in taking up arms in their defence.<sup>590</sup> The course of the war, and the specific engagements, all took place outside the initial boundary of the inquiry district, which in part followed the 1865 confiscation line. The inquiry district boundary was extended for a number of reasons, one of which was to enable claimants to bring raupatu claims before the Tribunal. In terms of those raupatu claims, the boundary was extended as far north (beyond the Pūniu River) and as far south (into Taranaki) as necessary (no fixed boundary was set).<sup>591</sup>

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589. Submission 3.4.130(e), pp 12–13.

590. Statement 1.3.1, p 44.

591. Paper 6.2.8, p 7.

Separate to the acknowledgement of the injustice of the war, however, is the matter of its conduct. The claimants' case focused on two issues. First, they argued that the Crown refused opportunities to make peace and thus prolonged its unjust war.<sup>592</sup> Secondly, claimants and technical witnesses told us that, as Crown forces advanced south, actions at Rangiriri, Te Rore, Rangiaowhia, Kihikihi, and Ōrākau 'breached the standard rules of military engagement'.<sup>593</sup> This included contravening established military protocol in respect of the white flag, mishandling prisoners of war, killing or wounding non-combatants, killing combatants in the act of surrendering or fleeing, mishandling the dead and wounded, destroying and looting property, and deliberately infecting Māori populations with smallpox.

The Crown denied all of these allegations and made no concessions about its conduct of the war. In particular, Crown counsel argued that non-combatants were killed because they were 'intermingled with armed combatants' at battles. There is no record, we were told, 'of Māori being killed or wounded after they had surrendered to Crown's forces'.<sup>594</sup> The Crown also argued that some settlers were killed by Māori: this was raised 'not in any way to justify the actions of its own soldiers but to show that a singular focus on Crown actions will inhibit a complete and balanced understanding of events'.<sup>595</sup>

In this section we examine the Crown's behaviour during the Waikato war with respect to the claimants' allegations, and identify whether or not the Crown's troops or their leaders acted egregiously or disproportionately. We do not attempt to provide a complete history of the war, nor is it necessary to do so for the purposes of our inquiry.<sup>596</sup>

### 6.7.1 Rules of engagement

The Crown said it was not aware of any evidence on the record of inquiry 'that details the standard rules of military engagement as they were in the 1860s'.<sup>597</sup> Rules governing the conduct of the British army do not appear to have been codified in detail in the 1860s. Codification was not contemplated, it appears, until the passage of the Army Discipline and Regulation Act 1879, which eventually led to the British War Office publishing its first *Manual of Military Law* in 1884: the Act, the Rules of Procedure prepared under the Act, and notes were combined to 'form a text book on Military Law'.<sup>598</sup> This does not mean that before then the British conducted war without restraint. The proper conduct of war had long been a subject of profound and lengthy consideration by European scholars of the laws governing nations: men such as Grotius, Vattel, and Halleck. The early 1860s were

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592. Submission 3.4.15, pp 7–8, 12.

593. Statement 1.4.1, p 9.

594. Submission 3.4.300, p 21.

595. Submission 3.4.16, p 8.

596. See the accounts of Vincent O'Malley (doc A22) and in Belich, *The New Zealand Wars*, for modern histories of the war.

597. Statement 1.3.1, p 48.

598. Great Britain and Gerald Augustus Robert FitzGerald, *Manual of Military Law*, 3rd ed (London: War Office, 1894), pp iii, iv.



also a time of reflection on the evils of war: the Red Cross was formed in 1863 and the first Geneva Convention signed in 1864.

The question remains: to what standards ought the Tribunal hold to the behaviour of the British army in Waikato? An attempt to identify particular standards, locatable to the historical period, would not be feasible in the time and space available. Instead, the analysis underpinning this section asks whether there is evidence of understanding or agreement between the Crown and Māori about how the war should be conducted. Māori and British understandings of acceptable wartime conduct did differ. For example, one of the points of contention in the first Taranaki war was the plunder of settler farms and killing of settlers in late March 1860 by Ngāti Ruanui. Settlers and Crown officials interpreted these acts as murder and robbery. Māori considered this an acceptable act of war. In 1861, Wiremu Tamihana compared these killings with an earlier killing of Māori by Māori in Taranaki. He told Governor Browne:

Look Ihaia murdered Te Whaitere (Katatore). He caused him to drink spirits, that the senses of Te Whaitere might leave him. He was waylaid, and died by Ihaia. That was a foul murder. You looked on, and made friends with Ihaia. That which we regard as a murder you have made naught of; and this, which is not a murder, you call one. This, I think, is wrong: for the Governor did not say to Wiremu Kingi and the Ngatiruanui, O friends, do not kill those who are unarmed. Nor did he direct that the settlers living in the town should be removed to Auckland, where there was no fighting, and there stay.<sup>599</sup>

These quite different views of what constituted acceptable standards make it difficult to draw hard and fast rules. What does seem clear is that Māori expended considerable effort attempting to understand and conform to the rules the British claimed to fight by. For example, Harold Maniapoto told the Tribunal:

I takoto ngā tikanga ā ngā rangatira o te rūnanga nui kia kaua e raweke ngā kāinga me ngā whenua o te mihinare me te kura. Tae noatia ki te tahunatanga, te tāhaehae taongatanga me te kōhurutanga o ngā wāhine me ngā tamariki ki Rangiohia, i mau kaha ana tonu ki taua tikanga e aku tūpuna me ngā rangatira katoa o Maniapoto, o Hinetū, o Waikato whānui. Ahakoa te tino kino o te mahi taurekareka o te hōia Pākehā me te Kāwana ki reira kāore i whakatakahia, ā i whakahē pēnā rānei i te tikanga tiaki i takotohia ai e rātou o te rūnanga nui i Hui-te-Rangiora.

The chiefs of the great council laid down the rules that said, 'Do not tamper with the homes and lands of the missionaries and the school.' Right up to the burning and the taking of the goods and the murder of the women and the children at Rangiaowhia, they cleaved strongly to that principle, my ancestors did, and all the chiefs of Maniapoto, of Hinetū and of the broad Waikato. In spite of the very evil acts committed by the Pākehā soldiers and the Governor there, the Māori did not

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599. Tamihana to Browne, not dated, AJHR, 1861, E-1B, p17.

trample or tamper with the principles of care handed down by the great council Hui-te-Rangiora.<sup>600</sup>

In 1861, Wiremu Tamihana told one of the missionaries, J A Wilson, of a great hui held to consider the conduct of war following the fighting at Taranaki. Wilson recorded what Tamihana said to him:

I [Wilson] then introduced the subject which I have never ceased to urge upon the chiefs – the claims of the wounded and prisoners to humane and generous treatment. I reminded him of the example in this respect which your Excellency [Browne] and General Pratt, as well as the officers and men had shown to his countrymen, and which he on his part fully acknowledged. . . . He added: ‘In our late runanga all the chiefs considered this matter, and it was agreed that none should be killed but in battle; that prisoners should be spared and exchanged; and that they would doctor the wounded with the same remedies which they used for their own people’. He then added, ‘But our ambuscades we shall not abandon; they are the only artillery that we have.’<sup>601</sup>

Tamihana also told Wilson that settlers would be sent away before any fighting. Their property would not be looted.<sup>602</sup>

This exchange between Wilson and Wiremu Tamihana shows that the humane treatment of non-combatants, the wounded, and prisoners was becoming a shared standard for warfare by the 1860s, though not necessarily shared by all. What was required from both sides was to act in good faith. This included the respect for shared conventions like the white flag (discussed further below). Drawing on an array of earlier authorities, the American Henry Halleck published his *International Law* in 1861 (it was a major source for the British army’s 1884 *Manual*). Halleck cited Vattel’s opinion that ‘the faith of promises made to an enemy is absolutely essential for the common safety of mankind, and is, therefore, held sacred by all civilized nations.’<sup>603</sup>

If, however, there can be said to be a doctrine governing the British conduct of war, it was the concept of military necessity: do what has to be done to achieve the desired ends, but no more than that. This was what Tamihana had realised when he wrote:

No Rangiaohia au i mohio ai, he tino nui rawa tenei pakanga, ina hoki te kino o ona whakahaere.

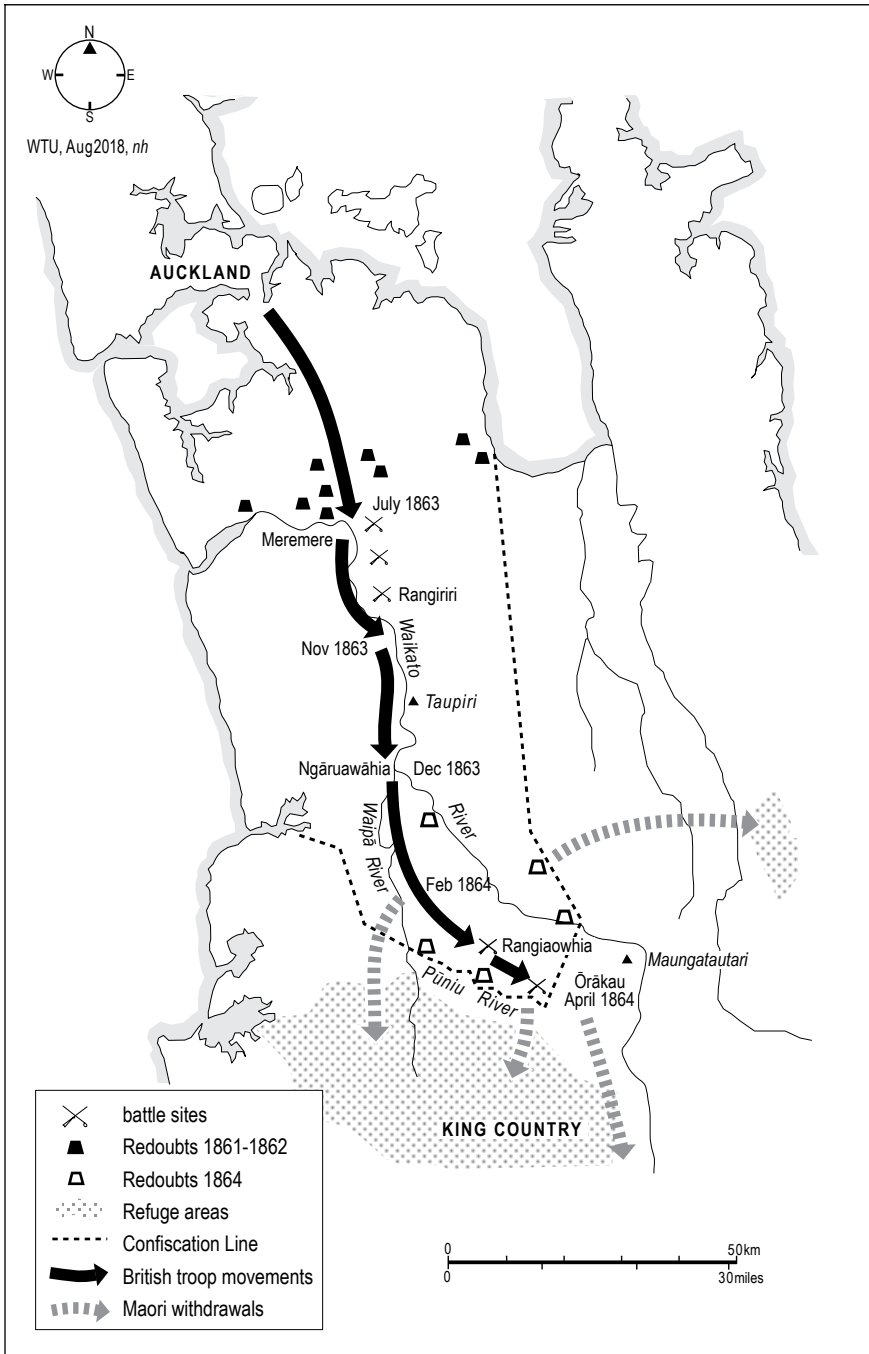
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600. Transcript 4.1.10, pp 357–8.

601. Stokes, *Wiremu Tamihana*, p 241

602. Stokes, *Wiremu Tamihana*, p 241

603. HW Halleck, *International Law: Or, Rules Regulating the Intercourse of States in Peace and War* (San Francisco: HH Bancroft, 1861), p 653, <https://archive.org/details/internationallawwoohall> (accessed July 9, 2015).



Map 6.2: The invasion of Waikato, 1863-1864

At the time of the fight at Rangiaohia I discovered that this would be a very great war, because it was conducted in such a pitiless manner.<sup>604</sup>

### 6.7.2 Camerontown, Pukekohe East, Meremere

In the first months after the British army crossed the Mangatāwhiri, Kingitanga forces launched a number of small-scale attacks targeting British communication and supply lines.<sup>605</sup> Then at Camerontown, on 7 September, a raid destroyed 41 tons of military supplies and severely damaged the British supply line. Among those killed were James Armitage, the resident magistrate who was directing the operation, and Captain Swift. A second raid a week later on Pukekohe East was unsuccessful. Dr O'Malley estimated 12 Māori were killed and two British. Ngāti Maniapoto seem to have played a leading role in both actions. In Te Huia Raureti's later account, defeat came at Pukekohe because Wahanui Huatare had brought bad luck on the party. Before the attack it had been agreed among the group that they would not loot or destroy any settler's property. Wahanui and some others looted a settler's house and this was blamed for their defeat.<sup>606</sup> These raids, ambushes, and sniper attacks on British troops as they made their way south, and also on settlers, succeeded in greatly hindering British progress. General Cameron was forced to wait until he had enough troops to both protect his supply and communication lines and move forward with the attack.<sup>607</sup>

We accept that non-combatant settlers were killed during a few of these raids.<sup>608</sup> According to O'Malley:

Throughout the 1860s and beyond officials maintained a sharp (and sometimes scarcely credible) distinction between British casualties inflicted by 'rebel' forces during the course of combat and supposed murders of ordinary settlers that were deemed to be criminal acts.<sup>609</sup>

In a military sense, the raids played a crucial role in stopping the British advance into the Waikato; there were no killings of settlers in front of the British lines (including in Te Rohe Pōtae, where some remained under the protection of the peoples there). As Crown counsel noted, the fact that some settler non-combatants were killed does not in any way justify the actions of the British army in killing non-combatants, but it is noted here to give 'a complete and balanced understanding of events.'<sup>610</sup>

604. Document A22, p 709; Wi Tamihana Te Waharoa, petition, 24 July 1866, AJHR, 1866, G-2, p 6.

605. Document A22, pp 42–47.

606. Document A22, pp 49–52.

607. Document A22, pp 46, 53; Belich, *The New Zealand Wars*, pp 133–141.

608. Document A22, p 42; Belich, *The New Zealand Wars*, pp 135, 137.

609. Document A22, p 42.

610. Submission 3.4.16, p 8

We also note that the major military event during this period was the Crown's turning of the line at Meremere on 31 October, which forced the Kīngitanga warriors to retreat to a new defensive position at Rangiriri.<sup>611</sup>

### 6.7.3 Rangiriri

#### 6.7.3.1 *The white flag*

The capture of Rangiriri pā by British forces on 21 November 1863 was the most significant defeat inflicted on Kīngitanga forces during the Waikato conflict.<sup>612</sup> The circumstances in which Māori fighters surrendered are, as Vincent O'Malley put it, 'mired in controversy'.<sup>613</sup> The claimants pointed to James Belich's view that: 'On their own criteria, the British took unscrupulous advantage of one of the most practically valuable and widely accepted laws of war.'<sup>614</sup>

Large tracts of the lower Waikato valley in 1863 were swampland, making travel both more difficult and more constrained. The partially completed pā at Rangiriri overlooked and controlled a narrow isthmus between the Waikato River on the west, and Lake Waikare to the east. Reconnaissance missions had reported that the pā was unimpressive and not well constructed. On 20 November 1863, 1,400 British troops attacked.<sup>615</sup>

The British were wholly unprepared for what they encountered. Rangiriri proved a 'wonderful specimen of engineering'. 'Without sapping and mining,' according to a newspaper report, 'it would be almost impossible for any troops in the world to have taken it, as it was impossible to get at it.'<sup>616</sup> Cameron's troops made several attempts to breach the fortifications but each advance was repelled.

Just after dawn next day, 21 November, the British were preparing to sap the pā, when the defenders unexpectedly raised a white flag. In General Cameron's initial telegraph to the governor he reported that 'being completely surrounded and cut off, they surrendered unconditionally.' Yet Cameron also wrote: 'The king was present at Rangiriri [*sic*], and escaped during the night by swimming across the swamp, as did several others.'<sup>617</sup> His later official account was less unconditional. His troops had 'almost completely enveloped the enemy' and the wounded must have been evacuated in the night, as none were inside the pā next morning. Nonetheless: 'Shortly after daylight on the 21st, the white flag was hoisted by the enemy, of whom 183 surrendered unconditionally, gave up their arms, and became prisoners of war.'<sup>618</sup>

611. Document A22, pp 47–49, 53–56; Belich, *The New Zealand Wars*, p 139

612. Document A22, p 97; Belich, *The New Zealand Wars*, p 157. For Belich's description of the battle of Rangiriri, see pp 145–157.

613. Document A22, p 57

614. Belich, *The New Zealand Wars*, p 154

615. Document A22, p 57.

616. Document A22, p 61 (*New Zealand Herald*, 27 November 1863)

617. Document A22, p 67 (Cameron, 21 November 1863 (telegraphic despatch), *New Zealand Gazette*, no 60, p 503)

618. Cameron to Grey, 24 November 1863, *New Zealand Gazette*, no 62, 30 November 1863, p 514.

If many of the Rangiriri defenders were able to leave during the night without the British noticing, it becomes, as Belich pointed out, an unconvincing explanation for surrender.<sup>619</sup> One of James Cowan's informants told him that lack of gunpowder led to the surrender. Ta Kerei Rauangaanga 'spoke to the interpreter sent forward by the General', refusing a summons to surrender and asking for more gunpowder so they could continue fighting.<sup>620</sup> Dr O'Malley found no corroborating evidence for this argument. He cited the deputy quartermaster-general, who recorded that ammunition appeared to be in 'plentiful supply'.<sup>621</sup> Another possibility is that the white flag was flown to gain time for reinforcements to arrive,<sup>622</sup> but this does not seem a good explanation for why so many left during the night. We agree with Dr O'Malley that the likeliest explanation for raising the white flag at this point was so that the Kingitanga could negotiate from a position of relative strength – before too much territory and too many people had been lost.<sup>623</sup>

The *New Zealand Herald* repeated the claim that the defenders were completely surrounded, then added that they

thought it better to hoist a flag of truce and endeavour to come to terms with the General. A white flag therefore was hoisted, and the soldiers hoisting one too, crowded into the works, and when it came to the question of terms; the General sent word that he would make none, but that they must lay down their arms and surrender themselves prisoners of war unconditionally; it was too late for resistance, the soldiers were amongst them, and the place was lost, and the lives of all in it perfectly at the disposal of our men.<sup>624</sup>

The *New Zealander* ran a similar account, except that it reported the man who flew a white flag 'was very much annoyed to find that no white flag was shown on our side', and that they 'were all very much surprised when they found they must give up their arms and be considered as prisoners'.<sup>625</sup> In a later report, the Rangiriri prisoners said that 'the pakeha had always respected the white flag in the war in Taranaki and that it would be better to hoist it in the morning and treat'.<sup>626</sup>

With regard to Taranaki, this statement appears correct. Soon after the first engagement at Te Kohia pā, Waitara, H Ronalds wrote in his diary: 'We saw a white flag flying from a Pah in the bush wh[ich] is supposed to be a flag of truce'.<sup>627</sup> General Pratt signalled his agreement to a truce in Taranaki in March 1861 with the following notice:

619. Belich, *The New Zealand Wars*, p 153

620. Cowan, *The New Zealand Wars*, vol 1, p 334.

621. Document A22, p 68 (DJ Gamble, 1 December 1863). See also Belich, *The New Zealand Wars*, p 153.

622. Document A22, p 73.

623. Document A22, pp 73–78.

624. Document A22, pp 69–70 (*New Zealand Herald*, 27 November 1863).

625. Document A22, p 69 (*New Zealander*, 26 November 1863).

626. Document A22, pp 68–69 (*New Zealander*, 23 June 1864).

627. H Ronalds, *Diary of Taranaki War*, 21 March 1860, Richmond–Atkinson Papers, vol 1, p 536.

When you see my letter, hoist flags at all the Maori places, leave the trenches and go and stay in the Pas, and keep the white flags flying.

The Truce will commence as soon as the white flags are hoisted, and will continue during these two days.<sup>628</sup>

After the truce was negotiated to end the first Taranaki war, Donald McLean told Te Rangitāke 'that hostilities should cease for the present; that his people could have free access to their cultivations, peach groves, and graves; [and] that during the truce the white flag should be kept flying from his fortified places to prevent mistakes.'<sup>629</sup>

Lieutenant Pennefather was among those who entered the pā after the white flag was flown. He and his men mixed among the defenders, 'shaking hands, and the General came up about ten minutes afterwards, complimented them on their bravery, and demanded their arms.'<sup>630</sup>

The use of a white flag is mentioned in several accounts of the conventions of wartime conduct, symbolising a suit for parley and an agreement to do nothing prejudicial on either side during the course of the parley.<sup>631</sup> This is how the peace negotiations were conducted in Taranaki in 1861. It would be fair to say that it had become a shared convention between both British and Māori by the 1860s.

After Ōrākau, however, William Mair wrote to Brigadier Carey that Rewi 'and all his people were very anxious to make peace and live quietly by the side of the white people, but he was afraid that he would place himself too much at the General's mercy by giving up his arms.' This fear was explicitly linked to Rangiriri, where Māori 'had been dealt treacherously with, they having been led to believe that upon giving up their arms they would be permitted to go free and live within the lines of the troops.' Rewi did not believe 'that they (the prisoners) were so well treated or that their lives were to be spared.'<sup>632</sup> As O'Malley noted, when Governor Grey enclosed this letter in a despatch to Newcastle, William Fox responded on behalf of the colonial Ministers: 'This allegation of Rewi, if true, would establish a most dishonourable breach of faith on the part of the Military Authorities, to whom the prisoners surrendered, or on the part of the Colonial Government, or of both.'<sup>633</sup>

The evidence supports O'Malley's view that 'signalling agreement to a truce and then wilfully exploiting the opportunity created by this to convert it into a surrender' involved 'deception.'<sup>634</sup> Belich's assessment, supported by the claimants, that the British took unscrupulous advantage of a clearly signalled desire to nego-

628. Copy of a Notice from the General Commanding to William Thomson, AJHR, 1861, E-1B, p 9.

629. Document A23, p 346 (McLean to Browne, 22 March 1861, BPP, 1862 [3040], p 37).

630. Document A22, p 71 (Maunsell to Church Missionary Society, 4 January 1864).

631. See, for example, Hugo Grotius, *The Rights of War and Peace* (New York: M Walter Dunne, 1901), pp 416–417.

632. Document A22, p 173 (Mair to Carey, 28 April 1864, BPP, 1864 [3386], p 26).

633. Document A22, pp 173–174 (Fox, memorandum of ministers as to alleged statement of Rewi Maniapoto respecting native prisoners, 22 May 1864, AJHR, E-1, pt 2, p 19).

634. Document A22, p 70

tiated, is justified. The Māori defenders of Rangiriri raised the white flag to signal a willingness to talk terms and negotiate – a signal known and understood by both sides. General Cameron opportunistically took advantage of this request: once his soldiers were inside the pā he demanded surrender. Approximately 180 men, women, and children were taken prisoner.<sup>635</sup>

We discuss the Kingitanga's attempts to negotiate peace further below.

### 6.7.3.2 *Who was involved from Te Rohe Pōtae?*

The size of the Kingitanga force defending Rangiriri is commonly put at 400 to 500 people.<sup>636</sup> Adding the 183 prisoners, a further 36 listed by Wiremu Tamihana as having escaped, and 48 killed accounts for 267, suggesting that as many as 250 people left the redoubt during the night of 20 November.<sup>637</sup> Other than Tamihana's lists, nothing is known of the iwi or hapū affiliation of those people.

The names and hapū of 159 prisoners were listed in the *Appendix to the Journal of the House of Representatives*, with this qualification: 'Tera ano etahi kaore i mohiotia nga ingoa. (There are others whose names are not yet known.)'<sup>638</sup> Writing on 21 November, Tireni, Tapihana, Kumete, Pairoroku, Takerei, and Hakihaiā said they were among 175 taken prisoner; writing the next day WJ Gundry gave the same number.<sup>639</sup> Dr O'Malley wrote that 'approximately 171 names' were listed in the *Appendix*, but that '183 prisoners in total were said to have been taken'. A letter from Wiremu Tamihana to Wiremu Te Wheoro gave a further 36 names and their hapū.<sup>640</sup>

From the *Appendix* list, we can identify the following hapū from Te Rohe Pōtae: 16 were Patupō, 13 Ngāti Puhiaue, three Tainui, and 16 Ngāti Mahuta ('no Kawhia'). Tamihana said people of Ngāti Hinetū and Ngāti Hikairo were among those who left with him in the night.<sup>641</sup> There does not seem to have been a significant Ngāti Maniapoto presence at Rangiriri. Belich's explanation for this is that Rangiriri was under-defended. Some 1,500 Māori, including Maniapoto, had defended Meremere but had had to disperse afterwards, and such a large force could not be pulled together again in time to hold Rangiriri. Unlike the British with their professional army and paid-for supplies, the iwi of the Waikato and Te

635. Belich, *The New Zealand Wars*, pp 152–155.

636. Document A22, p 60; CGS Foljambe, *Three Years on the Australian Station* (London: Hatchard, 1868), p 32, <http://www.enzb.auckland.ac.nz/document?wid=2227>; Belich, *The New Zealand Wars*, p 144; Fox, *The War in New Zealand*, p 81, <http://nzetc.victoria.ac.nz/tm/scholarly/tei-FoxWarI-t1-body-d7.html>.

637. Document A22, p 96. The number of deaths includes Pene Te Pukewhau, who died later from his wounds.

638. 'Names of Prisoners Taken at Rangiriri', not dated, AJHR, 1863, E-5D, p 11.

639. 'Letter from Native Prisoners to Wiremu Tamihana and others', 21 November 1863, AJHR, 1863, E-5D, p [3]; WJ Gundry to Native Minister, 22 November 1863, AJHR, 1863, E-5D, p 5.

640. Document A22, p 59n; Wiremu Tamihana to Wiremu Te Wheoro, 4 December 1863, AJHR, 1863, E-5D, p 9. Tamihana included himself among those named.

641. AJHR, 1863, E-5D, pp 9–11; doc A22, p 59.



Rohe Pōtae could not sustain a fulltime army and had to feed themselves, even with support from Tūwharetoa and others.<sup>642</sup>

The claimants were bitter about the loss of life in this war which had been forced upon their iwi by the Crown. Forty-eight people are known to have died at Rangiriri (or afterwards from their wounds). Among them were several women.<sup>643</sup> Hazel Coromandel-Wander described the fate of her tupuna, Hoani Papita, recounting what she had been told:

He fought alongside of the warriors at Rangiriri. His fight was to retain the land, and all its prosperities, not for his personal gain but for the interest of those still to come. He was shot in the back and killed by the soldiers in the Rangiriri war . . . He is buried in the mass grave at Rangiriri cemetery. Rangiriri, Rangiaowhia, Orakau and other whenua was stained with the blood of innocent men women and children.<sup>644</sup>

### 6.7.3.3 *Attempt to negotiate peace*

According to the claimants, Te Rohe Pōtae Māori 'repeatedly sought to resolve the conflict peacefully' and end the war but the Crown ignored their approaches, and Rangiriri was one such example.<sup>645</sup> The evidence does suggest that at Rangiriri, Māori expected to negotiate terms of peace but ended up unwillingly surrendering. Dr O'Malley said the evidence supports the view that the Rangiriri prisoners believed that their surrender meant an end to the war. He quoted a conversation Te Puhī Paeturi had with EH Schnackenberg:

The chiefs understood that by our submission peace was to be declared, and there was to be an end of the war throughout the land. We handed over all our firearms and ammunition, but the General (Cameron) said he could not conclude negotiations at that spot, and that we must go to Te Ruato (Queen's Redoubt).<sup>646</sup>

Te Puhī's account is further corroborated by a report in the *New Zealand Herald* about the Rangiriri prisoners who were being transported through Ōtāhuhu. The report stated that the prisoners

admit that they have been thoroughly beaten, and that they have submitted once and for ever. They add, that Waikato being the head of the revolt, and Waikato being conquered, they are prepared to surrender their lands. But they express great surprise that, having made unconditional submission, they should be held in captivity, as they look upon themselves as penitent subjects of the Queen, to be punished with the loss of land, but not of liberty. They affirm that Waikato will never strike another blow; and that William Thompson and his 400 would have come in and laid down their

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642. Belich, *The New Zealand Wars*, pp 125–132, 141, 142–143, 144–145.

643. Document A22, p 96.

644. Document K37 (Coromandel-Wander), p1.

645. Submission 3.4.15, p 7.

646. EH Schnackenberg, *Maori Memories, As Related by the Kaumatuas of Kawhia to EHS, Kawhia* (Kawhia: Kawhia Settler Print, 1926) (doc A22, p 74).

arms on Saturday morning, but that their captivity had deterred Thompson and his party from doing so.<sup>647</sup>

A letter to Tamihana from leaders among the prisoners said:

Kua mau te rongo ko a matou pu kua riro i a Te Tianara me koutou hoki kia penei me matou. Kia mau te rongo. Ko te rongo mau nei. Ko te mana o te motu me tuku ki raro, me hoatu te mana kia Kawana, kei whakaputa ke koutou i tetahi ritenga ma koutou.

Peace is made. Our guns are given up to the General. Be you like unto us: let peace be made. These are (the terms of) lasting peace: The mana of the island let it be put down; let the mana be given up to the Governor.<sup>648</sup>

Wiremu Te Wheoro, a Waikato rangatira who had not supported the Kīngitanga, wrote to the governor that 'Waikato has fallen': prisoners had been taken and guns had been given up; those who had escaped had agreed that peace should be made.<sup>649</sup> Tamihana, too, seems to have decided on peace at this point, sending his mere to Cameron.<sup>650</sup> The interpreter for the Crown, William Gundry, wrote to the Native Minister on 22 November. After the surrender, he said, the prisoners

wanted to make peace, as they were the principal Chiefs of Waikato. The General told them he could not do that until the Governor arrived . . . White flags are flying all about the native settlements . . . In my opinion, the Maories will give up their arms when His Excellency comes up here.<sup>651</sup>

This accorded with European conventions of war, by which, although a decision about a truce or ceasefire was the responsibility of commanders in the field, the negotiation of lasting peace could only be agreed by political leaders.

Neither the governor nor his Ministers went to the redoubt to negotiate terms. Ministers do not seem to have met the prisoners at all, while the governor did not visit them until the middle of the following year.<sup>652</sup>

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647. Document A22, pp 74–75 (*New Zealand Herald*, 27 November 1863). The reference to William Thompson's 400 is to the possibility of reinforcements led to Rangiriri by Wiremu Tamihana, who himself put the number at only 200: doc A22, pp 80–81.

648. Document A22, p 75 (Tireni and others to Wiremu Tamihana and others, 21 November 1863, AJHR, 1863, E-5D, p 3).

649. Te Wheoro to Grey, 23 November 1863 (doc A22, p 76).

650. Document A22, p 75.

651. Document A22, p 77 (WJ Gundry to Native Minister, 22 November 1863, AJHR, 1863, E-5D, p 5).

652. Grey to Cardwell, 7 September 1864, AJHR, E-5, p 10.

#### 6.7.3.4 Treatment of prisoners

The prisoners taken at Rangiriri were held for an extended duration in squalid and crowded conditions without any inquiry into their participation in the wars. Writing from Rangiriri immediately after their capture, Gundry said: 'The prisoners seem very well contented at present, as the soldiers treat them well.'<sup>653</sup> They marched the 15 miles to the Queen's Redoubt on 23 November 1863, where Cameron had told them they must go to negotiate peace terms. After a day, they continued on to Ōtāhuhu, a further 25 miles, where the *New Zealand Herald* reported that they arrived on the afternoon of Wednesday 25 November

way-worn and foot-sore, having marched from the Queen's Redoubt that morning, a distance of at least thirty miles . . . Some of the natives were so completely knocked up that they had to be conveyed in ambulance carts. . . . They seemed to be 'quite chop fallen.'<sup>654</sup>

The reception was 'anything but kindly', the *Herald* reported, while Bishop Selwyn wrote that at 'Otahuka' [Ōtāhuhu?] the prisoners were said to have been stoned as they marched by.<sup>655</sup>

A month later the prisoners were transferred to a converted coal hulk, the *Marion*, moored in the Hauraki Gulf. The governor visited them there in mid-1864, reporting to the Colonial Secretary that the prisoners had been 'illegally detained'. 'Amongst the men thus treated,' he said, 'were some whose previous conduct gave them strong claims on our generosity; others who, I believe, were most probably innocent men; no enquiry had been made into the guilt of any of them.'<sup>656</sup> Grey blamed his Ministers (as he so often did in these years), and told the Secretary for State:

On the whole, I was satisfied that the treatment these prisoners were receiving was such as would, when men's minds cooled down, be regarded as derogatory to the good name of Great Britain, and was rendering the Native population in some instances desperate. I have since seen the hulk and the prisoners. I believe that the health of many I saw and closely observed has been permanently injured by the length and nature of the imprisonment they were subjected to; and that their imprisonment in such numbers, in so limited, badly lighted, and ill-ventilated a space, reflects discredit on us, and will hereafter be most deservedly censured.<sup>657</sup>

The prisoners remained on the *Marion* until the beginning of August, when they were transferred 'on parole', at the governor's suggestion, to Kawau Island.<sup>658</sup> The

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653. Gundry to Native Minister, 22 November 1863, AJHR, 1863, E5-D, p 5.

654. 'The Prisoners of War', *New Zealand Herald*, 27 November 1863, p 3 (doc A22, p 74).

655. H W Tucker, *Memoir of the Life and Episcopate of George Augustus Selwyn* (London: William Wells Gardner, 1879), p 190 (doc A22, p 74).

656. Grey to Cardwell, 7 September 1864, AJHR, 1864, E-5, p 10.

657. Grey to Cardwell, 7 September 1864, AJHR, 1864, E-5, p 10.

658. Dalton, *War and Politics in New Zealand*, p 200.

following month the prisoners escaped to Mahurangi, on the mainland, allegedly with the assistance of sympathetic Ngāpuhi.<sup>659</sup>

The Crown's treatment of the Rangiriri prisoners was reprehensible. They were held for nine months in squalid and crowded conditions without inquiry into their participation in the war. The harsh treatment of the Rangiriri prisoners undoubtedly contributed to the fierce resistance of Te Rohe Pōtae Māori to British forces and the unwillingness to surrender to the Crown in later military engagements (see section 6.7.10.3).

### 6.7.3.5 *Smallpox allegations*

Traditional kōrero recounted to us by several claimants claimed that Pākehā soldiers and officials deliberately infected Māori populations with diseases such as smallpox. Shane Te Ruki alleged that disease was used as a weapon. He described the effect it had on Te Rohe Pōtae communities:

What I have not spoken of with regards to Ōrākau is the disease which ripped through the survivors who were put to flight from that place, also the survivors of the slaughter at Rangiaowhia, let's not call it a 'battle', let's call it what it is, a 'slaughter', he parekura, they were put to flight, but they were also put to flight with the disease we call 'karawaka', smallpox, it didn't arrive by accident, it did not arrive by accident, we know this.

A number of Māori imprisoned in the rohe of Tāmaki as the Crown's war machine began its journey into our rohe captured a number of Māori and ensured that they were inflicted – infested with this disease and set them loose amongst the population. Koirā ngā kōrero e mōhio nei. Koirā tētahi o ngā take i haere pera atu ai ngā orange o te pakanga o Ōrākau me Rangiaowhia arā ki Tokanui te aha ki te whakaora i o rātou tīnana e pānia nei e te tīnana e pānia nei e te mate, e te mate kiwaka. (Those are the stories handed down. That was the reason the survivors fled from Ōrākau and Rangiaowhia to Tokanui, to revive themselves – that was afflicted with smallpox.)

Ngāti Unu was also in there and sorely afflicted, many of our ancestors died, never to be heard of again. . . .

So severe was that epidemic, that uruta, as to remove a vast section of our population, I'm talking about Ngāti Unu and it's the same perhaps for many of you. Removed so that much of the kōrero, tātūhū kōrero, whakapapa, etc, no longer exists. Ko ngā kaupapa e mau tonu nei i a mātou, he toenga, he toenga kōrero. (Those things that we still hold are just crumbs, morsels.)<sup>660</sup>

Piko Davis also alleged that Ngāti Maniapoto prisoners were deliberately infected with smallpox and then released to spread the disease to their whānau. His evidence was based in part on the diary of Aporo Taratutu, which unfortunately

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659. Document A22, pp 386–387.

660. Transcript 4.1.1, p90.

had been lost.<sup>661</sup> Mr Davis' estimate was that 8,000 people in Te Rohe Potae died from smallpox in 1864–1865, although others believed that the figure was much higher (12,000).<sup>662</sup>

Vincent O'Malley found no documentary evidence that Pākehā soldiers and officials deliberately infected prisoners with disease, specifically smallpox, in order to infect Māori communities. Disease did ravage Te Rohe Pōtae populations after the war, he said, but he characterised allegations of deliberate infection as part of 'the legacy of bitterness and mistrust over many generations left by war and raupatu'.<sup>663</sup> In additional evidence to the Tribunal, Dr O'Malley noted that the distribution of blankets infected with smallpox had been used as a weapon against Native Americans. He added that there were no known cases of ships with smallpox visiting New Zealand other than the *Tyburnia* in September 1863 (too early) and the *Nebraska* in 1872 (too late). There was thus no opportunity, he argued, for the Crown to have infected prisoners with smallpox even if the Government had been willing to do so.<sup>664</sup>

We accept that prisoners, taken mainly at Rangiriri but also in later engagements, were forced to travel far from home, kept in crowded quarters, and undoubtedly at heightened risk of contracting infectious disease as well as illnesses caused by poor sanitation and nutrition. We think it certain that, on release or escape, some returned home in 1865 carrying disease. Dr O'Malley pointed out that there were 'serious bouts of illness and disease amongst the Maori population of the Rohe Potae district in the aftermath of the wars.' Typhoid took a heavy toll because of the 'straitened circumstances in which the tribes found themselves' as a result of the war.<sup>665</sup> In our view, however, the claim of deliberate infection of smallpox is unconvincing. It does show the depth of animosity and grievance passed down from the 1860s to the present day.

#### 6.7.4 Ngāruawāhia

At the battle of Rangiriri (and immediately afterwards), some Kingitanga leaders tried to negotiate with the Crown and bring an end to the war. Crown counsel argued that the only chiefs who wanted to surrender were those who had been taken prisoner at Rangiriri. Otherwise there was very little evidence that Kingitanga chiefs were prepared to surrender on the Crown's terms (laying down their arms and accepting the Crown's authority, at a minimum). Instead, the Crown's view is that the Kingitanga were not sufficiently discouraged by Rangiriri, and the governor had little reason to modify his terms at that point. For these

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661. Document A78, p 190; doc 020(b) (Davis), pp 20–29; transcript 4.1.6 (Katharine Taurau, Ngā Korero Tuku Iho hui, Te Tokanganui-ā-noho marae, 10 June 2010), pp 129–132; transcript 4.1.13 (Te Piko Davis, hearing week 8, Te Kotahitanga Marae, November 2013), pp 1166–1170, 1182–1191.

662. Transcript 4.1.13 (Davis), pp 1183–1184.

663. Document A22, p 387; doc A22(h) (O'Malley), pp 6–22.

664. Document A22(h), pp 6–22; see also submission 3.3.243(a), the documents filed by the claimants for Dr O'Malley to review.

665. Document A22, p 387; doc A22(h), pp 16–20.

reasons, Crown counsel did not accept the claimants' argument that the Crown missed an opportunity to end the war.<sup>666</sup>

This attempt to negotiate raised several questions:

- ▶ Would other Kingitanga leaders agree to negotiate?
- ▶ Would the Crown agree to negotiate?
- ▶ What kind of terms would the Crown offer, and would those be flexible (open to negotiation and amendment) or acceptable to the Kingitanga?

The answers to these questions are crucial to our understanding of how the war was conducted, and whether the Crown prolonged its unjust war past the point where peace could have been made.

The first question is whether other Kingitanga leaders would join Tamihana and the chiefs who raised the white flag at Rangiriri in seeking to end the war at this time. Dr O'Malley noted that one of the escaped chiefs, Te Wharepu,<sup>667</sup> wrote to the governor on behalf of all the chiefs of Waikato seeking the restoration of the prisoners and an end to the war. 'Let it suffice for you,' he wrote, 'the men who are dead.'<sup>668</sup> O'Malley concluded that 'all of the available evidence' showed this letter was sent on behalf of the Kingitanga leadership.<sup>669</sup> At Ngāruawāhia the leaders of Ngāti Hauā, Ngāti Mahuta, and Ngāti Maniapoto gathered and agreed that the war should be ended.<sup>670</sup>

The second question is whether the Crown would agree to negotiate. At first it seemed that the answer was 'yes'. Governor Grey wrote to the Waikato chiefs on 6 December 1863 that they must allow Cameron to 'go uninterrupted' to Ngāruawāhia and hoist the Queen's flag. After this was done, he told the chiefs, 'I will talk to you.'<sup>671</sup> The Kingitanga leaders agreed to these terms; the only dispute among them was about whether the King's 80-foot flagstaff should be left standing for receipt of the Queen's flag. Cameron was allowed to occupy Ngāruawāhia without opposition, and the King's flag was sent to Grey.<sup>672</sup>

General Cameron approved of making peace at this point because he feared driving the Waikato peoples to desperate resistance, but at the same time he wanted to make peace with them so that his army could continue onwards unopposed to attack Ngāti Maniapoto. Punishing this iwi had always been one of the objectives of the war. The general warned that 'fair terms' would have to be offered to avoid driving the Waikato tribes to extremes.<sup>673</sup> Grey advised Cameron that occupying the King's capital and raising the Queen's flag there would suffice to show the country that the King movement had been crushed. After that, the Government would be 'quite ready to consider any proposals that the Natives

666. Submission 3.4.300, pp 12–13.

667. Pene Te Wharepu, also known as Pene Pukewhau: doc A22, p 78 n

668. Pene Pukewhau to Grey, 25 November 1863 (doc A22, p 78).

669. Document A22, pp 78–82.

670. Document A22, pp 83–85.

671. Document A22, p 82 (Grey to Pene Pukewhau and the chiefs of Waikato, 6 December 1863).

672. Document A22, pp 83–88.

673. Document A22, p 86 (Cameron to Grey, 8 December 1863).

may make.<sup>674</sup> Preparations were made for the governor to leave Auckland for Ngāruawāhia on 16 December 1863.<sup>675</sup> He reported to the Secretary of State that the ‘neck of this unhappy rebellion is now broken,’ and the Government drew up terms of surrender for the chiefs.<sup>676</sup>

The third question is what kind of terms was the Crown prepared to offer? It is difficult to classify them as ‘fair’ (as the general had suggested): everyone would have to appear before the governor at Ngāruawāhia, surrender their weapons, agree to obey the Queen’s law, and then go and live at places appointed by the governor. All of their land would be confiscated but the governor would choose and return certain pieces to surrendered hapū and individuals. Those who had committed ‘murders’ would be put on trial.<sup>677</sup>

In any event, the governor broke his promise and decided not to come to Ngāruawāhia and discuss terms with the rangatira – and receive their surrender. He gave two main reasons for this. First, he argued that only the chiefs imprisoned after Rangiriri (and their immediate relations) were involved and that the other Kingitanga leaders remained defiant. Work had begun on new Māori fortifications, and other reasons (which he said he could not remember) gave him the impression that ‘many of the Natives did not consider themselves as yet subdued.’<sup>678</sup> Secondly, Grey refused to go because of a dispute with his Ministers as to whether they should accompany him. On 24 December 1863, the Ministers withdrew their objection to the governor going on his own, but Grey had clearly changed his mind that the Kingitanga was ready to surrender.<sup>679</sup>

Former Attorney-General, Henry Sewell, condemned both governor and Ministers:

A distinct written pledge had been given by the Governor, after Rangiriri, that he would meet the natives at Ngaruawahia, when the Queen’s flag should be planted there, and would then talk to them about terms of peace. Upon the strength of this promise they evacuated Ngaruawahia abandoning their position without a struggle. The Governor was bound as a man of honour to fulfil that promise. His excuses for not doing so, are poor and trifling, but it was the duty of Ministers to measure the full extent of the obligation, and if Sir George Grey refused to allow them to accompany him, they ought, under protest, to have allowed him to go by himself. It was their duty to advise him, *at all events to go*. All the War after this, with all its consequences, loss of money, loss of life, and destruction of native confidence, lies at the door of the Governor primarily, but in a second degree at that of the late Ministers.<sup>680</sup>

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674. Document A22, pp 85–86 (Grey to Cameron, 6 December 1863).

675. Document A22, p 90.

676. Document A22, p 88 (Grey to Newcastle, 9 December 1863).

677. Document A22, pp 89–90.

678. Document A22, pp 90–91 (‘Memorandum by the Governor as to going to Ngaruawahia,’ 18 December 1863).

679. Document A22, pp 92–93.

680. Document A22, p 92 (Sewell, journal, 19 January 1865).

From the evidence reviewed by us (all of which was available to Grey), a broad-based group of Kīngitanga leaders had come together and agreed on peace. The governor was wrong to suggest that the initiative was limited to the immediate relatives of those taken at Rangiriri. We agree with the claimants that this was a crucial opportunity for the Crown to end its unjust war. Whether the Kīngitanga leaders would have accepted Grey's terms is a matter that we can never know. Crown counsel argued that the Crown had little reason to modify those terms and did not do so.<sup>681</sup>

On 16 December 1863, Grey sent a letter to the Waikato chiefs (in lieu of coming to Ngāruawāhia), inviting them to send a deputation to Auckland if they were prepared to submit to the authority of the Government. The deputation would be 'well-treated' and would be allowed to return to the Waikato. The governor would explain his future intentions and 'hear any representations they may have to make'. There was no mention of the terms that the governor and Ministers had agreed upon the week before, other than to state that those who gave up their arms would not be imprisoned unless they had 'committed murders'.<sup>682</sup> This was one of many admonishments by the Crown that those who killed non-combatants would be punished, an important standard to which the Crown's own troops should also have been held accountable (see section 6.7.7). Grey's letter did, however, warn the rangatira to decide quickly as the general's army would continue its advance in the meantime.<sup>683</sup> It seemed that there was no real choice: Cameron's force began moving up the Waipā, and the example of Rangiriri did not inspire any confidence that the chiefs would not be arrested in Auckland if they trusted to the honour of the Crown. The war continued.

Dr O'Malley suggested that the Crown's motivation to continue the war in December 1863 was the rich agricultural lands lying south of Ngāruawāhia, and the conviction that the Kīngitanga was far from crushed.<sup>684</sup> As will be recalled, the Crown's intention in June 1863 was to occupy and confiscate land running all the way across the island from Raglan to Tauranga.

When the Kīngitanga realised that there would be no peace negotiations, it seemed to them that Ngāruawāhia had been taken from them by a 'smart trick'; messengers were sent to tell the troops 'that it was not fair, and that they were to return'. Unsurprisingly, 'they refused to budge'.<sup>685</sup>

### 6.7.5 Te Rore

Since the Government refused to make peace in mid-December 1863, British forces began moving south from Ngāruawāhia along the Waipā River in late December. The small papakāinga of Te Rore was located just north of present-day Pirongia, on the bank of the Waipā River at the mouth of the Mangakāware

681. Submission 3.4.300, p13.

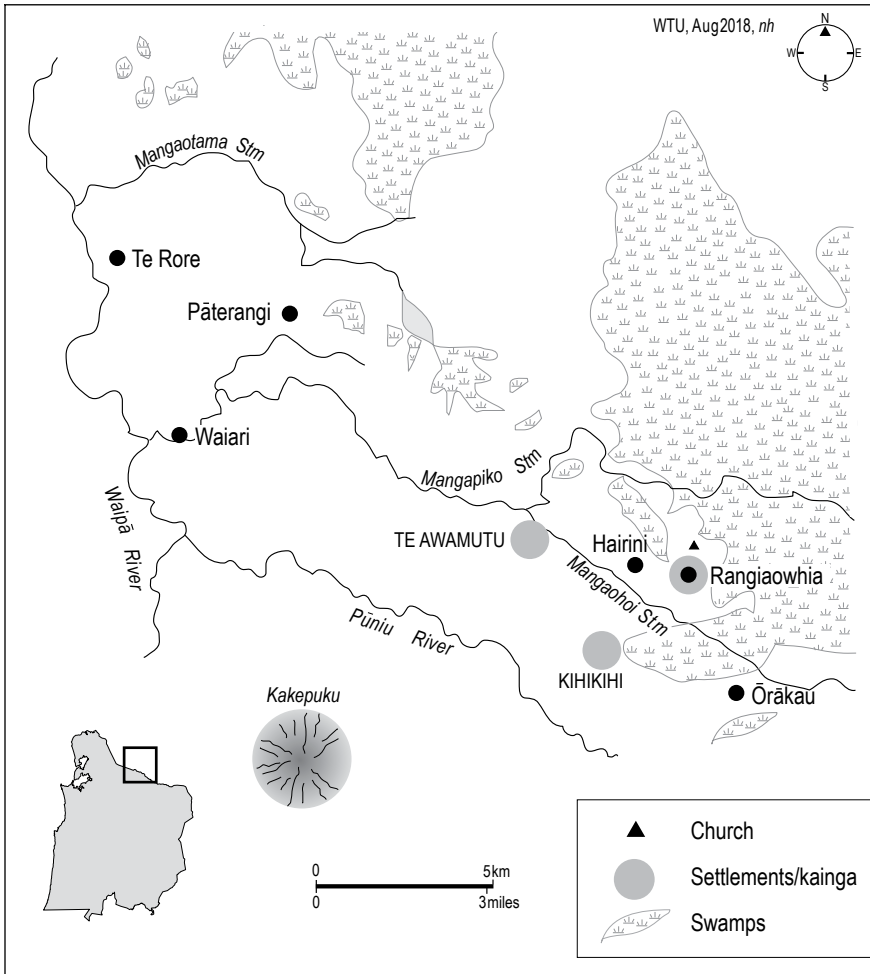
682. Grey to George Graham, 9 May 1865 (Stokes, *Wiremu Tamihana*, p 447); Grey to Pene Te Wharepu and the Chiefs of Waikato, 16 December 1863, AJHR, 1864, E-2, pp 4-5.

683. Document A22, p 99.

684. Document A22, pp 93-99; doc A22(c), p 6.

685. 'A New History of the Maori War', *Wanganui Herald*, 9 February 1884, p 2 (doc A110, p 524).





Stream. Te Rore was not a fortified pā and had no offensive or defensive purpose. It was, however, in a strategic location which marked the effective limit of navigable water for large vessels on the river. This made it a significant staging post for much of the commerce that went in and out of the upper Waipā district, and also for an army bringing men and supplies up the Waikato River. A cart road connected Te Rore with Pāterangi, Te Awamutu, and Rangiaowhia, which again had both commercial and military significance. John Vittoria Cowell had moved to

Te Rore from Kāwhia in 1839, married Mata Rihana the sister of Ngāti Apakura rangatira Wiremu Toetoe, and set up a hotel and trading post.<sup>686</sup>

Claimants from Ngāti Pēhi and Ngāti Te Kanawa (Wai 1606) alleged that Te Rore was bombarded, destroyed, and taken over as a military camp early in 1864. Liane Green said the Green, Te Kanawa, Turner, and Ormsby whānau lived there and the places destroyed included the Mangapouri flour mill, Tommy Green's timber mill, a bakery, butchery, and general store belonging to James Turner, and a school, two churches, and a barn.<sup>687</sup> The settlement was not a fortified pā and was not established for any military purpose, she said. They did not claim mana whenua, but were there to take advantage of commercial opportunities. The property of these two hapū in Te Rore was taken by the Crown and their businesses were destroyed.<sup>688</sup>

According to Frank Thorne, Te Rore was Ngāti Hikairo territory, referred to in a waiata composed by Pareoranga, a wife of Hikairo, after the death of her son Kakea. The Rūnanga o Ngāti Hikairo sought the return of land at Te Rore from the Compensation Court in 1865: 'ko Te Rore te ingoa o taua whenua, ko Pirongia Te Maunga, ko Mangauika te Mania.' Cowell's wife was Mata Kēkē, Mr Thorne said: she belonged to Ngāti Rāhui and had connections to Te Rore. Cowell had leased 20,000 acres there from Ngāti Hikairo.<sup>689</sup>

General Cameron established his headquarters at Te Rore late in January 1864. The armoured British steamship *Avon* could not travel any further upstream, and the route inland to Rangiaowhia and beyond was barred by the fortifications of Pāterangi. Mr Thorne said the army also occupied the former kāinga Tiongahemo, where the Pirongia golf course is now, and built a redoubt on Te Huri a Pōmare (where Ngā Puhī rangatira Pōmare was killed in 1826: see chapter 2).<sup>690</sup>

Several thousand men camped in the area for more than three weeks, and a smaller force remained in occupation for a much longer period. For these reasons, the Crown submitted, 'a certain level of damage and destruction was likely', but the evidence did not substantiate a claim of bombardment and destruction.<sup>691</sup> Crown counsel pointed to the account of von Tempsky, which mentioned that Armstrong guns had been brought with the army to Te Rore:

From our most advanced post, under Colonel Waddy, of the 50th Regiment, you could see the daily life going on at Paterangi. A little battery of Armstrongs kept the

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686. Document A22(c), pp 6, 8; transcript 4.1.10 (Frank Thorne, hearing week 4, Mangakotukutuku campus, 9 April 2013), pp 548–549; submission 3.4.310(e), pp 37–38.

687. Document s50(e) (Green and Tahī), paras 40–47 and document s50(c), paras 38–43, citing interviews with Patricia Turu (Ngāti Peehi, Ngāti Te Kanawa) in 2009, and Piko Davis (Ngāti Te Kanawa) in 2008 and 2012.

688. Claim 1.2.81, paras 90–93; submission 3.4.169(a), paras 31–33; transcript 4.1.10, p 807.

689. Document K32 (Thorne), pp 16–18.

690. Transcript 4.1.10, pp 548–550.

691. Submission 3.4.310(e), pp 37–38.

alertness of the Maoris somewhat in practice, and from a still more advanced hill a picket amused itself daily by long shots at the Maoris.<sup>692</sup>

This activity, Crown counsel suggested, might be ‘the background’ to the Wai 1606 claim.<sup>693</sup>

Dr O’Malley found only limited information describing the British advance on Te Rore. Troops marched up both sides of the river to reach Te Rore, which soldier Edward Tedder described as a ‘large cattle station’, late on 28 January 1864. They found it unoccupied. Dr O’Malley found no evidence of sustained bombardment, although the British did have a number of large guns: a 12-pound Armstrong gun was mounted on the *Avon* and three more such guns had been transported over land to Te Rore. The *Avon* snagged on submerged branches on 8 February, and sank (it was subsequently refloated).<sup>694</sup>

There is no evidence that the *Avon* had previously travelled upriver as far as Te Rore. The deputy quartermaster-general wrote that on 28 January, as troops moved up to Te Rore, ‘the “Avon” was to bring up supplies to Te Rore, covered by this detachment.’<sup>695</sup> A history of the gunboats pointed out that their safe passage was vital to the supply chain; between Whatawhata and Te Rore the *Avon* was protected by Forest Rangers, deployed along the both banks of the river to prevent an ambush.<sup>696</sup>

Māori destroyed two European-style buildings in advance of the British occupation: Cowell’s trading post and a house belonging to Dennett Heather near Mangaotama Stream. Dr O’Malley suggested the intent was to deny their use to the British and to obtain materials such as timber for fortifications. Māori whare seem to have been left intact when they departed in advance of the army. The *Daily Southern Cross* reported: ‘The General and staff took up their quarters near the Maori whares.’<sup>697</sup>

British troops were once again in close proximity to Kingitanga defenders. Desultory fire was exchanged during the first weeks of February. Rihi Te Rauparaha, who was aged about 10 at the time of the invasion, later recorded her memories of the event. We do not know when this was written:

Ka haere mai i roto o wai pa te tima o nga hoia Ka tae mai kite rore ka puhia te kapene e nga maori toko rua ko reupene tetahi ko pehimana tetahi Ka mate te kapene ki te rore noho tonu iho i te rore nga hoia i whawhai ana i te rore e rua nga maori i tu kotahi i mate kotahi i kai akiko Ka haere mai ana te hoia ka noho ki waiari ka whawhai ana te ma ori raua ko te pakeha me te maori

692. Gustavus von Tempsky, journal, 27 January 1864 (Cowan, *The New Zealand Wars*, vol 1, p 350).

693. Transcript 4.1.10, p 809.

694. Document A22(c), pp 6–33.

695. Gamble, February 1864 (doc A22(c), p 15).

696. Grant Middlemiss, *The Waikato River Gunboats: The Story of the Gunboats used during the British Invasion of the Waikato* (Cambridge: Grant Middlemiss, 2014), p 84.

697. Document A22(c), pp 22, 29, 32–33; ‘The War in Auckland’, *Daily Southern Cross*, 4 February 1864, p 3.

The warship came into the Waipa to Te Rore. The Maori who shot the captain were Reuben and Pehimana. The captain died at Te Rore. Those troops stayed at Te Rore. They fought again at Te Rore. Two Maori stood alone, one died of flesh wound. The troops came again and stayed at waiari. Fought again, Maori and Pakeha.<sup>698</sup>

The soldiers' steamer came up the Waipa. When it arrived at Te Rore the captain was shot by two Maori, Reuben and Pehimana. The captain died at Te Rore. The soldiers remained at Te Rore. They fought again at Te Rore. Two of the Maori were hit. One died and one was wounded.

The soldiers came again and stopped at Waiari. The Maori and Pakeha fought again in the Mangapiko River. Maori and Pakeha were killed in that fight . . .<sup>699</sup>

This account is broadly consistent with other sources. On 5 February, wrote soldier Edward Tedder, Māori hidden in scrub on the riverbank fired on the *Avon* near Mangaotama Creek, killing Lieutenant Mitchell. Soldiers foraged daily through the abandoned cultivations and orchards, and were fired on by Māori concealed in the fern. An obelisk on Kakaramea Road records the deaths of three British soldiers, one of whom was shot in an ambush near Te Rore on 8 February 1864.<sup>700</sup> In general, historians have noted the absence of the kind of sniping and raids on supply lines that Māori forces adopted in the early stages of the invasion.

Historian Andrew Francis described the canoe trade between Te Rohe Pōtae and Auckland as 'a substantial operation involving large numbers of Maori transporting considerable amounts of varied cargo'. Te Rore played an important part in this trade system, in which, by the 1850s, European traders were being 'surpassed by the adeptness and business acumen' of Māori.<sup>701</sup>

As counsel for the claimants acknowledged, the Wai 1606 claim is about loss of property, not life.<sup>702</sup> Heavy guns were present, and in sporadic use, but the evidence does not support a claim that Te Rore suffered heavy bombardment before it was occupied. The residents of Te Rore left before the British arrived. Māori burned or removed material from the two European buildings in the area, but left whare intact. As the Crown acknowledged, these whare and the goods and cultivations nearby are likely to have been damaged or destroyed during the British occupation. This meant that the homes, possessions, and livelihoods of the inhabitants were destroyed in two senses: first, by the immediate military occupation, and, secondly, by the fact that they could not return and rebuild – this land was soon after confiscated by the Crown.

Cowell received compensation of £766 for the loss of his home and business. Dr O'Malley found no evidence that Te Rore Māori were ever compensated for the loss of their homes and livelihoods.<sup>703</sup>

698. Document P1(a) (Lennox appendixes), pp 49–50; doc s50(a) (Green document bank), pp 8–11.

699. Alternative translation in doc s50(a), p 11.

700. Document A22(c), pp 9, 28–29.

701. Document A26 (Francis), pp 60–61, 74.

702. Transcript 4.1.10 (claimant counsel, hearing week 4, Mangakotukutuku campus, 11 April 2013), p 1013.

703. Document A22(c), pp 25–26.

### 6.7.6 Waiari

While Crown forces were advancing up the Waipā River towards the rich agricultural lands of Rangiaowhia, the Kīngitanga tribes were building a new defensive line to stop the British advance. This line was centred on Pāterangi. Cameron's goal was to outflank the Pāterangi line.<sup>704</sup> On the way, there was an encounter between Crown and Māori at Waiari, which the claimants raised with us in their evidence and submissions.

#### 6.7.6.1 What happened?

Waiari was occupied by Ngāti Puhiaue and was the home of Hikairo in the late eighteenth century. He was a Ngāti Apakura rangatira, but Ngāti Hikairo say he lived at Waiari after separating from Ngāti Apakura, and that Ngāti Puhiaue and Ngāti Hikairo were merged there. His son Whakamarurangi was born there, and Hikairo's decapitated head returned and interred there after he was killed at Pukerimu.<sup>705</sup> At Native Land Court hearings in 1886, Mohi Te Rongomau (Ngāti Hōrua) and Harete Tamehana (Ngāti Hauā) said that Ngāti Hikairo lived at Waiari during the wars but settled at Kāwhia with others of Waikato afterwards. Mohi had heard they were employed as scouts and signalmen during the war.<sup>706</sup>

An advance camp of 600 troops, under command of Colonel Waddy, was established about a mile to the south of Pāterangi near Mangapiko Stream. On 11 February, a party of about 50 British soldiers, protected by 20 sentries, came down to the river to wash. The bathers were fired on, whether due to opportunistic enthusiasm or because the Māori thought they had been discovered is uncertain. Dr O'Malley followed Cowan, and official accounts, that the ambush party had planned to mount a surprise assault early the following morning on the advance British camp. They had concealed themselves near an old Ngāti Apakura pā site at Waiari on the southern bank of Mangapiko Stream, from where they intended to attack the British camp from the rear.<sup>707</sup>

Frank Thorne said the Ngāti Hikairo view was that there was considerable discussion over whether to fire on the troops, but he indicated that the attack was in response to an unlooked for opportunity:

Waiari isn't detailed that much in regards to the other more well-known battles and because the others actually had strategic, strategically-built pā and they're prepared and there's a military force with big canons and all that kind of stuff. In this case there's some ill-prepared troops and some probably just as ill-prepared Māori coming across one another . . .<sup>708</sup>

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704. Belich, *The New Zealand Wars*, pp 160–163.

705. Document A110, p 350; doc K32, p 19; transcript 4.1.10 (Thorne, hearing week 4, Mangakotukutuku campus, 9 April 2013, p 552; doc K11 (Bell), p 6.

706. Document A94 (Collins, Turner, and Te Huia), p 158.

707. Document A22, pp 104–107; Cowan, *The New Zealand Wars*, vol 1, pp 346–349; 'Further Papers relative to the Native Insurrection', AJHR, E-3, 1864, pp 22–28.

708. Transcript 4.1.10 (Thorne), pp 591.

According to Pohepohe Mac Bell:

Our people were lacking in ammunition and lacking in every damn thing that it was possible to lack (tēnā te korero a taku kaumātua) and put up a hell of a fight really and paid dearly for it too. One part there they set up traps and had the Europeans pinned down, and, as they did, to make the fight fair, let them get away . . . and the Europeans got up and shot them. It was a different concept of conduct of war – different thinking.<sup>709</sup>

There may have been reluctance on the part of younger members of the group to get involved. Te Mūnu Waitai, old and asthmatic, ‘stood up and pūkanaed at the Pākehā enemy and they shot him dead.’<sup>710</sup>

The ambush party retreated into the old pā, but reinforcements were rapidly deployed: one detachment crossed the river by a log bridge just downstream to try to cut off a retreat. Heavy fire was exchanged over several hours.<sup>711</sup>

### 6.7.6.2 Casualties

For the defenders of Pāterangi, Waiari was a significant loss. The British return of casualties numbered six dead and seven wounded. Māori losses are less certain but Dr O’Malley put the best estimate at 35 dead and 30 wounded. Cowan wrote that many of those who fought were Ngāti Hikairo and Ngāti Maniapoto, recently arrived from Kāwhia. As well as Te Mūnu, Cowan named Taati, Ta Kerei, Taare, Te Kariri, and Hone Ropiha of Ngāti Maniapoto as among the dead. The *New Zealand Herald* reported that a son of Tikaokao and a nephew of Takerei were killed.<sup>712</sup> Tame Tūwhangai said that Ngāti Huru rangatira Te Rōre Te Māngina and his son, Īnia, were at Waiari and Īnia was killed there; Mr Tūwhangai said his grandmother’s first cousin was named Mangapiko in memory of this tupuna.<sup>713</sup>

Although we are not reporting on Ngāti Hikairo’s raupatu claim, we note their evidence on Waiari as a matter of context.<sup>714</sup> According to Ngāti Hikairo witnesses, Waiari was a pivotal battle for their tūpuna. Louvaine Kaumoana said: ‘I think this really “knocked the stuffing” out of our fighting force and our people were less involved in later battles.’<sup>715</sup> Mr Thorne said it was a turning point: ‘a good time to withdraw from active engagement in the war, and regroup and weigh up how to approach the continuing war.’<sup>716</sup> Counsel for Ngāti Hikairo said that ‘most of the lives lost at Waiari were of Ngāti Hikairo’ and the battle caused ‘a large loss of the iwi’s warriors and leadership.’<sup>717</sup> These losses, Mr Thorne considered, would

709. Transcript 4.1.10 (Thorne), p 552.

710. Pohepohe Mac Bell, interview, 2012 (doc K32, p 21).

711. Havelock to Waddy, 12 February 1864, AJHR, 1864, E-3, p 23.

712. Document A22, pp 105–106; Cowan, *The New Zealand Wars*, vol 1, p 349.

713. Transcript 4.1.17, p 579; doc R13(b) (Tūwhangai), pp 5–6.

714. Submission 3.4.226, pp 17–18.

715. Document K10 (Kaumoana), p 3.

716. Transcript 4.1.12, p 47 (Frank Thorne, hearing week 7, Waipapa marae, 7 October 2013).

717. Transcript 4.1.10, p 535.

have weighed heavily with Ngātūerua when he decided to warn his people at Rangiaowhia to escape inevitable trouble.<sup>718</sup>

Ngāti Maniapoto lost people according to Thomas Maniapoto: ‘Our people were at the fighting at Waiari and I am aware some of them died there during the fighting subsequent to the ambush, but there were many more of our relations there.’<sup>719</sup>

Rovina Anderson said Te Warahoe took part, and Rewi Maniapoto later said he had been present.<sup>720</sup>

### 6.7.6.3 *Issues about Waiari*

Waiari was important to the claimants because of the ‘large loss of Māori lives.’<sup>721</sup> Despite this significant loss of life, the events at Waiari are not widely known. James Belich does not mention the battle in his account of the Waikato war. Several claimants pointed out that while a stone monument surrounded by a pipe fence commemorates the British dead, the Māori who fell lie in an unmarked grave:

He maha ngā tūpuna i mate ai i Waiari, kei Mangapiko. Otirā ka tanumia ki reira, kāore kau he tohu hei whakamārama, hei whakamahara i a rātou engari kāore e tata atu he tohu hei whakamaharatia ngā hoia i patu ai ki reira. Koirā tā mātou mamae nā.

There were many ancestors who died at Waiari, which is at Mangapiko. Although they are buried there, there are no commemoration stones to remember them. But not far away there is a monument commemorating the soldiers who died there. So the pain still lingers because of that.<sup>722</sup>

Tiwha Bell and Janise Eketone mentioned Waiari as one of the battles that Ngāti Maniapoto had expected would be remembered by the Crown during the 150th anniversary of the war.<sup>723</sup> Ralph Johnson, for the Ministry for Culture and Heritage, said that a commemoration of the 150th anniversary was held at Waiari.<sup>724</sup>

The Crown raised the issue of Waiari in respect of its argument that not all Māori engagements with the Crown were ‘defensive’ in nature. This argument was made in two instances. The first was the raids in July to October 1863 (discussed in section 6.7.3). In that section of our report, we acknowledged that some settler non-combatants were killed in raids. The second instance was Waiari.<sup>725</sup>

718. Document K32, p 24.

719. Document K15, p 8.

720. Document K36, p 3; doc K23, p 22: Thomas Maniapoto thought that Te Warahoe were originally from Te Urewera (transcript 4.1.6, p 93); Harold Maniapoto said they were brought to the Waipā district by Terai, a son of Pēhi Tukorehu (transcript 4.1.1, pp 95–96).

721. Document K32(a) (Thorne), p 12

722. Transcript 4.1.2 (Frank Thorne), p 243; see also doc K35, p 25.

723. Document Q27 (Bell and Eketone), p 7.

724. Document T8 (Johnson), p 23.

725. Submission 3.4.300, pp 8, 13.

The Crown accepted that Te Rohe Potae iwi were justified in fighting in defence of their lands and homes.<sup>726</sup> But in opening submissions Crown counsel also stated that '[t]he Crown today does not necessarily accept that all responses of Rohe Pōtae Māori to the invasion were defensive'. For the Crown, this underlined why 'Māori who resisted its authority with force and arms' were thought at the time to be in rebellion. Crown counsel added: 'However, having regard to its concession that the war was an injustice and a breach of the Treaty, and in the spirit of reconciliation, the Crown does not consider it would be a constructive exercise to focus on those instances in this forum.'<sup>727</sup>

The Crown repeated this argument in closing, and raised the issue of Waiari: 'The failed ambush at Waiari took place on 11 Feb 1865 [*sic*]. O'Malley acknowledged that this 'wasn't a strictly defensive action' and accepted that the attack would have reinforced the Crown view that Māori were still in rebellion.'<sup>728</sup>

The Tribunal asked Crown counsel to clarify whether Waiari should properly be regarded as an offensive act in the context of Māori defending themselves against a Crown invasion of their lands. The Tribunal also queried whether the fact that the Māori involved seemed to 'stumble' upon the bathing soldiers should really be characterised as an 'ambush' or rather as an opportunistic action. Crown counsel agreed that the encounter may have been opportunistic but reiterated the Crown's position that the Tribunal lacked evidence of what was 'justified in war situations.'<sup>729</sup>

Waiari was a rare exception. Vincent O'Malley pointed out that the vast majority of fighting in the Waikato war took the form of Crown attacks upon Māori.<sup>730</sup> The authors of the Ngāti Maniapoto report had this to say about Waiari: 'Although the incident was an ambush, Ngāti Maniapoto and other Iwi were ultimately acting against Crown forces which had wrongly labelled them rebels and invaded their lands.'<sup>731</sup> In reply submissions, claimant counsel argued that in defending themselves from an invasion, their response 'could only ever be defensive.'<sup>732</sup>

This issue about Waiari goes to the heart of whether the Crown's conduct in attacking the peoples of the Waikato and Te Rohe Pōtae was lawful, and whether the Crown at the time was justified in considering those peoples to be in rebellion. Those issues have been debated in other Tribunal inquiries, where the Crown refused to accept that Māori were justified in fighting to defend their lands and maintained that Māori were in rebellion.<sup>733</sup> But in our inquiry the Crown has conceded that:

- ▶ the Waikato war was an injustice and a breach of Treaty principles;

726. Submission 3.4.300, p 8.

727. Submission 3.4.16, pp 6–7.

728. Submission 3.4.300, pp 8, 13n; transcript 4.1.23, pp 861–862.

729. Transcript 4.1.23, pp 902–904.

730. Transcript 4.1.10, p 812.

731. Document A110 (Joseph), p 532.

732. Submission 3.4.391, p 8.

733. Submission 3.4.300, p 13; submission 3.4.281, pp 27–28; see also Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, pp 108–116.



- ▶ Te Rohe Potae iwi and hapū were ‘justified in taking up arms in defence of their lands and homes’ and in defence of the Kingitanga; and
  - ▶ Māori were unfairly labelled as rebels in the Waikato war.<sup>734</sup>
- In previous inquiries, the Crown has not made these concessions.<sup>735</sup>

In light of the Crown’s concessions, we do not consider it necessary to determine whether Māori acted on the offensive rather than strictly defensively at Waiari or on any other occasions during the Waikato war. We accept the Crown’s submission that it serves no constructive purpose to pursue these matters further.<sup>736</sup>

### 6.7.7 Rangiaowhia

‘the hidden things have become manifest, namely good and evil’<sup>737</sup>

#### 6.7.7.1 What happened?

Late in the evening of Saturday 20 February 1864, more than 1,000 imperial troops, Forest Rangers, and Colonial Defence Force cavalry left Te Rore.<sup>738</sup> Guided by Ngātūerua Erueti (James Edwards) and John Gage, the British force crossed the Mangapiko Stream by the bridge at Waiari where the failed ambush had taken place nine days earlier. They marched silently in single file past Pāterangi, close enough to hear sentries calling to one another. The rough cattle track through fern met the dray road connecting Te Awamutu to the Pūniu River, and the invading force arrived in Te Awamutu at about 7am on Sunday morning.<sup>739</sup>

Cameron immediately pushed on towards Rangiaowhia, sending the Mounted Royal Artillery and Colonial Defence Force cavalry in advance of the main column. Cameron’s report to Grey briefly described the events that followed:

The few natives who were in the place were completely taken by surprise, and refusing to lay down their arms, fired on the Mounted Royal Artillery and Colonial Defence Force, whom I sent on in advance of the column. The natives were quickly dispersed, and the greater part escaped; but a few of them taking shelter in a whare, made a desperate resistance, until the Forest Rangers and a company of the 65th Regiment surrounded the whare, which was set on fire, and the defenders either killed or taken prisoners.<sup>740</sup>

#### 6.7.7.2 Casualties and prisoners

In his report to Grey, General Cameron wrote that the British lost two killed and six wounded. He estimated 12 Māori were killed and about 15 were wounded. Of

734. Submission 3.4.300, pp 1, 8.

735. See, for example, Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, pp 103–104, 108–116.

736. Submission 3.4.16, pp 6–7.

737. ‘Important Letter from the King Party’, *Daily Southern Cross*, 22 July 1868, p 3.

738. Belich says 1,230: Belich, *The New Zealand Wars*, p 163; Cameron’s report counted 1,097: Cameron to Grey, 25 February 1864, AJHR, 1864, E-3, p 29.

739. Document A22, pp 107–108.

740. Cameron to Grey, 25 February 1864 (doc A22, pp 108–109).

the 33 captured, 21 were women and children; Cameron made no mention of women and children being among the casualties.<sup>741</sup> Several days after the attack, Wiremu Tamihana wrote that there were ‘six . . . killed in one place’, which Dr O’Malley said was a reference to those who burned to death in a whare.<sup>742</sup>

Claimants and technical witnesses identified several iwi and hapū present during the attack, including but not limited to Ngāti Maniapoto, Ngāti Apakura, Ngāti Rāhui, Ngāti Hounuku, Ngāti Tauhunu, Ngāti Taheke, and Ngāti Parekahuki. Frank Thorne gave kōrero about his tupuna Te Kewene Whakataha who was at Rangiaowhia. Mr Thorne also identified two others who died at Rangiaowhia, Te Wera and Matapura.<sup>743</sup> Tame Tūwhāngai’s tupuna Hounuku Wharekoka and his wife Karo were at Rangiaowhia along with his great-great-aunt Rina Haututu and her husband.<sup>744</sup> Piripi Crown told the Tribunal about Hongihongi, who was in the burning church. Hongihongi and his sister Rangiamoa escaped the church, pulling Te Wano with them, and fled along a path named Tomotomo Ariki.<sup>745</sup> Those are a few examples but we heard many more kōrero about Rangiaowhia.

### 6.7.7.3 *What are the claims about?*

Ngāti Apakura claimants said Rangiaowhia was ‘a turning point’ in their history.<sup>746</sup> Casualties were not killed in war but were murdered. Gordon Lennox told us: ‘This is what has been passed down through my whanau and sustains much of our anger about these events.’<sup>747</sup>

Rangiaowhia was not a fighting pā, the claimants said, but an agreed place of refuge for women, children, and the elderly. The British promised that women and children would not be killed. The Crown said Te Awamutu, Kihikihi, and Rangiaowhia were ‘the principal supply bases’ for the defensive pā system. In closing submissions, the Crown said it was ‘unlikely’ General Cameron agreed not to attack Rangiaowhia.<sup>748</sup>

Rangiaowhia was charged by armed cavalry, the claimants said; no opportunity was offered for the inhabitants to surrender. Twelve whare were burned, including one that was deliberately set alight with people still inside. Inhabitants were shot when they tried to surrender or escape.<sup>749</sup> The Crown responded that Māori opened fire when troops entered the village and continued to shoot at soldiers. Evidence that a building was deliberately torched was ‘not particularly convincing’, the Crown said.<sup>750</sup>

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741. Document A22, pp108–110.

742. Wiremu Tamihana to Rawiri and Tawaha, 28 February 1864 (doc A22, p128).

743. Document K32, p 24.

744. Transcript 4.1.4, p 148; doc K19, p 4.

745. Transcript 4.1.6, p 397; doc A97, p 202.

746. Document K22 (Lennox), p 27.

747. Document K22, p 28.

748. Submission 3.4.300, p 16.

749. Submission 3.4.127, p 22; submission 3.4.228, p 43.

750. Submission 3.4.300, p 17 n

Ngāti Apakura claimants said there was evidence that women and children were killed at Rangiaowhia. The claimants also submitted evidence that women were raped by soldiers at Rangiaowhia. In response, the Crown argued that only those who fired at the soldiers were attacked (others did not and were not), and there is no contemporary evidence that women and children were killed at Rangiaowhia.<sup>751</sup> At the hearing of the Crown's closing submissions, however, Crown counsel agreed that this submission was incorrect and that certain evidence on the record had been overlooked.<sup>752</sup>

#### 6.7.7.4 Who was involved from Te Rohe Pōtae Māori?

The Ngāti Apakura oral and traditional history report acknowledged that exact boundaries were unclear, but 'clarified' that Ngāti Apakura had 'spheres of influence, a rohe or takiwā as it were' around Te Awamutu, Kaipaka, Hairini, Rangiaowhia, Puhue, Ōhaupo, Tuhikaramea, Ngāhinapōuri, Pirongia and Kāwhia'. Important Apakura rangatira lived in or near Rangiaowhia, such as Hoani Pāpita and Hori Te Waru, who both signed the Treaty of Waitangi and were instrumental in agricultural development during the later 1840s and 1850s.<sup>753</sup>

The Crown said that in February 1864 it understood Rangiaowhia to be the 'head quarters' of Ngāti Maniapoto. This assertion was based on the report of the army's Deputy Quartermaster-General Gamble.<sup>754</sup> Yet Gamble also reported that Kihikihi was 'the head-quarters of Rewi, chief of the Ngatimaniapotos', which indicates that British forces regarded the district protected by the Pāterangi fortifications as, in general, a Ngāti Maniapoto stronghold. Resident Magistrate Francis Dart Fenton, who conducted a census of the Waikato in 1858, listed Ngāti Apakura and Ngāti Hinetu as the groups then occupying Rangiaowhia, as did Cowan in his history of the war.<sup>755</sup> It is clear that, as Ngāti Apakura said in closing submissions, Rangiaowhia was the main Apakura settlement at the time, although the inhabitants had affiliations to other hapū, including Ngāti Maniapoto, Ngāti Raukawa, Ngāti Kauwhata, and Ngāti Wehi Wehi.<sup>756</sup> Cameron's guides, Erueti and Gage would have made him aware of the nature of the settlements he was entering, and there is evidence that the actions of the two guides were motivated primarily by a desire to avoid further bloodshed. There is a whānau tradition that Ngātūerua Hemi Erueti<sup>757</sup> tried to warn the inhabitants of Rangiaowhia before the Crown's troops arrived (see section 6.10).<sup>758</sup>

751. Submission 3.4.127, pp 21–22; submission 3.4.300, pp 17–18; submission 3.4.228, pp 43–49.

752. Transcript 4.1.23, pp 900–901.

753. Document A97, pp 49–55, 119; doc A26, pp 46–52.

754. Gamble, journal, February 1864 (submission 3.4.300, p 16).

755. Gamble, journal, 4 March 1864 (doc A22, p 130). Ngāti Hinetu is sometimes described as a hapū of Ngāti Apakura: see, for example, doc A97, pp 57–67.

756. Submission 3.4.228, p 43; submission 3.4.127, p 21.

757. Called Himi Manuao by some: doc K12 (Hopa), p 3; Belich, *The New Zealand Wars*, p 162.

758. See especially doc K12 and doc K12(a).

**6.7.7.5 Nature of the settlements**

From the late 1840s, Rangiaowhia and the surrounding district flourished during what historian Dr Andrew Francis described as the 'heyday of Maori agriculture'.<sup>759</sup> European visitors to the region remarked upon the development of agriculture and trade, which they attributed to the industriousness of the inhabitants, the fertility of the land, and the efforts of missionaries. Governor Grey visited the Waikato and Waipā districts in 1849 and reported on its 'most fertile character', remarking on the extensive cultivations and adding that he had 'never seen a more thriving or contented population in any part of the world'.<sup>760</sup> Auckland's first harbour master, David Rough, visited Rangiaowhia during March and April 1852 and estimated the population at 700, with around 800 acres planted in wheat.<sup>761</sup> The supposed resemblance of Rangiaowhia to the English countryside was a further indicator, for many Pākehā visitors, of economic success. The Government newspaper *Te Karere* reported:

Neat homesteads dotted here and there with haystacks, ploughs, harrows and other implements of husbandry . . . and scenery enlivened by several flour mills. The natives are extensive cultivators of wheat, which is ground at their mills and sold at Onehunga and Auckland.<sup>762</sup>

Ferdinand Hochstetter, who visited the upper Waikato early in 1859, wrote that 'numerous horses and herds of well-fed cattle bear testimony to the wealthy condition of the natives'.<sup>763</sup> Despite evidence of decline in agricultural production in the later 1850s, the district encompassing Rangiaowhia, Kihikihi, and Te Awamutu remained integral to sustaining the Kīngitanga population and defensive effort after the British invasion in 1863.<sup>764</sup>

**6.7.7.6 Why was Rangiaowhia attacked?**

Dr O'Malley wrote that, by early February 1864, General Cameron had concluded that the defensive line centered on Pāterangi 'was indeed a formidable defensive line which defied easy capture'. He described Cameron's 'cautious' advance south from Ngāruawāhia as 'perhaps understandable under the circumstances'.<sup>765</sup> The evidence shows, however, that Cameron's strategy was deliberate, had been decided by late January, and was focused on the occupation of Rangiaowhia.

From a hill above his camp at Tuhikaramea, on 14 January, the general and his staff reconnoitred the defensive fortifications that blocked the routes into the agricultural heartland of the Waipā. Deputy Quartermaster-General Gamble

759. Document A26, ch 2.

760. Grey to Earl Grey, 7 March 1849 (doc A26, p 42).

761. Document A26, pp 40–41.

762. 'Rangiaohia', *Te Karere Maori*, 1 January 1855, p 5 (doc A26, p 44).

763. KR Howe, 'Missionaries, Maoris, and "Civilization" in the Upper-Waikato, 1833–1863' (MA thesis, Auckland, 1970), p 110 (doc A26, p 91).

764. Document A26, ch 3.

765. Document A22, pp 103–104.

subsequently reported: “Piko Piko” and “Pa-te-rangi” were visible from the hill top at about ten miles in a direct line, but little could be ascertained from inspection at such a distance beyond that the positions appeared to be of formidable strength generally.<sup>766</sup>

Pāterangi and Pikopiko joined with Te Ngako and Rangiatea to form a chain of defences covering approximately 10 kilometres (six miles). Dr O’Malley described the works as ‘perhaps the most ambitious chain of Maori fortifications ever established.’<sup>767</sup>

Troops began their march from Tuhikaramea to Te Rore on 28 January 1864. Deputy Quartermaster-General Gamble wrote in his journal that day:

This was in pursuance of the Lieutenant-General’s pre-arranged plan, which was to ‘turn’ the ‘pahs,’ instead of directly attacking them, with which object he determined to move by this flank march on Te Rore, with a view of eventually getting in rear of the whole of the ‘pahs,’ by a track which crosses the Maungapiko towards Rangiahia.<sup>768</sup>

On 2 February, Cameron posted 660 men, under Colonel Waddy, within a mile of the fortified line. This was done, he said, ‘in order to occupy the attention of the natives, and make them believe that I intended to attack them at Paterangi.’<sup>769</sup> Having realised that a direct assault on Pāterangi would only succeed with heavy loss of life, Cameron reported to the War Office from Te Rore on 4 February that he ‘therefore selected the line of the Waipa in the hope of turning [the pā] and compelling the enemy to evacuate them by cutting off his supplies.’<sup>770</sup> He calculated that in doing so he would force an open battle on ‘the enemy’ and succeed in destroying the Kingitanga army.<sup>771</sup>

The operation was delayed due to a crisis of supply. As we noted earlier, the armoured steamer *Avon* snagged on branches in the Waipā and sank on 8 February. A replacement vessel, the *Koheroa*, was not able to reach Te Rore until 14 February. Cameron feared having to fall back for want of provisions.<sup>772</sup>

But on 4 March 1864, Cameron was able to report the success of ‘the movement to Rangiahia [*sic*], which I stated in my last despatch it was my intention to make, with the view of turning the line of intrenched positions constructed with great labour by the natives.’<sup>773</sup>

Von Tempsky later wrote that, in occupying the district: ‘We had . . . our knee upon the stomach of our enemy, by holding the whole breadth of cultivated

766. Gamble, journal, February 1864 (doc A22, pp 101–102).

767. Document A22, p 102.

768. Gamble, journal, February 1864 (doc A22(c), p 15).

769. Cameron to War Office, 4 March 1864 (doc A22(d) (O’Malley document bank), p 5).

770. Cameron to War Office, 4 February 1864 (doc A22(d), p 3).

771. Belich, *The New Zealand Wars*, pp 162–163.

772. Cameron to War Office, 4 March 1864 (doc A22(d), p 5).

773. Cameron to War Office, 4 March 1864 (doc A22(d), p 5).

country between the Waipa and the Horotiu.<sup>774</sup> The invaders were well aware that the loss of these settlements dealt a severe blow to the Māori communities who relied on them for their livelihood and prosperity. As Gamble wrote: 'The loss to the enemy of two such places, with their extensive cultivation, is and will be yet still more serious as winter advances.'<sup>775</sup>

Living off supplies requisitioned from enemy territory was a standard practice of European warfare. The difficulty of doing so in Waikato was one reason for the elaborate systems of logistical support Cameron established on his progress up the Waikato and Waipā valleys. His staff specifically noted the benefit to the force of the supplies they had captured. But Cameron's explanation was different: by cutting off access to supplies, he hoped to compel the evacuation of Pāterangi. And in this, the general succeeded.

Yet there is clear evidence of unease among some of those who participated in the attack. While Gustavus von Tempsky of the Forest Rangers called the operation 'the grand feature of the war', he went on to write:

The most of us felt dissatisfied with that day's work – yet I for my part could not but see that the result of this move would prove of overwhelming importance to the relative positions of the Maori and his antagonist. The attendant evils of such a coup de main kept rising up in my throat – but they might have been infinitely worse; and the good gained – one gigantic stride towards the pacification of the country, would eventually counterbalance the doubtfulness of the detail of its accomplishment.<sup>776</sup>

It is possible that von Tempsky's dissatisfaction was because he thought that the British had not chosen the most honourable course of action. Success was not achieved in open combat but by a kind of subterfuge.

Māori felt that the British had not abided by the code of honourable conduct that they professed to believe in. The occupation of Rangiaowhia was yet another instance, after the white flag at Rangiriri and the condemnation for allowing women and children to shelter within fighting pā, where Māori attempted in good faith to abide by agreed rules of conduct – what Tamihana called 'te ture o Ingarangi'. This was especially galling when one British justification for the war was the supposed threat to lawfulness and inability to maintain good order posed by the Kingitanga. Much of the rancour and anguish that has lingered in the long aftermath of the invasion is due to a belief that the British did not conduct themselves according to the rules they professed to uphold. These efforts by Kingitanga rangatira to adhere to 'the law of England' are, in themselves, evidence to counter the proposition that the Kingitanga was inimical to British authority.

Rangiaowhia showed that the Crown's conduct of the war was shaped by the doctrine of military necessity: that which needed to be done to secure military

774. Von Tempsky, Memorandum of the New Zealand Campaign, p118 (doc A22, p186; doc A22(a) (O'Malley document bank), vol 2, p1120).

775. Gamble, journal, 4 March 1864 (doc A22, p131).

776. Von Tempsky, Memorandum of the New Zealand Campaign, p111 (doc A22(a), vol 2, p1113).

success, should be done, but no more than that. Defining the point at which necessity became excess was, and is, notoriously difficult. The Waikato invasion was further complicated by the problem of what kind of war, exactly, was being fought. The military subjugation of Waikato Māori was the Crown's first serious assertion of effective sovereignty in the district, and if the war was an attempt at what the Crown now calls working out the details of the Treaty of Waitangi, that suggests to some degree at least a conflict between sovereign entities. Insurgency, insurrection, and rebellion were words used by Crown officials at the time to describe the conflict. Thus civil war is another possibility. Complicating the matter still further, it is unclear to what extent the British believed themselves to be bound by the European conventions of war while they were imposing the authority of their colonial empire on their own 'subjects'.

As von Tempsky acknowledged, the war was won by the British at Rangiaowhia. If his romantic temperament regretted the manner of victory, it might be said that war is only rarely a matter of grand and honourable exploits. What remains to be examined here is 'the doubtfulness of the detail of its accomplishment'. We note the Crown's view that the killing of non-combatants underscores the point that the Waikato war was an injustice, and that the governor at the time told Māori that *they* would be tried and punished if they killed non-combatants.<sup>777</sup>

#### 6.7.7.7 Was Rangiaowhia a sanctuary?

Claimants said the Kīngitanga leaders 'genuinely believed there had been some kind of undertaking made with respect to Rangiaowhia, and so the honour of the Crown was once more breached'.<sup>778</sup> At Rangiriri, women and children had remained inside the pā when the British attacked, and some became casualties or prisoners of war. Petitioning Parliament in 1865, Tamihana wrote:

ki reira ka tae mai ano te ture o Ingarangi ki te whakahe i au, mo nga wahine, mo nga tamariki ano hoki, i mate tahi me nga tangata ringaringa kaha ki roto i te pa whawhai, heoi ka waiho i roto i toku ngakautaua ako . . . [K]atahi ka wehea e au ko Rangiaohia te kainga mo nga wahine, mo nga tamariki, ka wehea atu etehi tane ki reira hei hari kai mai ki konei ki Waipa nei, ara ki Paterangi.

Then again was I condemned by the laws of England because of the women and children who died with the men of strong hand that fell in the fighting pa. I then left that lesson (learnt there) in my mind . . . I divided off Rangiaohia to be a place of abode for the women and children, and I drafted off some men to carry food to Waipa – that is to say, to Paterangi.<sup>779</sup>

777. Statement 1.3.1, p 48; submission 3.4.300, p 12.

778. Submission 3.4.198, p 21.

779. Document A22, pp 113–114 (Petition of Wi Tamihana Te Waharoa, 24 July 1865, AJHR, 1866, G-2, pp 4, 6).

In the context of Māori warfare as it was traditionally fought, protecting women and children within a defensive pā when a community was attacked was a logical response. As Tamihana explained, non-combatants were sequestered at Rangiaowhia in an effort to adapt to what were understood to be English laws of warfare. Dr O'Malley noted that to the British, the participation of women 'was widely deemed a deplorable aspect of Maori warfare.'<sup>780</sup> Grey wrote privately to Newcastle after Rangiriri that the conflict:

Even their women and young girls now take an active part in it. They advise me that in the action at Rangiriri on the 20th of November they had nine women killed, and many wounded – amongst the latter was a sister of the so called native King, as kind goodtempered a woman as I have ever known, and amongst the former, a girl daughter, of one of the principal chiefs, who was quite remarkable for her good looks, and was I am told in every way was a good and amiable girl. . . . all this is very sad, and is to me more trying than I can well say.<sup>781</sup>

In August 1864, Wiremu Tamihana told James Mackay that General Cameron's disapproval was communicated via 'friendly natives' (that is, those assisting the Crown):

That spot (Rangiaowhia) was selected as the dwelling place for our women and children, in accordance with the words of the General, conveyed to us through the friendly Natives, not to permit our women and children to remain in the fighting pas.<sup>782</sup>

In an 1865 petition to the New Zealand Parliament, Tamihana made the same point:

When the women were killed at the pa at Rangiriri, then, for the first time, the General advised that the women should be sent to live at the places where there was no fighting. Then the pa at Paterangi was set aside as a place for fighting, and Rangiaowhia was left for the women and children.<sup>783</sup>

We know that Wiremu Te Wheoro met with the Kīngitanga rangatira in December 1863, in the wake of Rangiriri, and Wiremu Nera Te Awaitaia met with Tamihana in February 1864, so there were certainly occasions at which the British disapproval could have been conveyed. Both James Belich and Vincent O'Malley

780. Document A22, p 114.

781. Document A22(a) (O'Malley document bank), vol 2, pp 938–939 (Grey to Newcastle, 9 December 1863).

782. Wiremu Tamihana quoted in Mackay to colonial secretary, 10 September 1864 (Stokes, *Wiremu Tamihana*, p 395). James Mackay was the civil commissioner at Waihou.

783. Wiremu Tamihana, petition, 5 April 1865 (Stokes, *Wiremu Tamihana*, p 445).



concluded there was convincing evidence that some kind of message was conveyed from Cameron about the safety of women and children after Rangiriri.<sup>784</sup>

In addition to the reported British disapproval of protecting women and children in 'fighting pa', Māori believed that the general had specifically agreed that Rangiaowhia should be left as the refuge for non-combants. Harold Maniapoto called the attack on Rangiaowhia 'a masterstroke of cowardice and betrayal'. General Cameron knew, he said, that 'the village was defenceless and occupied by nothing more than defenceless mothers, innocent children, and useless old men, left there by his own insistence after Rangiriri, as a sanctuary for noncombatants'.<sup>785</sup>

The role in the events at Rangiaowhia played by the Anglican Bishop of New Zealand, George Augustus Selwyn, has been the subject of contention over the years. In 1865, Tamihana wrote that despite agreeing to the British request to keep women away from the fighting,

Ka oti tenei te whakarite e matou, katahi ka hapainga te Ope a Pihopa Herewini raua ko Te Tianara ki te whawhai ki te tamaiti ki te wahine.

As soon as we had arranged this, Bishop Selwyn's and the General's troop set out to fight the women and children.<sup>786</sup>

Ngāti Maniapoto veteran Te Wairoa Piripi later told James Cowan:

After we had all left Ngaruawahia and assembled in our pa at Paterangi, a letter was sent to us by Bishop Selwyn and General Cameron, saying that it had been agreed by the missionaries and the Catholic Catechists that the women and children should retire to Rangiaowhia. The messenger who brought this letter was Wiremu Patena and he returned to Ngaruawahia. The soldiers came and they fought with us outside our pa but could not capture the fort. Then Bishop Selwyn left Paterangi and went with the army of soldiers to attack the women and children at Te Awamutu and Rangiaowhia.<sup>787</sup>

Raureti Te Huia's account to Cowan was similar: 'When the tribes stayed at Paterangi the soldiers arrived at Ngaruawahia. From there it was given to Wiremu Patena to take the message of the General and the Bishop. "Return the women and children and leave only those who wield weapons."<sup>788</sup>

Cowan dismissed these accounts as 'a purely Maori view, coloured by the mistaken idea that the Bishop was assisting the troops against the natives,'<sup>789</sup> but in doing so acknowledged the belief that Rangiaowhia was set aside as a place of safety.

784. Document A22, p 119; Belich, *The New Zealand Wars*, p 164.

785. Document K35, p 26.

786. Wiremu Tamihana, petition, 5 April 1865 (doc A22, p 115). Tribunal translation.

787. James Cowan, 'Rangiaowhia and Hairini Notes' (doc A22, p 116).

788. Raureti Te Huia, 'Te Pakanga ki Waikato' (doc A22, p 117).

789. Document A22, p 116 n

Pei Te Hurinui Jones set out the Kingitanga view of Selwyn's involvement, at a hui in 1962. This was that Selwyn's 'advice and knowledge of the country led to the killing of old men, women and children' at Rangiaowhia.<sup>790</sup> According to Selwyn's biographer, he conducted a burial service at Pāterangi on 12 February, for those slain at Waiari. It was there that he was told of the situation at Rangiaowhia, and he was expected to 'confer with General Cameron and make sure that the people there were left unmolested'.<sup>791</sup>

On 21 February, Selwyn accompanied the troops to Te Awamutu. According to Hohaia Ngahiwi, who worked as a teacher at the mission station there: 'The Bishop saved us. If it had not been for him we would have been killed. . . . The Bishop stayed with us at Te Awamutu, and he told us that he had not heard the soldiers were to go on to Rangiaowhia.' Selwyn then continued to Rangiaowhia, but according to Hohaia 'upon arrival all was over and the building had already been burnt together with the people inside. So he returned, and was heavy of heart'.<sup>792</sup>

The bishop acknowledged the damage his presence in the Waikato war caused. On Boxing Day 1865, he wrote from New Plymouth: 'The part which I took in the Waikato campaign has destroyed my influence with many. You will ask, then, "Did I not foresee this?" and if so, "Why did I go?"' His answer was that there was no military chaplain attached to the 10,000-strong British army. He felt it his duty to minister to the wounded and dying, both British and Māori. Further, Māori clergy had refused to leave the mission stations at Taupiri and Te Awamutu:

It was my duty to see they were not injured when our troops advanced, and this made it necessary for me to be in the front, and thereby to expose myself to the imputation of having led the troops. This has thrown me back in native estimation, more, I fear, than my remaining years of life will enable me to recover . . .<sup>793</sup>

Counsel for Ngāti Paretekawa (Wai 440) provided a variant on this theme by arguing that Christianity 'softened up' Māori to the idea of being bound by a higher power, and 'the Crown sought to entrench itself as that higher power'. Once this was achieved, 'the missionaries were used by the Crown as agents acting against Maori'.<sup>794</sup> As Selwyn himself seems to have acknowledged this may not have been deliberate policy, but it was one of the unavoidable impacts of war.

The exact nature of communication and agreement between the parties over a sanctuary remains unclear. Certainly, the British were concerned about the issue of non-combatants, and this fact adds weight to accounts that say the matter was discussed. Whether Rangiaowhia was mentioned specifically is less certain, but it is

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790. Pei Te Hurinui Jones quoted in *Church and People*, June 1962 (JH Evans, *Churchman Militant: George Augustus Selwyn, Bishop of New Zealand and Lichfield* (Wellington: A W & A W Reed, 1964), p93).

791. Evans, *Churchman Militant*, p 93.

792. Hohaia Ngahiwi to Maunsell, 5 May 1868 (Evans, *Churchman Militant*, p 263); see also doc A22, p 117.

793. Selwyn to Coleridge, 26 December 1865 (Evans, *Churchman Militant*, p 96).

794. Submission 3.4.198, p 19.

very likely Selwyn was told that non-combatants were sheltering at Rangiaowhia, when he went to Pāterangi on 12 February. Belich argued that the strategic and economic value of Rangiaowhia meant General Cameron was unlikely to promise not to attack it. He suggested that the general asked that non-combatants be kept away, ‘without specifying any sacrosanct ground’.<sup>795</sup> Dr O’Malley went further and raised the possibility that the British deliberately misled Māori to make it easier for the British to attack the settlement: suggesting Rangiaowhia as a safe haven in order to lull Te Rohe Pōtae Māori into a false sense of security.<sup>796</sup>

As Dr O’Malley admitted, there is no evidence for this assertion, and it should be discounted. More pertinent to the discussion is the fact that Cameron’s entire strategy had been decided a month earlier and was now at a final, crucial stage. He would not have told Selwyn his plan; there was scant chance he would alter it upon learning that Rangiaowhia was a designated refuge.

The long-planned British advance into Ngāti Maniapoto territory involved circumventing the opposing forces and occupying what was well known to be a rich agricultural district vital to the economic and military survival of the Kīngitanga. For this reason, and because the British themselves had raised the matter of the safety of non-combatants, there was a particular obligation on the general to ensure either that areas sheltering non-combatants were avoided, or, if it were not possible, that the safety of non-combatants was made pre-eminent during an occupation.

In principle, seizing an enemy’s supplies or supply lines is an acceptable war-time tactic. The British did still, as Tamihana noted, criticise Kīngitanga fighters for attacks on supply lines.

I mua ake o tenei takiwa, ka nui to matou hiahia kia mahuetia nga ritenga a o matou tupuna, te konihi, me to urumaranga, me era atu ritenga e mate ai te hoa riri. Kei ki koutou kaore e mana i a matou nga kupu whakamohio, kao, e mana ana ano.

Before this time our desire was great to put away the customs of our fore-fathers – ambuscades and skirmishing, and other modes of warfare by which the enemy could be destroyed. Do not say that the words of advice are thrown away upon us. No! the words of advice are regarded by us[.]<sup>797</sup>

There is a sense in which the European reproof of Māori for seeking to protect non-combatants within pā was unrealistic, and it was certainly not followed up by any concrete actions to provide for non-combatants of which we are aware. There is no evidence that battle-hardened officers of the British army – specifically General Duncan Cameron – really sought a solution to the problem of Māori non-combatants. We agree with Belich that Cameron was unlikely to commit himself not to attack ‘so important an economic target [Rangiaowhia], the very hub of the

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795. Belich, *The New Zealand Wars*, pp 164–165.

796. Document A22, pp 119–121.

797. Wiremu Tamihana, petition, 5 April 1865 (doc A22, pp 115–116).

Kingite supply system.<sup>798</sup> But it is also clear that he and his officers took no precautions when launching a surprise evening attack on an unfortified kāinga, and made no provision for the protection of non-combatants. We discuss this further in the next section.

### **6.7.7.8 Military conduct (egregious Crown actions)**

Claimant counsel submitted:

The deaths which followed, including those of a number of occupants of a pā torched by the British, were consequently remembered with great bitterness and remain as an eyesore to be remedied.<sup>799</sup>

Claimants and technical witnesses identified the actions of Crown troops in the attack on Rangiaowhia as among of the most egregious of the Waikato war. Counsel for Ngāti Apakura said: ‘Rangiaowhia was not a war, it was a tragedy’. British troops were accused of: attacking an undefended and unfortified village; deliberately burning a whare with people inside; lacking discipline and leadership; indiscriminate and deliberate killing of non-combatants (women, children, and the elderly); and destruction of property. Despite evidence that officers witnessed and abhorred some of these acts, no investigation took place and no disciplinary action was taken.<sup>800</sup>

#### **6.7.7.8.1 ATTACK ON AN UNDEFENDED AND UNFORTIFIED VILLAGE**

All agree that Rangiaowhia was not fortified. Nor was it defended, as descriptions of the inhabitants’ surprise at the cavalry attack make clear. But, as events proved, the inhabitants were not unarmed.<sup>801</sup> Although not an eye witness, von Tempsky wrote that ‘the peace of the morning [was] shattered by the crack of carbines as Nixon’s cavalry galloped into the village’ and men, women, and children ‘ran to escape the galloping horsemen.’<sup>802</sup> Recording his actual experience, von Tempsky wrote: ‘The rapid crack-crack of revolvers and carbines announced to us now that the troopers had not forgotten their spurs in getting ahead of us. We listened eagerly for the sound of double-barrelled guns – and that sound also was soon heard.’<sup>803</sup>

The latter was the sound of Māori returning fire. While the British intent may have been to disperse the inhabitants, there is no evidence the inhabitants themselves knew this. In the circumstances, and with the example of the Crown’s actions at Rangiriri in mind, armed defence was as reasonable an option as flight.

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798. Belich, *The New Zealand Wars*, p 164.

799. Submission 3.4.198, p 20.

800. Submission 3.4.228, p 43.

801. Submission 3.4.300, pp 16–17.

802. Von Tempsky quoted in Chris Pugsley, ‘Walking the Waikato Wars: Farce and Tragedy at Rangiaowhia’, *New Zealand Defence Quarterly*, no 17 (Winter 1997), p 33 (doc A22, p 121).

803. Von Tempsky, Memorandum of the New Zealand Campaign, p 104 (doc A22(a), vol 2, p 1106).

It is not clear why General Cameron decided to send mounted troops into Rangiaowhia in advance of his main force. Cavalry were used primarily as scouts and as 'shock troops'; it seems likely the intent was to intimidate and disperse the inhabitants. Cameron reported that 'the cavalry were rapidly thrown forward, and surprised the inhabitants, who were few in number.'<sup>804</sup> Further evidence that he intended to frighten the inhabitants into fleeing comes from von Tempsky's account of the advance on the Catholic church, when Captain Greaves warned: "The General does not want you to press the Maoris any further." "Not take them prisoner, even?" "No."<sup>805</sup>

Had Cameron expected to encounter determined resistance, it is doubtful he would have sent 'the young troopers of the Colonial Defence Force cavalry' in an initial assault on Rangiaowhia. This suggests that the mounted troops were not prepared to face those who did not choose escape or surrender.

#### 6.7.7.8.2 DELIBERATE BURNING OF A WHARE

A Colonial Defence Force veteran recalled events in 1882, writing that the initial cavalry attack 'did not take long to clear the enemy out' and they then returned through the settlement 'taking prisoners as we came along.' Six men and a boy had been seen entering a large whare. Several claimants stated this was a whare karakia.<sup>806</sup> Accounts vary as to what happened next. The Colonial Defence Force veteran wrote that Corporal McHale was shot dead when he entered the whare to demand the occupants' surrender. 'The firing soon brought together the whole of the cavalry; and, after a while, the 65th and Forest Rangers, also the General and staff, came up.'<sup>807</sup> Von Tempsky wrote that 'a motley circle of soldiers of all regiments' had surrounded the whare when he arrived at the scene.<sup>808</sup>

Cowan wrote that the whare had raupo walls, citing an 'old Forest Ranger' who said: 'We put the muzzles of our carbines close to the raupo walls and fired through the thatch.'<sup>809</sup> But witnesses are clear that it had walls of sawn timber slabs, with a thatched roof.<sup>810</sup>

Controversy lies in whether the whare was deliberately torched or caught fire accidentally. Writing in the 1920s, James Cowan concluded that because each side was shooting through the inflammable walls, they inevitably caught alight.<sup>811</sup> But this conclusion is based on the erroneous assumption that the walls were thatched. The Crown argued that the cause of the fire is not known for certain, that reports

804. Cameron to War Office, 4 March 1864 (doc A22(d), p 6).

805. Von Tempsky, Memorandum of the New Zealand Campaign, pp105, 107 (doc A22(a), vol 2, pp 1107, 1109).

806. Transcript 4.1.10, pp 270, 1512; doc A97, p 233.

807. 'The Fight at Rangiaowhia', *Marlborough Express*, 11 March 1882, p 2.

808. Von Tempsky, Memorandum of the New Zealand Campaign, p 107 (doc A22(a), vol 2, p 1109)

809. Cowan, *The New Zealand Wars*, vol 1, p 355.

810. See von Tempsky, Memorandum of the New Zealand Campaign, p107 (doc A22(a), vol 2, p1109): 'it was built of heavy plank, instead of the usual material employed in Maori whares'; and 'The Fight at Rangiaowhia' (*Marlborough Express*, 11 March 1882): 'we commenced to riddle the house, which was built of slabs'.

811. Document A22, pp122-123.

of deliberate burning were made long afterward, and that the 'very earliest account by an eyewitness states that he could not determine whether the fire was set deliberately or was an accident.'<sup>812</sup> This account is that of the *Daily Southern Cross* correspondent: it is not clear that it is an eye-witness account or merely recording the descriptions given by others: 'The whare became ignited, either accidentally or intentionally.'<sup>813</sup>

According to von Tempsky, 'neighbouring whares had been set fire to, with the view of communicating the fire to the all-dreaded one.'<sup>814</sup> Another Forest Ranger, William Race, wrote: 'who it was suggested it, I don't know but it was, to burn them out, or in – no sooner than it was agreed upon, the redoubtable black sailor was to the fore, and raupo roofs in hot weather did not take long to set on fire.'<sup>815</sup>

Most compelling, however, is the record of General Cameron himself, who wrote, plainly: 'the Forest Rangers and a company of the 65th Regiment surrounded the whare, which was set on fire.'<sup>816</sup>

Dr O'Malley argued: 'there seems no real reason why those who claimed to have been aware of a deliberate plan to torch the occupants out of their whare should have made up such a story.' The Crown responded that 'his logic is not particularly convincing.'<sup>817</sup>

While much of what occurred at Rangiaowhia must remain unknown, in this case the evidence points to whare being deliberately set alight by British troops, in at least one instance in full knowledge that several people were inside it.

### 6.7.7.8.3 LACK OF LEADERSHIP

Dr O'Malley suggested that the deaths inside the burning whare were a direct result of the 'breach of military discipline (and arguably of the rules of war at the time) on the part of the British troops.'<sup>818</sup> Māori inside the whare killed no fewer than five soldiers, including Colonel Nixon, leader of the Colonial Defence Force, who died subsequently from his wounds. There are two charges of ill-discipline: setting fire to the whare, and shooting dead an elderly unarmed man as he emerged from the burning building trying to surrender. Von Tempsky wrote that the officers shouted 'Spare him!' But, 'some ruffians – and some man, blinded by rage, at the loss of comrades perhaps – fired at the Maori!'<sup>819</sup> According to Cowan: 'The truth was that the troops clustered promiscuously about the burning houses were not under the immediate control of their officers at the moment of the Maori's surrender.'<sup>820</sup>

812. Submission 3.4.300, p17 n

813. 'March on Rangiwahia by the General', *Daily Southern Cross*, 25 February 1864.

814. Von Tempsky, Memorandum of the New Zealand Campaign, p108 (doc A22(a), vol 2, p1110; doc A22, p123).

815. William Race, 'Under the Flag: Reminiscences of the Maori Land (Waikato) War, by a Forest Ranger', 1863, p128 (doc A22(a) vol 2, p1146).

816. Document A22, pp108–109 (Cameron to Grey, 25 February 1864, AJHR, 1864, E-3, p29).

817. Document A22, pp123–124; submission 3.4.300, p17 n

818. Document A22, p126.

819. Von Tempsky, Memorandum of the New Zealand Campaign, p109 (doc A22(a), vol 2, p1111).

820. Document A22, p126 (Cowan, *New Zealand Wars*, vol 1, pp355–356).

William Race remembered: ‘evidently his purpose was to make terms for he commenced speaking and gesticulating very loudly above the din around, but poor fellow twas a short lived speech for in less than two minutes he was riddled so to speak, with bullets.’<sup>821</sup> Race went on to describe how Lieutenant St Hill, an aide de camp to the general, rebuked one of the Forest Rangers who he saw shooting the elderly man:

... for answer the Ranger pulled up his sleeve & showed the officer a nasty jagged flesh wound in the arm received a few minutes before from one of the amazons before captured. Tit for tat said Von’s man, the woman tried to kill me, and I tried to kill him that’s all, The Lieut. rode away muttering about having him punished & there it ended.<sup>822</sup>

The Crown submitted that it was possible those inside the whare kept firing as the elderly man made his way out, citing Race’s comment that he had to speak loudly ‘above the din around’: This, the Crown submitted, ‘can only refer to the din of gunfire, and it seems unlikely that the officers would have allowed soldiers to continue shooting in the absence of return fire.’<sup>823</sup> This proposition is implausible for three reasons: no accounts mention continued fire from within the whare at this point; the din was more likely the sound of a burning building and the shouts of those within and without; and it would have been very difficult to maintain fire from inside the whare when what Race called ‘a very big man’ stood at the entrance trying to surrender alongside several dead bodies.

The deliberate firing of the whare (particularly when it was known there was at least one child inside) and the shooting of a man attempting to surrender were breaches of discipline. Dr O’Malley is correct that the deaths of those inside were the result of that ill-discipline. It would have seemed clear that death awaited them, whichever course of action they chose.

There is evidence that senior officers were present while these events took place, including Gustavus von Tempsky, Colonel Nixon, and Lieutenant St Hill. One account places General Cameron himself at the scene.<sup>824</sup> No evidence was presented to the Tribunal of any subsequent official attempt to inquire into the burning of the whare, the shooting of the unarmed man, or the deaths of those burned alive in the whare.

#### 6.7.7.8.4 ATTACKS ON WOMEN, CHILDREN, AND THE ELDERLY

Official accounts list neither the age nor gender of the casualties, although there is acknowledgement that women and children were among those taken prisoner.

821. William Race, ‘Under the Flag: Reminiscences of the Maori Land (Waikato) War, by a Forest Ranger’, 1863, pp 129–130 (doc A22(a), vol 2, pp 1147–1148; doc A22, p 124).

822. Race, ‘Under the Flag’, p 131 (doc A22(a), vol 2, p 1149; doc A22, p 124).

823. Submission 3.4.300, p 17 n

824. *Marlborough Express*, 11 March 1882.

Nevertheless, there is a longstanding and deeply held conviction, emphasised to the Tribunal during hearings, that women and children were killed at Rangiaowhia. Tom Roa told the Tribunal:

Me whakaatu atu e ahau tēnei wā, te kōrero mai a taku whaea nō te Hāhi katorika, ko te nuinga o ngā tāngata i reira, he wāhine, kaumātua, koroheke, tamariki, e ai ki ngā kōrero ka rere ētehi ki roto i te whare katorika nei, e ai ki taku whaea, ko tētehi tamaiti e waru noa pea ngā tau kua puta mai i te whare, i te tāhunga e te Pākehā, ko tāna kōrero, ka pūhia te mokopuna nei e te pū Pākehā.

My mum said to me about the Catholic church: 'Most of the people there were women, elders, old men, children,' according to the traditions many fled into the Catholic church. According to my mum, one of the children was about eight years old and came out of the house as it was being burnt by the Pākehā and she said the child was shot by the Pākehā.<sup>825</sup>

Hazel Coromandel-Wander described what happened to her kuia Wikitoria at Rangiaowhia:

My kōrero about my great grandmother who was at Rangiaowhia and that was handed down to my mother in 1930 when she went to stay with our kuia at Puketarata. . . . Wikitoria was only a young girl at that time. . . . Wikitoria who was a child . . . when she woke up in the morning she was told to go down and have a wash, her and her friends . . . while they were down there having a wash, kua tae mai a Cameron. . . . Wikitoria . . . was down in the raupō, they went to hide in the raupo. . . . They hid there until it was night because they were only young then. They heard the gunfire. They heard the tangi's. They smelt the smoke. . . . And that's what they did, they hid in the day and they travelled in the night.<sup>826</sup>

Wikitoria's name was changed to Te Mamae as a reminder of what she experienced and witnessed that day, and she later named one of her sons Te Wera in acknowledgement of the whare that were burned. Similarly, an uncle of Ms Wander was named Rātapu, because the specific event happened on a Sunday.<sup>827</sup>

Gordon Lennox talked about Rihi Te Rauparaha, his great-grandmother, who also witnessed the attack as a young girl:

My Great grandmother Rihi was a child of 10 years and living at Rangiaowhia when Cameron and his troops attacked and murdered her relatives. When the shooting started she and others in the whanau ran and hid in the raupo to escape. From there she witnessed members of her whanau get shot, stabbed and burnt to death. One of the children that was burnt to death in the church was Wiremu the son of Pukewhau Penetana my Great great Grandfather. Rihi told her whanau that she had never been

825. Ngā Kōrero Tuku Iho hui, Te Tokanganui-ā-Noho marae (transcript 4.1.6, pp 245–246).

826. Ngā Kōrero Tuku Iho hui, Te Kotahitanga Marae (transcript 4.1.1, pp 27–28).

827. Ngā Kōrero Tuku Iho hui, Te Kotahitanga Marae (transcript 4.1.1, p 29).



so terrified her life and that she would never forgive the pakeha for what they did. Her whanau were torn apart in the aftermath and scattered all over.<sup>828</sup>

The Crown noted these allegations, but said ‘there is no contemporary evidence to support such claims.’<sup>829</sup> As noted earlier, the Crown accepted that this was incorrect when questioned about it at hearing.<sup>830</sup>

Counsel for Ngāti Apakura quoted a *New Zealand Herald* report from 26 February 1864:

The Maoris were driven into their whare and shot down promiscuously. Many unfortunately being men that soldiers would never shoot if they could avoid it, and some women too it is feared were mingled with the crowd.<sup>831</sup>

The important word is ‘promiscuously’: done with no regard for method or order, random, indiscriminate, unsystematic. The *Herald* was no friend to Māori or the Kingitanga,<sup>832</sup> yet it reported, in effect, that women were likely to have been shot. Other evidence shows that the British found it hard at times to distinguish between men and women. Von Tempsky recorded shots being fired from a house, which he surrounded, when a ‘fairy burst from its door, and, running with the fleetness of a deer, dropped her gun just in time to have her sex recognised and respected.’<sup>833</sup>

An important point needs to be stated. Whatever the nature of Māori expectations regarding Rangiaowhia as a refuge, and it is clear they were genuinely held, not all the inhabitants were unarmed. When attacked by the British, some at least were able to return fire, and those who did included women and the elderly. Claims that soldiers fired on St Paul’s church, perforating the walls, should be read in light of other evidence that some of those inside were shooting at the soldiers. While that posed a moral dilemma for some, if not all, soldiers, the act of returning fire should be viewed in a different light to the act of shooting the unarmed, the capitulating, or the young.

Two accounts exist written by survivors who were children at the time. The first was recorded by Pōtatau, who was a child at the time:

Oma tonu atu ahau ki te whare o taku papa, kihai ahau i roa ki reira ka tae mai ko taku tupuna ko Hoani tona ingoa, he mohio nona kei reira matou i haere mai ai ia kia mate tahi ai matou, i reira ano hoki a Ihaia Rawiri me tona tama. No tenei wa ka puta mau ko taku whaea ki waho ka noho ki te whatitoka o te whare. Ka rongō

828. Document G29 (Lennox), p [1].

829. Submission 3.4.300, p18.

830. Transcript 4.1.23, pp 900–901.

831. Submission 3.4.228, p 47 (*New Zealand Herald*, 26 February 1864).

832. Dr O’Malley commented that it was seen by its critics as virtually an organ of the Government: doc A22, p 69.

833. Document A22(a), vol 2, p 1108 (Von Tempsky, ‘Memorandum of the New Zealand Campaign’, p106).

atu ahau i taku papa e ki atu ana ki taku tupuna me waiho a tatou pu me puta marie tatou ki waho. Ki ana mai taku tupuna kei te nui ake koia au i o matua i riro herehere nei i Rangiriri? Ki ake ano taku papa, me haere marie tatou i runga i te ture, oti kihai taku tupuna i whakaae. I tenei wa ka tae mai nga hoia ka patai reo Maori mai ki taku whaea. 'Kahore he Maori i roto i te whare,' ki atu ana taku whaea 'kahore.' Ki tonu ake toku papa, ae, he Maori kei konei, katahi ka peke mai taua Pakeha reo Maori ki te whatitoka o te whare, hopukia ana taku papa, tukua atu ana ki nga hoia. Ka tomo atu taua Pakeha ki te whare, na taku tupuna tonu ia i pupuhi, mate rawa, katahi ka kumea te tupapaku e etahi o ratou ki roto ki te whare.<sup>834</sup>

I at once ran to my father's house. I had not been long there when my grandfather came to the same house. His name was Hoani. It was because he knew we were there that he came, so that he might die with us – Ihaia, Rawiri, and his son. At this time myself and my mother went outside the house, and sat at the door of the house. I heard my father say to my grandfather: 'Let us lay down our guns and give ourselves up as prisoners.' My grandfather said: 'Am I greater than your uncles who were taken at Rangiriri?' My father again said to my grandfather: 'Let us go in peace, and according to law.' My grandfather would not agree. At this time the soldiers came to us, and asked my mother in Maori: 'Are there any Maoris in the house?' She replied: 'No, there are no Maoris in the house.' My father at once said: 'Yes, there are Maoris here.' The European who spoke Maori came to the door of the house, and caught hold of my father, and handed him over to the soldiers. The European went inside of the house. My grandfather shot him and killed him. Some of the others dragged the body in the house.<sup>835</sup>

Pōtatau said his grandfather was called Hoani. 'It was because he knew we were there that he came, so that he might die with us – Ihaia, Rawiri, and his son.'<sup>836</sup> This account was published in Thomas Gudgeon's *Defenders of New Zealand* in 1887.

The second description was by Rihī Te Rauparaha, probably written around the time of the Sim commission hearings in 1927, and provided for us by her descendants (the translation was supplied by the claimants):

i te po o te rahoroi ka rahina te hoia e Himi Manuao ko Himi Erueti te ingoa Pakeha no Ngati Rahui no Ngati Puhiaawe tenei awhekaihi he hapu ano no Ngati Apakura nana i arataki te hoia i [tikina] i te taone o Pirongia Ngahinapouri titiwha ka tae ki Te Awamutu arahina tonutia i taua po ka tae ki Rangiaowhia i taua po ka patua nga Maori ka hoaritia nga wahine i te po tae noa ki te maramatanga o te ata ka whawhai nga Maori i roto i te whare ki nga Pakeha ka tui aua Maori te kanara ka tahi katahuna te whare o aua Maori ka werae tehi ki rota i aua whare e rima i pau i te ahi ko Hoani Ngarongo na Hoani i pupuhi te canara Ko Ihaia tetehi Ko Rawiri tetehi Ko Wiremu

834. Document A102 (Meredith, Nankivell, and Joseph), p100 (doc A110, p548). A source for the Māori text is not given. Minor editorial changes by the Tribunal.

835. T.W. Gudgeon, *The Defenders of New Zealand being a Short Biography of Colonists who Distinguished Themselves in Upholding Her Majesty's Supremacy in These Islands* (Auckland: H. Brett, 1887), p178 (doc A110, p549).

836. Gudgeon, *The Defenders of New Zealand*, pp178–179 (doc A110, p549).

Toetoe te tamaiti Ko Roka te wahine hui katoa toko 5 nga Maori i tahuna oratia ki te ahi heoi.

on the Saturday night they were guided by Himi Manuao Erueti, the Pakeha name, of Ngati Rahui of Ngati Puhiaawe was this halfcaste. A hapu of Ngati Apakura. It was he who guided the troops through the town of Pirongia via Ngahinapouri titiwha. Arrived in Te Awamutu he guided them on that night to Rangiaowhia. On that night they (the soldiers) killed Maori. They (the soldiers) raped the women all that night until daylight. Maori fought from the house against the Pakeha colonel. Then it was set alight the house of these Maori. They were burnt in that house. Five people Hoani Ngarongo. It was Hoani who shot the colonel. There was Ihaia, Rawiri, Wiremu Toetoe the boy. Roka was the woman. Five Maori in all who were burnt alive in the fire. Stop.<sup>837</sup>

These accounts seem to be discussing the same event; both agree that Hoani, Ihaia, Rawiri, and a boy, Wiremu Toetoe, died inside the whare. Rihi added a fifth name: a woman named Roka. Gordon Lennox, great grandson of Rihi, said Wiremu was Rihi's brother and the son of Pukewhau Penetana (Mr Lennox's great great grandfather).<sup>838</sup> Hoani and Ihaia, according to Hitiri Te Paerata, were at Rangiaowhia because it was their role to take food to Pāterangi.<sup>839</sup>

Rihi Te Rauparaha's account also states that women were raped by soldiers at Rangiaowhia. There is no official record of sexual assaults by soldiers on Māori women. Nor is there substantial tangata whenua evidence accusing Crown forces of rape. However Shane Te Ruki described Mate Wahine, a cleansing puna on Kakepuku maunga used by women. He stated it was used in the aftermath of the war:

Why? Because they had been i tūkinohia te Pākehā ngā hōia Pākehā me ngā tamariki. Ka haere i reira ki te whakaora i o rātou mate. Ko te mate whaiwhai tētahi o ngā mate (They had been assuolated by the soldiers. The women and children would go there to cleanse the sexual diseases and other such ailments afflicted.) . . . many a disease was unfortunately spread by the incidences of rape and abuse that happened to women and children north of our district, and many of them came to Mate Wahine, ko te wahine te whakaora i o rātou tina, te whakamahu. Hēoi ana tērā, tērā, and I know that a kuia tūpuna of Ngāti Apakura came to that place after that war – after that slaughter.<sup>840</sup>

It is very likely that if women endured sexual attacks they would have felt reluctant to talk about their experiences. Rihi Te Rauparaha did make the accusation, but it remained hidden until presented to this Tribunal. At the time of the Sim

837. Document p1(a), pp 49–51. Two versions were submitted in evidence, but they are similar. Minor corrections to capitalisation, etc, by the Tribunal.

838. Document G29, p [1]; doc K22, p 28.

839. Document A22, pp 143–144.

840. Ngā Kōrero Tuku Iho hui, Te Kotahitanga Marae (transcript 4.1.1, pp 71–72).

commission, she wrote to Maui Pōmare about the events at Rangiaowhia but then attempted to recall her letters. She told Pōmare that her whānau were ‘persecuted’ for speaking out about the Māori who were ‘shot at and were burnt with fire at Rangiaowhia.’<sup>841</sup>

We accept the claimants’ translation. While Māori were killed during the night, women are then mentioned specifically: ‘ka hoaritia ngā wāhine i te pō tae noa ki te maramatanga o te ata’. Literally, the women were put to the sword throughout the night.

#### 6.7.7.8.5 DESTRUCTION OF PROPERTY

Cowan said that 12 buildings were burned by troops at Rangiaowhia.<sup>842</sup> The claimants said crops were burned, although the Crown pointed out drawings of the settlement made after the army’s occupation that appear to show wheat fields. But for the British no less than Māori, the wealth of Rangiaowhia lay in its potential to feed an army. One newspaper report described troops returning to Rangiaowhia several days later to loot ‘pigs, poultry, rabbits, and esculent vegetables, spears, mats, long and short-handled tomahawks, greenstones, guns, cartouche boxes, cooking utensils, clothing, &c, – scarcely a soldier returning without some trophy of victory.’<sup>843</sup>

All this is to overlook the main material loss suffered, namely the expulsion and exile of those who lived there. Tame Tūwhangai said his ancestors were not even permitted access to their personal belongings after the occupation. This suggests they began the long journey across the mountains to Taupō with little more than the clothes on their backs.<sup>844</sup> Loss, not destruction, of property is the real issue. That loss encompassed an entire material culture, and 20 years of agricultural development.

#### 6.7.7.9 Māori response to Rangiaowhia

The attack and occupation of Rangiaowhia was a significant turning point for Māori in their attitude and response to the Crown. Wiremu Tamihana of Ngāti Hauā later recalled: ‘My hand did not strike the Pakeha during the war until the battle at Hairini; then for the first time my hand struck, my anger being great about my dead, murdered and burnt with fire, at Rangiaohia.’<sup>845</sup> Nigel Te Hiko told the Tribunal how the events at Rangiaowhia brought Raukawa into the war: ‘According to Hitiri Te Paerata, the horror at Rangiaowhia prompted his father to lead the iwi of Raukawa into the Waikato war.’<sup>846</sup>

As discussed earlier, the place of non-combatants in warfare had been a matter of contention since at least 1860. The Crown accused Ngāti Ruanui of murder for killing settlers at the outset of the Taranaki war in 1860. Māori and Pākehā

841. Rihī Te Rauparaha to Maui Pōmare, 26 April 1927 (doc P1(a), pp 63–64.

842. Document A110, p 547.

843. Document A22, p 109 (*Daily Southern Cross*, 25 February 1864).

844. Document A97, p 243.

845. J Mackay to Colonial Secretary, 10 September 1864 (doc A97, p 201).

846. Document K24 (Te Hiko), p 5.

understood different rules of warfare. Throughout the Waikato conflict, up until Rangiaowhia, there is evidence that Māori attempted to adapt their mode of war to meet what they understood were British expectations. Thus, after Rangiriri, non-combatants were moved out of fighting pā. The most conscientious in attempting to conform to Pākehā law was Tamihana, as we described earlier (section 6.7.7.7). For him the sense of betrayal was very great: ‘it was the affair at Rangiaohia that hardened the hearts of the people. The reason was the many instances of murder.’<sup>847</sup>

The Crown’s actions at Rangiaowhia led to deaths, injuries, and imprisonments of combatants and non-combatants, together with material devastation and expulsion. These were not unfamiliar consequences of war. What was different was that these acts occurred at a place the occupants thought would not be attacked. The belief that General Cameron violated this understanding underlies the serious erosion of trust that followed, trust not only in the Crown but also the church and the law.

Trust underpins the Treaty relationship. The claimants’ evidence on Rangiaowhia is also evidence that the destruction of trust and the bitterness it engendered has lasted now for a century and a half.

A more immediate effect, however, was that Māori once again altered their strategy for protecting non-combatants. Dr O’Malley thought it significant that at Ōrākau the practice of bringing families within fortifications was resumed: ‘Maori male fighters no longer trusted the British, it would seem, not to attack and kill their women and children.’<sup>848</sup>

## 6.7.8 Hairini

### 6.7.8.1 What happened?

From the strategic perspective of the British, the attack on Rangiaowhia had the desired effect. The next day, 22 February 1864, reports indicated Māori were leaving Pāterangi for Kihikihiki and Rangiaowhia. Later that morning British troops marched to Pāterangi and occupied the formidable pā. After hearing reports that Māori were entrenching an old pā at Hairini, Cameron ordered his troops to attack before a defensive position could be established. As the general reported:

The natives fell hurriedly back before the leading files of the 50th could reach them with the bayonet, and retired through a swamp in the direction of the Mangatautari [*sic*] road. The cavalry had an opportunity of charging them as they retreated, and did some execution. They made no further stand, but fled precipitately towards Mangatautari, leaving almost everything but their arms behind them.<sup>849</sup>

The Māori defenders occupied Hairini to give their people time to evacuate Pāterangi and the Rangiaowhia district. Wiremu Tamihana and Ngāti Hauā

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847. Wiremu Tamihana, petition, 5 April 1865 (doc A22, p 115).

848. Document A22, p 153.

849. Document A22, p 110 (Cameron to Grey, 25 February 1864).

retreated to Maungatautari while Rewi Maniapoto and his people crossed the Pūniu River.<sup>850</sup>

### 6.7.8.2 Casualties

Two British soldiers were killed in the attack and 15 were injured. Once again it is impossible to conclusively determine the number of Māori casualties. On the basis of a ‘close reading’ of Wiremu Tamihana’s record, Belich and O’Malley said Tamihana accounted for nine Māori dead: Te Rangikaiwhirea, son of Pakira, Amitai, two from Raukawa, two from Te Urewera, Taikatu of Rangiwewehi, Keto Ki Waho of Te Aua tribe, and Paora Pipi of Ngatitahinga. The *Daily Southern Cross* reporter estimated 29 Māori dead. O’Malley located another source, an imperial soldier, who guessed as many as 80. General Cameron thought ‘at least 30’ a better estimate.<sup>851</sup> His deputy quartermaster-general wrote: ‘For two or three days after the engagement dead bodies and wounded men were discovered hid in the thick fern and swamps.’<sup>852</sup> O’Malley pointed out that if the British estimates are seen as more accurate, then ‘more Maori appear to have been killed at Hairini than Rangiaowhia, even though it is the latter which has dominated the historical record.’<sup>853</sup>

### 6.7.8.3 Issues about Hairini

First and foremost the claimants were devastated by the loss of life at Hairini. They repeated the argument that these deaths – along with all the others since December 1863 – had been avoidable if only the Crown had agreed to their entreaties to make peace. There was thus no military justification for Hairini since the war could have been ended much earlier.<sup>854</sup> The claimants alleged that the Crown’s forces also committed atrocities at Hairini by the killing of women and children who were not involved in the fighting.<sup>855</sup>

As far as we are aware, the only woman identified as having been killed at Hairini was Kereopa Te Rau’s sister.<sup>856</sup> One of the notable features of the Hairini battle was the presence of members of a number of iwi from other parts of the North Island who had come to help defend their Kīngitanga whanaunga.<sup>857</sup> One of these was Kereopa Te Rau of Ngāti Rangiwewehi. Tamihana’s report of the battle said that one Ngāti Rangiwewehi person, named Taikatu, was killed by a ‘stray bullet.’<sup>858</sup>

850. Document A110, p 558.

851. Cameron to Grey, 25 February 1864 (doc A22, p 110).

852. Gamble, journal, 4 March 1864 (doc A22, p 110).

853. Document A22, pp 110–112.

854. Submission 3.4.127, p 29; submission 3.4.189, pp 39–40; doc K15, p 9.

855. Submission 3.4.208, p 9.

856. Document A22, pp 118, 129–130.

857. Document A110, pp 556–557.

858. Wi Tamehana to Rawiri and Tawaha, 28 February 1864 (doc A22, p 112).

### 6.7.9 Kihikihi

E noho ana i te mahau o taku whare  
i Hui-te-rangi-ora.  
Whakarongo ana ki te haruru o te  
rangi – e tangi haere ana . . .

Sitting quietly on the verandah of my  
(Runanga) house – Huitrangiora (Kihikihi)  
My ears are assailed by the thunder  
reverberating in the heavens . . .<sup>859</sup>

#### 6.7.9.1 *Did the looting and destruction have a military purpose?*

When British troops from the 40th and 70th regiments occupied Kihikihi on 23 February 1864, they found the village abandoned (as they had found Te Awamutu). Kihikihi was home to Rewi Maniapoto, Ngāti Paretekawa, and Ngāti Ngutu. It was described by one soldier as the largest settlement he had seen during the British invasion. On hundreds of acres around the village, in one estimate, wheat, maize, potatoes, and kūmara were cultivated. At the end of summer, thousands of peach and apple trees were weighed down with fruit. Storage pits were filled with vegetables for the winter – enough potatoes, in the estimate of the deputy quartermaster-general, to feed the entire British force in the field for the coming winter. Along with Rangiaowhia, the loss would be ‘yet still more serious as winter advances.’<sup>860</sup> While Rangiaowhia is commonly thought of as the centre of agricultural development in the Waipā, before the British invasion, the eye-witness accounts of invading soldiers indicate that there had been intensive agricultural development throughout the district.

In the centre of the village a Kīngitanga flag flew from a tall flagstaff. There, too, stood the whare Hui Te Rangiora, which according to Kaawhia Muraahi was ‘central to the ongoing political, social and economic welfare and development of the local Waipa area in its time.’<sup>861</sup> Harold Maniapoto said it was built

by all the tribes prior to intrusion of the forces into the Waikato. It was founded there for that purpose. It was to seat the tribal council seat of discussion and of kōrero and it was where they made all their decision.<sup>862</sup>

859. Document A110, p 602: a waiata said to be by Rewi Maniapoto, discovered by Rovina Maniapoto in the private writings of Winitana Tupotahi of Ngāti Paretekawa. Translation by Rovina Maniapoto.

860. Gamble, journal, 4 March 1864 (doc A22, p131); doc A22, pp130–133; doc A110, p 601.

861. Document K29, p 8.

862. Transcript 4.1.7, p 281 (Harold Maniapoto, hearing week 1, Te Tokanganui-a-noho, 6 November 2012).

Te Rūnanga o Kihikihi was convened by Rewi, but members were from Maniapoto and Waikato and included Raureti Te Huia, Epiha Tokohihi, Te Taaepa Te Tou, Nepe Te Ngakorangi, Hopa Te Ranganini, Taati Wharekawa, Te Winitana Tupotahi, Ngataa Terenuku, Te Kohika Raureti, Te Hapi Te Hikonga-uira, Te Katea, Porokoru, Te Huirama, and others.<sup>863</sup> At Hui Te Rangiora, Te Rangitāke's request for assistance at Waitara was received and discussed, and Raureti Paiaka and Matene Te Reoreo were sent from there to discover the facts of the situation (see section 6.5.3).<sup>864</sup> At Hui Te Rangiora the decision to expel Gorst from Te Awamutu was taken. Hui Te Rangiora continues to be revered among Ngāti Maniapoto.

In Gustavus von Tempsky's account, after the British occupied the settlement, 'Rewi's house and high flagstaff were given to the flames, and the village, to pillage.'<sup>865</sup> Not only food, but livestock and as many goods as could be carried were taken back to the British camp at Te Awamutu. 'In the space of a few short hours,' said Dr O'Malley, 'one of the most prosperous Maori settlements in all of pre-1864 New Zealand was thus destroyed.'<sup>866</sup> Pressed by Crown counsel, Dr O'Malley said meanings that were applicable to Kihikihi included 'pull or break down,' 'make useless; spoil utterly' and 'ruin financially'.<sup>867</sup> Dr O'Malley said:

It seems likely that Crown forces took a particular pleasure in sacking the settlement of Rewi Maniapoto. That might have included an intention to inflict the kinds of pain, stress and disturbance described above, though it is not clear that such an intention is documented.<sup>868</sup>

Not all was lost, however. Harold Maniapoto recounted:

So they packed up all their goodly affairs and all the poupou and the precious artifacts from within the whare of Hui Te Rangiora, and then when they went back to the Pūniu in the late '60s, they regathered the artifacts that they'd hidden away and they rebuilt Hui Te Rangiora on the south side of the Pūniu River.<sup>869</sup>

It is curious, considering the political importance of Kihikihi, and Hui Te Rangiora in particular, to Ngāti Maniapoto and supporters of the Kingitanga, that General Cameron made no mention of these events in his report to the governor. The *Daily Southern Cross* reported that the general was present at Kihikihi.<sup>870</sup>

863. Document A110, p 231 n

864. Document A110, pp 515–516, doc K29, p 8.

865. Von Tempsky, Memorandum of the New Zealand Campaign, p 118 (doc A22, p 133).

866. Document A22, p 133.

867. Document A22(f) (O'Malley), p 5.

868. Document A22(f), p 34.

869. Transcript 4.1.7, pp 278–279 (Harold Maniapoto, hearing week 1, Te Tokanganui-a-noho, 6 November 2012). The land on which the rebuilt whare stood was later taken under the Public Works Act and this is discussed later the report.

870. Document A22, pp 132–134.



In our view, this reflects the fact that the destruction of this great whare had no military purpose. The claimants were in no doubt what the destruction meant. Kaawhia Muraahi said:

Hui Te Rangiora presented no immediate threat to the Crown. It was an iconic and spiritual place to our people. It symbolized something dear and noble to us.

The Crown rather than burning it down had an opportunity to simply seal its doors and post a guard outside so that at a later stage when or if relationships improved it could be used again either for the original purpose or for some other mutually agreed purpose. Instead, the Crown deliberately and with malice burned down what was the singular and most important building which stood on Paretekawa lands at the time. This Whare was of significant importance to our hapu.<sup>871</sup>

According to Thomas Maniapoto:

Our kōrero is that when Rewi Maniapoto saw the smoke rising in the distance from the direction of Kihikihi his heart sank because he knew it would be Hui Te Rangiora.

...

In my view the burning of Hui Te Rangiora was calculated to intimidate. There was no real reason to search out and destroy this house, but to cause such harm. It was a Crown action that showed an absolute lack of consideration of the enemy's concerns. It was a blatant attempt to destroy our tūpuna's will to live. We feel that it is akin to saying if you resist us we will put a bullet between your eyes.<sup>872</sup>

As noted above, there was no military reason to burn Hui Te Rangiora. The British understood the building to be, as the reporter for the *Daily Southern Cross* put it, 'the assembly room of the Maori chieftains when discussing the auspicious prospects of the rebel side of the question regarding supremacy in this island.'<sup>873</sup> Thus, whether through sheer vandalism or deliberate calculation, the destruction of Hui Te Rangiora carried with it a powerful symbolism of intent to eradicate Māori autonomy and to humiliate and denigrate Rewi Maniapoto in particular.

Nor could there be military justification for the seizure of personal goods from the kāinga, reported as 'useful household articles, clothing, paddles, &c.'<sup>874</sup> This was simply theft, and is exacerbated by the fact that General Cameron oversaw the looting while Māori were attempting to meet him to arrange a peaceful conclusion to the conflict.

Dr O'Malley considered that the pillaging of food supplies from Kihikihi 'made some sense from a strategic point of view.'<sup>875</sup> We agree that the seizure and

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871. Document K29, pp 11–12.

872. Document K15, p 10.

873. Document A22, pp 132–133 (*Daily Southern Cross*, 25 February 1864).

874. *Daily Southern Cross*, 25 February 1864 (doc A22, p 133).

875. Document A22, p 133.

destruction of food had a military purpose at Kihikihi (and the significance of this is explored in our Treaty analysis and findings section).

### **6.7.9.2 Another attempt to negotiate peace**

While Cameron and his force were sacking Kihikihi, an envoy from the Kingitanga came to Te Awamutu to attempt to negotiate peace. Vincent O'Malley commented: 'After almost every major assault by the British on Maori settlements in the Waikato Kingitanga leaders made efforts to restore peace.'<sup>876</sup> As discussed in section 6.7.4, the Kingitanga leaders tried to end the war and negotiate with the Crown after Rangiriri without success. After the swift blows in succession of Rangiaowhia, the retreat from Pāterangi, and the battle of Hairini, the rangatira sent Wiremu Toetoe to General Cameron to try to open negotiations. Toetoe was one of two men who had gone to Austria to learn the art of printing, and had brought back with them the printing press for the Kingitanga's *Te Hokioi*.<sup>877</sup> There was a rumour that Cameron offered terms that included confiscation of 'all the lands of Ngāti Maniapoto and other Rohe Potae hapu and iwi'.<sup>878</sup> According to one newspaper report, Cameron sent a copy of a proclamation which had been issued in February, which confirmed that lands would be confiscated but left unclear whether those who surrendered would be imprisoned. Dr O'Malley was not able to find any official report of what terms were conveyed by the general.<sup>879</sup> The claimants were highly critical of the Government's response, especially that any kind of peace hinged on acceptance of large-scale confiscation.<sup>880</sup>

Why was peace not made at this point? Governor Grey certainly believed that the invasion could be halted at the Rangiaowhia district. It was still necessary to 'punish' Ngāti Maniapoto, he said, but this could be done 'hereafter by the non recognition of their title to land'.<sup>881</sup> O'Malley suggested that the punishment of Ngāti Maniapoto remained a point of agreement between the governor and Ministers, but that by mid-February 1864, both Cameron and Grey believed that the colonial Ministers wanted to prolong the war unnecessarily in order to maximise the land they could confiscate.<sup>882</sup> In the wake of the seizure of Rangiaowhia, the Ministers thought the military goal should change from delivering a knockout blow to the Kingitanga 'army'. Instead, the Ministers wanted the British forces to advance on Maungatautari (where Ngāti Hauā had retreated), seizing and destroying all food supplies. The intention was to starve the people into unconditional surrender. They did not believe that Māori were desperate enough yet to make peace on the Crown's terms.<sup>883</sup>

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876. Document A22, p134.

877. Document A110, pp 492–494; doc K35, pp 12–13; doc A22, p134.

878. Document A22, pp 134–135.

879. Document A22, pp 135–137.

880. Submission 3.4.189, pp 34–35.

881. Document A22, p137 (Grey to Cameron, 13 February 1864).

882. Document A22, pp 140–141.

883. Whitaker, memorandum of Ministers in reply [to the governor], 27 February 1864 (doc A22, p140).

## 6.7.10 Ōrākau

Tokotokona na te hau tawaho  
 Koi toko atu  
 I kite ai au i Remu-taka ra  
 I kite ai au ma taku kui ki Wai-matā-e  
 Tohungia mai e te kokoreke ra  
 Katahi nei hoki ka kitea te karoro tu a wai  
 I tu awaawa ra  
 Ma te kahore anake e noho toku whenua  
 Kai tua te ra e whiti ana  
 E noho ana ko te koko koroki  
 I ata kiki tau.  
 Compelled (are we) by outside winds (to fight)  
 Oppose them not.  
 In spirit-land I saw the ancient burial place  
 With my mother visited the place of flesh-cutting flints.  
 It was the kokoreke bird that pointed out,  
 And then I saw the sea-gull of the waters  
 Standing in the valley (an evil omen),  
 Nothing shall my lands occupy  
 Hereafter will be the sunshine (peace)  
 And the song of the koko will be heard,  
 But I alone will live to tell of it.<sup>884</sup>

The defeat of the defenders of Ōrākau in April 1864 quickly gained legendary status among Pākehā as the site of an honourable resistance that confirmed Māori as worthy if doomed opponents in the war for possession of Waikato. James Cowan, the chief promoter of this interpretation, wrote:

on that greatly prized garden-land a band of men – and women, too – fought their last despairing fight for a broken cause. They lost the battle, but they won an enduring name, and won the admiration and affection of their Pākehā antagonists, for their amazing bravery, devotion and self-sacrifice.<sup>885</sup>

This view was never seriously questioned among Pākehā until James Belich effectively dismantled it in the 1980s. But it was never shared by Māori. Asked to provide text for a memorial inscription, Tureiti Te Heuheu responded: ‘at the time of the war waged by the Pakeha race against the Maori King, [Rewi] fought in the war on the side of the Maori King, with the result that he was defeated here at

884. Document A22, p149. Said to have been uttered by Rewi Manga Maniapoto, predicting that a stand at Ōrākau would end in disaster.

885. Document A97, p208 (James Cowan, ‘Famous New Zealanders – No 5 – Rewi Maniapoto – The Story of Orakau’ *New Zealand Railways Magazine*, (vol 8, no 4, 1 August, 1933), p 25).

Orakau, his tribe subdued, and his lands taken by conquest'. This description was considered to be 'not quite what's required' and nothing was done.<sup>886</sup>

In this inquiry claimants submitted that: 'Rather than the day of the most famous battle in New Zealand history, the day should be known as one of the darkest days.'<sup>887</sup> They told us that Māori strategy at Ōrākau was determined to a large degree by the way the British forces had conducted the war up to that point: by imprisoning Waikato fighters after Rangiriri, repeatedly refusing to negotiate peace terms, and attacking and imprisoning non-combatants at Rangiaowhia, the British convinced Māori that they were fighting a pitiless war in which no quarter would be offered. And, claimants said, those fears proved correct. Women and children, kept within the pā because after Rangiaowhia the British were not trusted not to attack non-combatants, were among those hunted down and brutally killed as they attempted to escape. As many as 160 of the defenders were killed, and the high proportion of the dead compared to the wounded suggests 'a large scale massacre of wounded non-combatants.'<sup>888</sup>

The Crown acknowledged that many Māori were killed and wounded during the pursuit, 'at least' 80 killed and 'about 40' wounded. Crown counsel submitted that it was not clear whether the 'high proportion of killed to wounded' was the result of a refusal of fleeing 'fugitives' to surrender, but accepted that 'some Māori men and women' may have been 'killed out of hand.'<sup>889</sup>

#### **6.7.10.1 The Māori strategy for Ōrākau**

After Hairini, Kīngitanga forces dispersed to protect their remaining people and lands. Tamihana and his Ngāti Hauā people returned to their strongholds around Maungatautari. Ngāti Maniapoto and Raukawa regrouped across the Pūniu River at Tokanui, from where they saw smoke rising above Kihikihi as Hui Te Rangiora burned. As Raukawa leader Hitiri Te Paerata recounted, a hui at Wharepapa agreed to continue their resistance and to establish a pā on the north side of the Pūniu River.<sup>890</sup> This hui was held in late March 1864, after their offer to negotiate peace in February had been met with the response discussed in the previous section.

Rewi Manga Maniapoto favoured a united stance, and set out to consult Tamihana and the other leaders at Maungatautari. He was intercepted by a Ngāi Tūhoe tauā led by Piripi Te Heuheu who, with Ngāti Raukawa, argued that a pā should be built at once from which to resist the invading army. Rewi yielded, first to the proposal for a pā, and then to the choice of site. Hoariri Te Paerata of Raukawa said, 'Me mate au ki kōnei' (let me die here on the land), hence the selection of Ōrākau. The pā site was close to the British forces and there was food available, but it suffered from two serious defects. Its exposed position meant the British were able to encircle the pā, cutting off escape and access to water. The

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886. Karen Cameron, 'Ōrākau NZ Wars memorial', Ministry for Culture and Heritage, <http://www.nzhistory.net.nz/media/photo/orakau-nz-wars-memorial> (updated 24 June 2014).

887. Submission 3.4.198, p 21.

888. Submission 3.4.127, pp 24–26.

889. Submission 3.4.300, p 20.

890. Document A22, pp 143–144; doc K24(c); doc A97, pp 217–223.

defenders could not withstand a siege for more than a few days. A third drawback was that the defenders of Ōrākau had neither the time nor manpower to construct a pā on the scale of Pāterangi or Rangiriri. When the British attacked it was still incomplete. This last, however, should not be over-estimated. As Cowan pointed out, Ōrākau pā, 'flimsy as it was, proved an unexpectedly difficult problem for the assaulting forces.'<sup>891</sup>

According to Major William Mair, the Government interpreter, Ōrākau was not occupied until 28 March. Their presence was not noticed by the British until the morning of 30 March, and Brigadier-General Carey assembled around 1,100 troops. Divided into three groups with the aim of surrounding the pā, the groups set off during the night and arrived in concert early on 31 March. After three attempts to storm the pā had been repelled, Carey settled for 'surrounding the place, and adopting the more slow but sure method of approaching the position by sap.'<sup>892</sup> Meanwhile, a party of mostly Ngāti Tūwharetoa arrived, but were unable to reach those within the pā. By the morning of 1 April 1864, the greater part of the defenders' ammunition was spent, there was no water, and only raw kamokamo and kūmara to eat. Within the pā, debate over whether to attempt to either break out or seek terms for surrender continued without agreement. Some time during the morning of 2 April, General Cameron arrived and ordered terms to be offered the defenders.<sup>893</sup>

Government interpreter Mair told those inside the pā that, although General Cameron admired their bravery, they were surrounded and escape was impossible; to save their lives, they should yield. The reply, now embedded in legend, was then said to have been made, that they would fight on for ever, and that if the men were to die, the women would die with them.<sup>894</sup>

Then, in a single phalanx, the defenders left the pā and moved up to the crest of the ridge, forcing their way through a weak point in the encircling line of troops. They continued down towards the Pūniu River through mānuka scrub and swampland. The advantage of surprise saw them through into the scrub, but troops were quick in pursuit. Estimates of casualties range from 80 to 200 killed, and 33 men and women were taken prisoner.<sup>895</sup>

### **6.7.10.2 Who was involved from Te Rohe Pōtae Māori?**

If those who arrived too late to join the defence of the pā are included, around 500 Māori can be said to have been involved in the three-day battle of Ōrākau. Angela Ballara identified sections of the following iwi and hapū participating at Ōrākau: Ngāti Te Kohera, Ngāti Paretakawa, Ngāti Wairangi, Ngāti Tūwharetoa, Ngāti Rangiwewehi, Ngāi Te Rangī, Ngāi Tūhoe, Raukawa, Ngāti Kahungunu,

<sup>891</sup> Cowan, *The New Zealand Wars*, vol 1, p 373; doc K24, p 5; doc K24(c); doc A22, p 150; doc A97, p 221.

<sup>892</sup> Carey to assistant military secretary, 3 April 1864 (doc A22, pp 151–155).

<sup>893</sup> Document A22, pp 155–160.

<sup>894</sup> Document A22, pp 160–161; doc K24(c), p 29.

<sup>895</sup> For detailed accounts of the battle, see doc A110, pp 565–590; doc A22, pp 142–170; Belich, *The New Zealand Wars*, pp 166–175.

Ngāti Hauā, Ngāti Porou, and Ngāti Maniapoto. From Waikato, she identified Ngāti Māhanga, Ngāti Hinetū, Ngāti Mahuta, Te Werokoukou, and Patupō.<sup>896</sup> This breadth of support among North Island iwi and hapū made a strong statement of rejection by Māori of the Crown's demand for submission and the confiscation of lands.

From the outset of this inquiry, during Ngā Kōrero Tuku Ihu hui, claimants spoke about those who fought at Ōrākau. Of central importance was Rewi Manga Maniapoto and his military leadership. According to Thomas Maniapoto, the mission-educated Manga was 'a bit of a matakite, he could foresee . . . the lust of the Pākehā's eyes for the land . . . and he was aware that sooner or later [Māori] were to be dispossessed' of their land.<sup>897</sup> Kāwhia Te Murāhi told us that according to his kaumātua, 'Manga's temperament was not one of a warrior, he wasn't a hard man. He enjoyed the company of children and people generally and he was not a recluse or anti-social by nature.'<sup>898</sup>

In late 1863 or early 1864, Rewi, Te Winitana Tupotahi, and Hapi Te Hikongairua travelled to Te Urewera to seek support for the defence of upper Waikato.<sup>899</sup> Rovina Maniapoto explained that Tūhoe met at Ruatāhuna to discuss joining the fighting. Their tohunga assembled some rods to assist with their karakia and deliberations. If the rods remained standing, Tūhoe would be victorious in their fight; if the rods fell the omen was not good. The rods fell and the tohunga knew there would be death and defeat. Most of Tūhoe stayed home, but Ngāti Wharepākau and Ngāti Manawa, the kin of Te Pūrewa and Tangiharuru, went.<sup>900</sup>

Among Ngāti Maniapoto, most prominent were Ngāti Paretekawa, led by Te Winitana Tupotahi, Raureti Paiaka, and Te Kohika, with Rewi in overall command.<sup>901</sup> Pōneke, known among his family as Napinapi, was an expert in handling weapons and is said to have protected Rewi. He and his son Niketi died at Ōrākau, but Niketi's wife Rihi survived. Rihi's second husband Te Kohika and his brother Te Whakataute fought at Ōrākau. Their father was Te Huia Raureti (Raureti Paiaka).<sup>902</sup> Ngāti Rangatahi stated 'Ngāti Rangatahi lives were lost during the Battle of Orakau'; although specific names were not given, Tame Tūwhangai acknowledged Rangatahi was a common ancestor to Ngāti Paretekawa, 'our blood connection to the warrior chief Pēhi Tukorehu.'<sup>903</sup>

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896. Document A120 (McBurney), pp151–152. Mr McBurney stated that Te Werokoukou comprised those members of Ngāti Kauwhata who chose to remain in Waikato.

897. Transcript 4.1.1, p 50 (Thomas Maniapoto, Ngā Kōrero Tuku Iho hui, Te Kotahitanga Marae, 1 March 2010).

898. Transcript 4.1.1, p 148 (Kaawhia Te Muraahi, Ngā Kōrero Tuku Iho hui, Te Kotahitanga Marae, 2 March 2010).

899. Document A22, p 147.

900. Transcript 4.1.1, p 200 (Rovina Maniapoto, Ngā Kōrero Tuku Iho hui, Te Kotahitanga Marae, 2 March 2010).

901. Submission 3.4.189, p 37.

902. Transcript 4.1.1, pp 141–142 (John Mana (Jock) Roa, Ngā Kōrero Tuku Iho hui, Te Kotahitanga Marae, 2 March 2010); transcript 4.1.1, pp 150–151 (Kaawhia Te Muraahi, Ngā Kōrero Tuku Iho hui, Te Kotahitanga Marae, 2 March 2010); submission 3.4.230, p 4; doc P15(a).

903. Submission 3.4.205, p 15; doc K26 (Tūwhangai), p 6.

Counsel for Ngāti Ngawaero, Ngāti Taumata, Ngāti Te Kanawa, and Ngāti Unu submitted that those hapū 'were at the forefront' at Ōrākau.<sup>904</sup> Ngāti Unu claimants said their tūpuna Te Poupatete, with Raureti Te Huia, was one of 12 who assisted Rewi in the retreat through the swamp.<sup>905</sup> Ngāti Rōrā claimants said Taonui Hikaka was with Rewi 'at the time of Orakau.'<sup>906</sup> Among Ngāti Hari, Peita Kotuku and his father Tupukaheke Te Naku fought together at Ōrākau.<sup>907</sup> Morehu McDonald pointed out that the descendants of Ingoa were there. Mr McDonald named Rapata Te Whareiti, who had a rifle, as one of the warriors at Ōrākau.<sup>908</sup>

Te Paerata led the contingent comprising Raukawa, Ngāti Kohera, and Ngāti Tūwharetoa. He and his son Hone Teri were killed, along with others of Raukawa. Hitiri Te Paerata and his sister Ahumai survived their father, although Ahumai was wounded in the retreat.<sup>909</sup> Dr Robert Joseph spoke of the Maniapoto whakapapa connections of the Paerata whānau. Rewi and Te Paerata were cousins and Ahumai married Matawaia Te Momo from Maniapoto.<sup>910</sup> Henare Te Momo and Hauraki Tonganui were others of Raukawa.<sup>911</sup> Ngāti Tūwharetoa members of this group included Te Rangihiraweā, cousin of Te Paerata, Nui, and Rangitoheriri. Others with Te Rangihiraweā were Nuku and Wetini.<sup>912</sup> Ngāti Hinemihi were also present.<sup>913</sup> A separate large Ngāti Tūwharetoa taua arrived on 31 March, just too late, as by then the pā was surrounded. Paranapa Otimi provided much useful detail about these people.<sup>914</sup>

Ngāti Apakura said their tūpuna were present at Ōrākau. Wiremu Karamoa Tumanako, of Apakura and Ngāti Hinetū, led Anglican services within the pā. Others of Apakura may have been Te Paewaka, Aporo, and Te Huirama.<sup>915</sup> It was 'highly likely' Ngāti Kauwhata were present at Rangiaowhia and Ōrākau.<sup>916</sup> Rodney Graham said his tūpuna Kereama Paoe fought at Ōrākau.<sup>917</sup> Donald Tait

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904. Submission 3.4.250, p 3.

905. Transcript 4.1.1, p 74 (Shane Te Ruki, Ngā Kōrero Tuku Iho hui, Te Kotahitanga Marae, 1 March 2010). The hui transcript offers no translation; submission 3.4.251, p 9.

906. Submission 3.4.279, p 13: The reference is to O'Malley (doc A22, pp 173, 175) and the source does not state Taonui was actually present at Ōrākau, but was with Rewi at Hangatiki later that month.

907. Submission 3.4.167, p 18.

908. Transcript 4.1.1, pp 55–56 (Morehu McDonald, Ngā Kōrero Tuku Iho hui, Te Kotahitanga Marae, 1 March 2010).

909. Submission 3.4.158, p 14.

910. Submission 3.4.189, pp 6–7; doc B2 (Joseph), pp 2–6.

911. Submission 3.4.189, p 37.

912. Submission 3.4.281, pp 30–31; doc R23 (Otimi), p 3.

913. Submission 3.4.187, p 10.

914. Document R23, especially pp 6–7.

915. Submission 3.4.228, p 49; doc A97, pp 224–226.

916. Submission 3.4.134, p 16.

917. Submission 3.4.147, p 23.

said it was Te Werokoukou hapū of Ngāti Kauwhata that fought there.<sup>918</sup> Dr Joseph also noted the presence of Ngāti Kahungunu.<sup>919</sup>

James Cowan described the Ōrākau defenders as numbering ‘scarcely more than three hundred’: Te Urewera, Ngāti Whare, and Ngāti Kahungunu, about 140; Ngāti Raukawa, Ngāti Te Kohera, and a few of Ngāti Tūwharetoa, about 100; 50 of Ngāti Maniapoto; and further 20 Waikato. The total included about 20 women and children.<sup>920</sup> Belich thought ‘200 to 250 warriors and something like fifty non-combatants may be a reasonable estimate.’<sup>921</sup> He noted that the estimate of 50 for the Ngāti Whare section might be wrong, as it was based on an interview with Harehare, who was not present. Also among Cowan’s papers is a figure given by Peita Kotuku, who was present, of eight men and three women.<sup>922</sup>

### 6.7.10.3 *Rejecting the offer of surrender*

As reported by General Carey, ‘the enemy was called upon to surrender, previous to the concentrated fire of the Armstrong gun and hand grenades on their work; they were told that their lives would be spared.’<sup>923</sup> Why did the Ōrākau defenders reject the offer of terms if they were surrounded by Crown forces and on the verge of defeat? Mair’s report explained the defenders’ thinking as follows:

These answers came from the Uriwera [*sic*] who occupied that side of the works, but a discussion was held in the inner redoubt as to what course they should adopt; upon some one suggesting that they should accept the terms offered, it was answered, no! or we shall be all ‘taken to Auckland, as those were from Rangiriri, and never perhaps be liberated.’ Rewi himself proposed that this should be their last fight, and that they should request the General to ‘march all his troops back to the Awamutu, and that they should pledge their word to follow and lay their guns at his feet, and hereafter trust to the white people for protection.’ To this the Uriwera [*sic*] (who were evidently the toa’s of this fight) answered that ‘they would not listen to such terms, and if any one came from the General again they would do their best to shoot him.’<sup>924</sup>

Rewi, then, was prepared to put his trust in the British and pledge his word. Ōrākau is the episode of the war where most is known about Rewi’s conduct and decisions. Some aspects stand out. Decisions were made with care and acts undertaken with firm resolve; he counselled moderation; but decisions were made by consensus and adhered to, despite evidence that Rewi himself did not always agree. As we discussed in earlier sections, Rewi’s actions in 1860–1863 – including

918. Document A120, p152.

919. Transcript 4.1.1, p162 (Robert Joseph, Ngā Kōrero Tuku Iho hui, Te Kotahitanga Marae, 2 March 2010).

920. Cowan, *The New Zealand Wars*, vol 1, p 373.

921. Belich, *The New Zealand Wars*, p168.

922. Belich, *The New Zealand Wars*, p 358, n 33.

923. Carey to assistant military secretary, 3 April 1864, AJHR, 1864, E-3, p52.

924. Mair to colonial secretary, 29 April 1864 (doc A22, pp160–161).



during the expulsion of Gorst – showed a strong commitment to consensus decision-making, despite the many reports of his supposed maverick behaviour.

By the time of Ōrākau, Rewi had already lost his home to the British. A comparison might be drawn with the situation after Waiari, where Ngāti Hikairo and Ngāti Apakura suffered losses and some at least sought terms of peace. After Waiari, at least according to Pākehā, Raukawa were still defiant. At Ōrākau, if Mair is reliable, it was Tūhoe who remained least amenable to surrender, but Peita Kotuku recalled that Ngāti Maniapoto and Waikato rangatira were among those who would not consent.<sup>925</sup>

During hearings, Jenny Charman said Ngāti Apakura believed that outrage over what had happened at Rangiaowhia ‘led in part to the desperate decision to stand and fight at Ōrākau.’<sup>926</sup> Dr O’Malley argued that the Ōrākau leadership would have seen good reason to revert to the traditional practice of bringing non-combatants into fighting pā for their protection.<sup>927</sup>

While no contemporary evidence was presented to support this interpretation, it is certain that Cameron’s actions at Rangiriri played an important part in their calculations. In April 1864, the prisoners taken at Rangiriri remained on the hulk *Marion*. No inquiry into their alleged guilt had been made, nor charges laid. Grey set out his concern on this point explicitly when he wrote to the Secretary of State that month:

I believe that the uncertainty which hangs over the course intended to be pursued with regard to these prisoners – and consequently, with regard to any other prisoners we take – induces a spirit of desperation amongst the native population, which, whilst it is sad to see, is quite unnecessary. . . .<sup>928</sup>

This fear appears to have been widespread among those who resisted the invasion of Waikato. After Ōrākau, Hone Te One went to Hangatiki as an intermediary for the Crown. He found Rewi and his people anxious for peace, but Rewi was:

afraid that he would place himself too much at the General’s mercy by giving up his arms; that the natives captured at Rangiriri had been dealt with treacherously, they having been led to believe that, upon giving up their arms, they would be permitted to go free and live within the lines of the troops. He did not believe that they, the prisoners, were so well treated, or that their lives were to be spared . . .<sup>929</sup>

On 3 May 1864, Grey reported to the Colonial Office that

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925. Document A22, p 161.

926. Transcript 4.1.10, p 43 (Jenny Charman, hearing week 4, Mangakotukutuku campus, 8 April 2013).

927. Document A22, p 120.

928. Grey to Newcastle, 6 April 1864, AJHR, 1864, E-5, p 3.

929. Grey to Newcastle, 3 May 1864, AJHR, 1864, E-5, p 4.

the natives distinctly state, that the reason they would not accept the terms offered to them by General Cameron at Orakau was because they found 'they would all be taken to Auckland, as the prisoners were from Rangiriri, and never perhaps be liberated.'<sup>930</sup>

Five men taken at Ōrākau were subsequently listed among 228 men imprisoned on the *Marion*: Wi Karamoa (Ngāti Hinetū), Te Rewarewa (Patupō), Wi Hione (Rongowhakaata), Aperaniko (Ngāi Tawake), and Karipa Mautaiaha (Raukawa).<sup>931</sup>

The actions of the Crown, at Rangiriri, in the treatment of its prisoners, and at Rangiaowhia, were cumulative in exacerbating fear and distrust among its opponents. What might have happened at Ōrākau, had Rewi's advice to 'pledge his word' been heeded, cannot be guessed. The events that followed the refusal to surrender are best explained as tragedy heaped upon tragedy. The Crown demanded submission without good cause. By its actions during the war, whether intentional or not, the Crown showed itself to be a pitiless foe. This created desperation, and the result was the greatest and most barbarous loss of life of the Waikato war.

#### 6.7.10.4 *The flight from Ōrākau*

##### 6.7.10.4.1 A MASSACRE ?

Deputy Quartermaster-General Gamble reported that the troops 'poured a murderous fire' on Ōrākau defenders as they fled.<sup>932</sup> As at Rangiaowhia, the death of an officer was supposed to have led troops to breach discipline and retaliate with particular force. In this case it was Captain Ring of the 18th Royal Irish regiment, killed on the morning of 31 March in the second attempt to assault the pā.<sup>933</sup> William Race recalled that soldiers were 'enraged' by the escape and the death of Ring and others, writing a strangely phrased extenuation: 'having myself witnessed such playing fast and loose with these rebels so often, considered, strange as it may appear this disregard of discipline by the soldiers justifiable.'<sup>934</sup> Hitiri Te Paerata also used the word 'enraged' to describe the troops' behaviour.<sup>935</sup> He recounted the ferocity of the pursuit:

As we fled before them they tried, by outmarching on our flanks, to cut off our retreat, and poured a storm of bullets which seemed to encircle us like hail. It became as a forlorn hope with us; none expected to escape, nor did we desire to; were we not all the children of one parent? therefore we all wished to die together. My father and many of my people died in breaking away from the pā. When we cut through the

930. Grey to Newcastle, 3 May 1864 (doc A22, p 172).

931. Document K24, p7. The names are from 'List of Maori prisoners taken at Rangiriri, Rangiaohia, Orakau, etc, and at present on board the Hulk "Marion"', G13, box 3, 100, Archives New Zealand, Wellington.

932. Gamble, journal, 4 April 1864 (doc A22, p 163).

933. Carey to assistant military secretary, 3 April 1864, AJHR, 1864, E-3, p 51.

934. Race, 'Under the Flag', p 198 (doc A22, p 166; doc A22(a) vol 2, p 1167).

935. Hitiri Te Paerata, *Description of the Battle of Orakau, As Given by the Native Chief Hitiri Te Paerata, of the Ngatiraukawa Tribe, At the Parliamentary Buildings, 4th August 1888* (Wellington: Government Printer, 1888), p 11 (doc A22, p 165).

troops further on my brother, Hone Teri, who was with Rewi, died in endeavouring to shield him. The whole of my tribe were slain; my father, brothers, and uncle all died. My sister Ahumai, she who said the men and women would all die together, was wounded in four places. She was shot in the right side, the bullet going through her body and coming out on the left, she was shot right through the shoulder, the bullet coming out at her back; she was also shot through the waist; and her left thumb was shot away.<sup>936</sup>

There can be no doubt that women and children were killed by troops in the flight from Ōrākau. As noted earlier, there is evidence that the assault on Rangiaowhia caused women and children to stay within the pā rather than depend for their safety on their status as non-combatants in an unfortified village. Many if not most of those within the pā had travelled long distances to support their Waikato and Maniapoto kin.

Carey acknowledged in his official report that women were killed, but pleaded mitigating circumstances:

I regret to say that in the pa and in the pursuit some three or four women were killed unavoidably, probably owing to the similarity of dress of both men and women, and their hair being cut equally short, rendering it impossible to distinguish one from the other at any distance.<sup>937</sup>

This prompts the question, why were these deaths unavoidable if killing women was a matter for regret? In Mair's account, written on 6 April, with its jumbled, breathless syntax, regret became revulsion:

I saw 8 or 10 women killed and one of the wounded is dead, and 5 or 6 of the men, the entire loss cannot be less than 150, the wounded prisoners are three men, one boy, and a woman . . . I have had my fill of fighting, and do not care to see any more, these poor killed and wounded women have horrified me, and I am filled with disgust, at the generally obscene and profane behaviour of the troops, as well as their vaunting, yet almost cowardly behaviour . . .<sup>938</sup>

Hitiri Te Paerata described events that must have contributed to Mair's disgust, in which soldiers attacked and in at least one case killed wounded women within the pā:

when the pa was carried Major Mair went in with the stormers to look after the wounded. He found some soldiers trying to kill a wounded woman named Hineiturama, belonging to Rotorua. They did not know, perhaps that she was a woman, but they were enraged at the death of their officer, Captain Ring. Major Mair

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936. Te Paerata, *Description of the Battle of Orakau*, pp 5–6 (doc A22, p 163).

937. Carey to assistant military secretary, 3 April 1864 (doc A22, p 164).

938. WG Mair, 6 April 1865 (doc A22, p 165).

carried the woman to a corner of the pa, and ran off to save another woman called Ariana, who was also badly wounded, but when he returned Hineiturama had been killed.<sup>939</sup>

Dr O'Malley cited accounts in which a wounded woman carrying a young child was rescued from a soldier who was about to bayonet her.<sup>940</sup>

The *New Zealander* reported:

*Women – many women – slaughtered, and many children slain, are amongst the trophies of Orakau, and ‘civilization’ in pursuit, or as it returned from the chase, amused itself by shooting the wounded ‘barbarians,’ as they lay upon the ground where they had fallen. [Emphasis in original.]*<sup>941</sup>

These accounts demonstrate that in the pursuit of the Ōrākau defenders Crown troops showed a complete disregard for human life. Crown troops lacked discipline and showed a willingness to commit atrocities against the Māori defenders. Nor was there any disciplinary action in the months that followed the attack against those Crown soldiers who had committed acts of brutality. As O'Malley argued, along with the Crown's conduct at Rangiriri and Rangiaowhia 'the events at Orakau once again cast grave shadows over the overall conduct of British troops throughout the Waikato War.'<sup>942</sup>

#### 6.7.10.4.2 CASUALTIES

The number of British killed at Ōrākau is known precisely: 16 were killed and another 52 wounded. Estimates of the number of Māori casualties at Ōrākau vary from 50 to as many as 200. Claimants agreed with Dr O'Malley that a figure of 150 to 160 killed was most likely.<sup>943</sup> The Crown preferred Belich's figure of at least 80 killed and 40 wounded, based on an assessment made by Rewi to Hone Te One, soon after the battle, that about 80 had been killed and a further 120 were wounded, taken prisoner, or missing.<sup>944</sup>

Perhaps the best place to begin is Carey's official report. He wrote that 101 were killed during the escape, and that prisoners reported a further 18 to 20 killed during the siege and buried in the pā. Carey added that early on the morning of 3 April, Māori were seen carrying dead and wounded away 'at the most distant point of pursuit, and fresh tracks showed that they had been similarly occupied during the night.'<sup>945</sup> Mair later reported that, of the 33 prisoners, 26 were wounded and by the end of the month 11 had died.<sup>946</sup> William Race remembered that a fortnight

939. Te Paerata, *Description of the Battle of Orakau*, p 6 (doc A22, p 165).

940. Document A22, p 166.

941. *New Zealander* quoted in *New Zealand Herald*, 15 April 1864 (doc A22, p 166).

942. Document A22, p 169.

943. Submission 3.4.127, p 26; doc A22, pp 167–168.

944. Submission 3.4.300, p 20; Belich, *The New Zealand Wars*, pp 172–173; doc A22, p 168.

945. Carey to assistant military secretary, 3 April 1864, AJHR, 1865, E-3, p 53.

946. Document A22, pp 168–169.

after the battle ‘when reconnoitring the locality of that swamp the foetid smell too truly told that many bodies were rotting there.’<sup>947</sup> The British records thus produce a total of about 130 dead, to which should be added those recovered by the defenders and the bodies left to rot in the swamp.

While Rewi estimated 80 dead, his figure of 120 wounded, taken prisoner, or missing requires examination. Missing, in this context, essentially means killed. We know there were 33 prisoners, and that some of the survivors who managed to evade capture were wounded. An indication of the fate of the roughly 90 wounded or missing can be gleaned from Rewi’s remark that, of his party of about 15, only three or four escaped.<sup>948</sup>

These considerations, together with estimates by General Cameron, William Mair, and Hitiri Te Paerata, that about 150 Māori were killed, tend to confirm that number as the most plausible estimate of Māori casualties at Ōrākau.

Despite his preference for a lower estimate of casualties, Belich considered the large number and proportion of Māori killed at Ōrākau in comparison to those wounded to be evidence of ‘a large-scale massacre of wounded non-combatants.’<sup>949</sup> Dr O’Malley compared the figure of 26 wounded prisoners with his estimate of 150 dead to draw the same conclusion.<sup>950</sup> His calculation must exaggerate the true position, as many of those who crossed the Pūniu to safety were also wounded. But a comparison with the Imperial troops, who suffered roughly one death for every three wounded, makes a stark and disturbing contrast. The unavoidable conclusion must be that the recorded accounts did not describe aberrations but are indeed evidence of a massacre which included the wounded, the unarmed, women, and children.

#### 6.7.10.4.3 CARE OF THE DEAD

Most of the dead were buried in mass graves near the pā. Mair wrote that approximately 30 Māori were buried in one ditch near the pā, including ‘Hineiturama (Te Arawa), Te Paerata, his son Hone Teri (Maniapoto, Raukawa, Te Kohera), Wereta (Te Kohera), Piripi te Heuheu (Tuhoe), and others.’<sup>951</sup> Cowan wrote: ‘When the trench graves were filled in, the clenched hand of a Māori protruded above the ground, and a soldier trampled on it to tread it under.’<sup>952</sup> Much remains unknown: Were there burial services? Were the graves marked in any way? Was any opportunity given for the survivors to collect their dead kin? Later in April, Rewi, through Hone Te One, asked General Carey ‘to furnish him with a list of the killed and prisoners.’<sup>953</sup> Whether that was done is unknown. As noted earlier, there is evidence that some bodies were not buried at all, but left to rot where they fell.<sup>954</sup>

947. Race, ‘Under the Flag’, p 206 (doc A22, p 167).

948. Document A22, pp 168–169.

949. Belich, *The New Zealand Wars*, p 173.

950. Document A22(f), p 9.

951. Document A97, p 226.

952. Cowan, ‘Famous New Zealanders’, p 25 (doc A97, p 217).

953. WG Mair to colonial secretary, 29 April 1864 (doc A22, p 168).

954. Document A22, p 167.

At hearing week four, counsel raised the question of what happened to the land the mass graves were located on. It seems to have been sold as farm lots to ex-soldiers. We discuss this issue when we address urupā and wāhi tapu later in the report.

### 6.7.11 The end of the war?

As discussed in the previous section, Rewi Maniapoto was on his way to consult with Wiremu Tamihana when he was diverted to the fortification and defence of Ōrākau. After the retreat from that pā, Rewi returned to Hangatiki. Ngāti Maniapoto and others (including some Waikato refugees) constructed a new line of pā south of the Pūniu River to once again resist the advancing Crown troops.<sup>955</sup> At this stage, General Cameron's message to them was that he could only accept unconditional surrenders. The rangatira were still very worried about the fate of those who had been taken at Rangiriri and imprisoned indefinitely on the *Marion*. They refused to surrender unless the Crown softened its stance on confiscation and guaranteed that they would not be imprisoned. The colonial Government, however, wanted Cameron to continue the war. Grey was worried that Ngāti Maniapoto had not been punished enough.<sup>956</sup> Just before Ōrākau, the governor had said that Ngāti Maniapoto 'escaped untouched in every engagement – they never fight, and do nothing but murder and pillage, having escaped hitherto without punishment, they are as unsubdued as ever.'<sup>957</sup> Both Grey and the Ministers urged Cameron to move further inland and attack Ngāti Maniapoto.<sup>958</sup>

General Cameron's forces were building redoubts and entrenching north of the Pūniu. He refused to carry on any further, arguing that the military goals had been met and the Queen's flag was flying at Ngāruawāhia.<sup>959</sup> Although no one knew it at the time, the shooting part of the war in the Waikato was over.

Because there was no real conclusion to the war and no peace-making, the two sides remained poised on either side of the 'border' in a state of hostility and suspicion. As the claimants submitted:

Even when hostilities ceased, it was far from clear that the war was over. As O'Malley put it, the war 'came to an end almost by default' in what was far from a peaceful situation.<sup>960</sup>

Te Rohe Pōtae and exiled Kīngitanga leaders imposed a formal aukati and closed their remaining lands to the Crown and to a large extent to settlers (see chapter 7).

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955. Belich, *The New Zealand Wars*, p175.

956. Document A22, pp170–177.

957. Grey to Biddulph, 8 March 1864 (doc A22, p179).

958. Belich, *The New Zealand Wars*, p198.

959. Document A22, pp178–179.

960. Submission 3.4.412, p8.

### 6.7.12 Treaty analysis and findings

As the Crown has conceded, the Waikato war was an injustice and a breach of Treaty principles. Through this concession ‘the Crown acknowledged a high level of responsibility for the effects of war and raupatu.’<sup>961</sup> The Crown considered that the killing of non-combatants by its forces, and the loss of homes, cultivations, and belongings during the war, ‘underscore the Crown’s concession that the wars were an injustice.’<sup>962</sup> The Crown argued that the Treaty did not ‘displace the Crown’s power to use coercive force in appropriate circumstances,’<sup>963</sup> but its admission that the war was an injustice and a Treaty breach shows that the Waikato war was not the ‘appropriate circumstances’ for the use of force. Crown counsel did not make a submission that the Treaty was suspended during the war, as the Crown has argued in some other inquiries. We agree with the Taranaki Tribunal: ‘While the norms of a Treaty, like those of an international covenant, may be suspended in an emergency, the emergency in this case was caused by the Governor and he could not reap the benefit of his own wrong.’<sup>964</sup>

We accept the Crown’s concession that the Waikato war was an injustice and a breach of Treaty principles. In our view, it was a very serious Treaty breach, as any breach must be which causes the loss of life. It follows that the death of every Māori person killed during the unjust war – combatant and non-combatant – was an injustice, and the casualties of the war were a serious prejudicial effect of the Crown’s breach. We expand on this when we discuss prejudice more generally later in the chapter. Here, we note that many of the events discussed in section 6.7, though painful and prejudicial to Māori, were among the ordinary consequences of war. This means that they are covered by the scope of the Crown’s concession that the Waikato war was an injustice and in breach of the principles of the Treaty. One example is the destruction of livelihoods when the inhabitants of Te Rore had to flee in advance of an occupying force (section 6.7.5). This was an inevitable consequence of an invasion by a force intent on conquering and occupying the territories of the Kīngitanga tribes.

But not all matters can be explained as ordinary incidents of war. Where the Crown’s forces acted in a disproportionate or even an egregious manner, then further Treaty breaches occurred, intensifying the suffering of an already unjust war and compounding the prejudice. In this respect, the Crown must take not just a ‘high level of responsibility’ but full responsibility for the conduct of its troops, which were under its control.

One example of such conduct is the killing of non-combatants. Crown counsel submitted that ‘it was not Crown policy to kill non-combatants.’<sup>965</sup> We would go further and say that the killing of non-combatants violated the British standards of

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961. Submission 3.4.300, p 21.

962. Statement 1.3.1, p 48; submission 3.4.16, p 8.

963. Submission 3.4.300, p 8.

964. Waitangi Tribunal, *Taranaki Report*, p 9.

965. Submission 3.4.16, p 8.

the time for the conduct of war. As discussed earlier, the Crown characterised it as ‘murder’ when settler non-combatants were killed.<sup>966</sup>

From our discussion above, it will be evident that the Crown’s forces killed Māori non-combatants at Rangiriri, Rangiaowhia, Hairini, and Ōrākau. At Rangiaowhia and Ōrākau, we have found that non-combatants were massacred by British forces – at Rangiaowhia when the Crown attacked a defenceless kāinga and its forces set a whare alight, and at Ōrākau when combatants and non-combatants were fleeing from the battle. These Crown actions, set out in full in sections 6.7.7 and 6.7.10, were egregious and in breach of the principles of the Treaty. The Crown’s relationship with the peoples of Te Rohe Pōtae is still overshadowed today by the events at Rangiaowhia in particular.

At Rangiriri (section 6.7.3), the Crown’s forces violated a shared rule of war (the white flag for truce and negotiations). In our view, this was morally wrong but not in itself a breach of Treaty principles. The Crown also imprisoned those who had attempted to negotiate a truce at Rangiriri, holding 180 men, women, and children in inhumane circumstances and without trial. We return to that point below.

Finally, we find the Crown forces’ conduct of the war to have been excessive or disproportionate in their destruction or plundering of property which served no military purpose. At Kihikihi (section 6.7.9), the burning of a great taonga, Hui Te Rangiora, and the plunder of personal belongings serve as an important example. This Crown conduct was an additional breach of Treaty principles which compounded the injustice of the war. We accept, however, that the taking of or destruction of food was an action with a military purpose (and therefore covered by the original Treaty breach).

In addition to the troops’ conduct, we find that the political leaders, the governor and Ministers, conducted aspects of the war in a disproportionate or egregious manner.

First, the 180 men, women, and children taken at Rangiriri were held in inhumane conditions and without a trial (section 6.7.3). This was by no means an inevitable consequence of invasion, and the governor found great fault in his Ministers for it. We find that the circumstances of their imprisonment breached the principle of active protection and their article 3 rights to a fair trial. The governor did intervene and ensure the relocation of the prisoners from the hulk *Marion* to Kawau Island. We have no information as to the conditions in which they were held on Kawau. We agree with the Turanga Tribunal that, in such circumstances, the prisoners were entitled to escape from unlawful detention, which they duly did.<sup>967</sup>

Secondly, the governor and Ministers acted in a disproportionate and reprehensible manner by prolonging this unjust war unnecessarily. In sections 6.7.3, 6.7.4, and 6.7.9, we described the repeated efforts of the Māori leaders to negotiate with the Crown and to end the war. Were there sound military reasons for continuing the war after Ngāruawāhia was given up to the British army as the governor had

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966. See, for example, doc A22, p 42; Grey to Pene Pukewhau (Te Wharepu) ‘and all the People of Waikato’, 16 December 1863, AJHR, 1864, E-2, p 4.

967. See Waitangi Tribunal, *Turanga Tangata, Turanga Whenua*, vol 1, p 194.



required? The governor and General Cameron thought not, although both still wanted to punish Ngāti Maniapoto. But the governor changed his mind, seemingly because of a petty squabble with Ministers (section 6.7.4). We find that the Crown's action in prolonging the war was a further Treaty breach and compounded the prejudice of its unjust invasion.

As discussed above, we accept that some settler non-combatants were killed during the raids against the British supply lines early in the war. We also accept that the property of some settlers was destroyed. In Te Rore, for example, two houses were destroyed, essentially to deny their use to the oncoming British forces (see section 6.7.5). We accept these points because, as the Crown has submitted, it is necessary to do so for a 'complete and balanced understanding of events.'<sup>968</sup> It does not excuse or mitigate the Crown's Treaty breaches.

### 6.8 THE INVOLVEMENT OF NGĀTI TŪWHARETOA IN THE WAIKATO WAR

A number of iwi came to support the Kingitanga when the Crown attacked it in the Waikato in 1863. Those who came included parties from Tūhoe, Tūwharetoa, Raukawa, and Ngāti Rangiwewehi.<sup>969</sup> Some of the iwi who participated have made claims in this inquiry. As we discussed earlier, Raukawa's claims have been settled. Ngāti Tūwharetoa, however, have advanced a claim in respect of the Waikato war:

Ngāti Tūwharetoa claims that the Crown breached the Treaty in waging an unjustified war against the Waikato, seeking actively to defeat by military force te tino rangatiratanga of te tangata whenua. The Crown's aggression amounted to an unjustified war not only against Waikato, but against those iwi such as Tūwharetoa who were obliged by cultural obligations and political commitments to come to the aid of their kin. Bound by their allegiances to the Kingitanga and to Tainui, Tūwharetoa taua went to the Waikato to defend the land, and suffered casualties as a result.<sup>970</sup>

In the Crown's view, its concessions only applied to those who fought in defence of their own homes and lands. The Tribunal asked the Crown to clarify whether the Crown's concessions applied to Ngāti Tūwharetoa.<sup>971</sup> Crown counsel submitted:

The Tribunal has asked the Crown to advise the extent to which the concession it has made in this inquiry concerning war and raupatu covers Ngāti Tuwharetoa.

The Crown does not consider that its concession that Māori were justified in defending their lands applies, by extension, to those whose primary interests are outside the district. Specific breach and non-breach acknowledgements may be made for such groups depending on their level of involvement in the conflict and the nature of

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968. Submission 3.4.16, p 8.

969. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 252.

970. Submission 3.4.281, p 26.

971. Transcript 4.1.23, pp 894-895.

their grievances arising therefrom. Such acknowledgements are made on a case-by-case basis where the Crown considers they are justified.<sup>972</sup>

The Crown did not make any such specific acknowledgement for Tūwharetoa in our inquiry.

### 6.8.1 Ngāti Tūwharetoa involvement in the Waikato war

Many Ngāti Tūwharetoa supported the establishment of the King and placed their lands under the King's protection while retaining their full autonomy.<sup>973</sup> Not all Tūwharetoa hapū supported the King, however, and there was some support for the Crown in the northern Taupō area.<sup>974</sup> The iwi did not participate in the Taranaki war of 1860–1861.<sup>975</sup> Paranapa Otimi described some initial reluctance to get involved in the Waikato war in 1863, partly ascribed to the advice of the local CMS missionary, TS Grace. There was 'dissension', he said, 'among Ngati Tuwharetoa over the lack of support to Waikato and the Kingitanga call to arms.'<sup>976</sup> Nonetheless, there were Tūwharetoa parties involved in the defence of Meremere and Rangiriri.<sup>977</sup> In October 1863, the Graces abandoned their mission station at Pukawa, and there were frequent reports of Taupō groups setting out to Waikato.<sup>978</sup>

In 1864 a large contingent of Tūwharetoa warriors was involved in the defence of the Kingitanga. Iwikau Te Heuheu had urged neutrality on his people but Horonuku Te Heuheu joined in the war because he 'would not stand by and watch the Crown impose injustices upon Waikato and Maniapoto with whom he had close affiliations.'<sup>979</sup> There was significant Tūwharetoa involvement and casualties at Ōrākau and to a lesser extent at Hairini, where one Tūwharetoa person was killed. Some Tūwharetoa were inside the pā at Ōrākau, while others under Horonuku Te Heuheu led an unsuccessful attempt to relieve the defenders. We do not have exact figures for those of Tūwharetoa who were killed at Ōrākau.<sup>980</sup> TS Grace noted in 1867 that many of his 'old friends' among Tūwharetoa had died there – indeed, he believed Tūwharetoa to have been 'the chief sufferers there', although we cannot confirm that point. There were also some Tūwharetoa present at Rangiaowhia (which they called Ohia).<sup>981</sup>

After the defeat and disastrous retreat at Ōrākau, the survivors of the Taupō contingent returned home, and began to prepare for the defence of Taupō if the Crown's invading force were to reach that far. As well as caring for their own people who had been wounded, they hosted a number of refugees. The latter

972. Submission 3.4.309, p 4.

973. Document J22, p [16]; Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 224–225.

974. Document A54 (Stirling), pp 51–53.

975. Submission 3.4.281, p 29.

976. Document R23, p 2).

977. Document R23, p 2; doc A22, p 48.

978. Document A54, pp 121–127.

979. Document J22, p [18].

980. Document R23, pp 4–9; doc A22, pp 110–111, 152, 181; doc A54, pp 127–130.

981. Grace, journal of Taupō journey, October 1867 (doc A54, p 130).

included some Ngāti Apakura. The King took refuge there for a time in 1864.<sup>982</sup> According to Paranapa Otimi's evidence, the refugees stayed with Tūwharetoa for more than 40 years.<sup>983</sup> The disruptions of war had caused food shortages in Taupō, and the arrival of refugees exacerbated this situation.<sup>984</sup>

In 1864, the Crown prepared a map showing the districts which 'supplied combatants on the rebel side to the War', and this map included all of western Taupō and a 'smaller pocket from Waihi around to Korohe, and from Te Rangitā to about Hatepe on the eastern shore'.<sup>985</sup>

### 6.8.2 Treaty analysis and findings

As noted above, the Crown submitted that Ngāti Tūwharetoa were not justified in fighting against the Crown in Waikato because they were not fighting in defence of their own lands and homes.<sup>986</sup> Counsel for Ngāti Tūwharetoa argued that this was illogical because the Crown had already conceded that Te Rohe Pōtae Māori were justified in fighting in defence of the Kīngitanga, irrespective of whether they had customary interests north of the Pūniu.<sup>987</sup> The Crown's closing submissions stated:

The Crown has previously acknowledged that its representatives and advisers acted unjustly and in breach of the Treaty of Waitangi and its principles in its dealings with the Kīngitanga, which included iwi and hapū of Te Rohe Pōtae, in sending its forces across the Mangatawhiri in July 1863, and occupying and subsequently confiscating land in the Waikato region, and resulted in iwi and hapū of Te Rohe Pōtae being unfairly labelled as rebels.

The Crown advises that this concession will be addressed to iwi and hapū of the Rohe Pōtae independently of any reference to the Kīngitanga if it is shown during the course of the inquiry that iwi and hapū of the Rohe Pōtae have rights in the Waikato raupatu district that are distinct from Waikato Tainui.<sup>988</sup>

We agree with the claimants that the first part of this concession should logically apply to all iwi who 'subscribed to the Kīngitanga kaupapa' and who were obliged by their tikanga to 'come and fight in support through a combination of their kinship to Waikato and their allegiance to the Kīngitanga'.<sup>989</sup> We also agree with the conclusions of the Central North Island Tribunal, which the claimants asked us to adopt:

So the decision to fight in the Waikato was not just about tribal relationships, although these were always important. It was about support for a new institution

982. Document R23, pp 2–4, 10; doc A54, pp 130–132; doc A22, p 209.

983. Document R23, p 4.

984. Document A54, pp 105, 121, 132–133.

985. AJHR, 1864, E-9, p [5] (doc A54, pp 117–118).

986. Submission 3.4.309, p 4.

987. Submission 3.4.412, pp 7–8.

988. Submission 3.4.300, p 1.

989. Submission 3.4.412, p 7.

which was itself the embodiment and defence of their own mana or tino rangatira-tanga. Maori could see the dominoes falling in 1863, but fighting at Waikato was not really self-defence of the Tuwharetoa rohe at a distance. Nor was it a hostile initiative by the tribe. Tuwharetoa went to assist a defence against invasion by the Crown. They did so because they had an obligation to defend a shared commitment to a political initiative, to defend mana Maori motuhake. In other words, they went precisely because the Kingitanga was premised on kotahitanga – Waikato Tainui were the kai-tiaki of this taonga, but they took that role with the support of other hapu and iwi.

The idea that ‘self defence’ was legitimate, but that it did not apply outside one’s home tribal lands, may be too narrow to be appropriate in this context. Those tribes which went outside their own lands to fight a defensive war in support of the Kingitanga, were fighting for their kin, their King, and their own futures. The Kingitanga was their response to settler land-hunger and the one-sidedness of a kawa-natanga that was responsible only to the settlers. The Crown’s determination to inflict a massive defeat on the Kingitanga was an attack on them and their tino rangatira-tanga, just as surely as if it took place in their own rohe. Their political future was at stake, and they fought in defence of it, as well as of their relations.<sup>990</sup>

The Central North Island Tribunal did not make specific findings about whether Tūwharetoa were legally in ‘rebellion’ for going to fight in Waikato, stating that it did not need to determine the point.<sup>991</sup> We agree that it is not necessary to determine that question, nor did the Crown argue its case on legal grounds (that is, the law of rebellion and what constitutes rebellion in legal terms).

In Treaty terms, our view is that the Kingitanga embodied and protected the tino rangatiratanga of many tribes. An attack on the Kingitanga was an attack on those tribes. Ngāti Tūwharetoa were entitled to defend the Kingitanga against the Crown’s unjust attack. The Crown’s concession of Treaty breach applies to them in our view.

We have already found the Crown in breach of the Treaty for its unjust attack on the Kingitanga, and for labelling those who resisted its unjust attack as ‘rebels’. We repeat that finding here in respect of Ngāti Tūwharetoa for the reasons given above. Our findings about Ōrākau, Hairini, and Rangiriri also apply to Tūwharetoa, as does our finding that the Crown unnecessarily prolonged its unjust war (see section 6.7.12). As far as we are aware, from the evidence presented to us, no Tūwharetoa people were killed at Rangiaowhia.

The prejudice for Ngāti Tūwharetoa included the loss of life which they suffered, the hardships caused by the war (including injuries, food shortages, and the need to provide for refugees for a considerable period), and the damage done to their relationship with the Crown. This relationship was further harmed by related

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990. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 254; submission 3.4.281, p 32.

991. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 253–254.

incidents in the later 1860s, as discussed in the Central North Island report (*He Maunga Rongo*).<sup>992</sup>

We turn next to consider the confiscation of land which followed the Waikato and Taranaki wars, and the impacts of that confiscation on Te Rohe Pōtae claimants.

### 6.9 CONFISCATION AND COMPENSATION

The Crown has conceded that its confiscations of land after the wars in Waikato and Taranaki ‘were wrongful and in breach of the Treaty of Waitangi and its principles’. The Crown specifically acknowledged:

- ▶ its confiscation of Ngāti Maniapoto interests in Taranaki in 1864; and
- ▶ ‘its dealings with the Kingitanga, which included iwi and hapū of Te Rohe Pōtae, in . . . occupying and subsequently confiscating land in the Waikato region’.

The Crown undertook to address the latter concession to Te Rohe Pōtae iwi and hapū ‘independently of any reference to the Kingitanga if it is shown during the course of the inquiry that iwi and hapū of the Rohe Pōtae have rights in the Waikato raupatu district that are distinct from Waikato Tainui’. The Crown also acknowledged that inadequacies in the Compensation Court it established compounded the prejudice created by the raupatu. The Crown acknowledged that it imposed without consultation a process for investigating raupatu grievances.<sup>993</sup>

Crown counsel stated in closing submissions that Ngāti Maniapoto ‘had strong ties’ to the land north of the Pūniu River and acknowledged that ‘some property of Rohe Pōtae Māori was destroyed, taken or damaged’ once Crown forces reached southern Waikato.<sup>994</sup> However, the Crown has not extended its concession regarding the Waikato raupatu to Te Rohe Pōtae iwi and hapū. In responses to specific claims the Crown argued against making any such concession, because, counsel said, those claims were settled by existing settlement legislation.<sup>995</sup> That was because the claimants, Ngāti Paretekawa and Ngāti Apakura, are named in the Waikato raupatu settlement legislation. In chapter 1, however, we determined that the Tribunal has jurisdiction to hear these claims on the basis of a non-Waikato affiliation. Both groups have close affiliations to Ngāti Maniapoto. As a matter of logic, the prejudice resulting from the occupation and confiscation of their lands must have prejudiced Ngāti Maniapoto also.

Two other groups, Ngāti Kauwhata and Ngāti Wehi Wehi, have also made raupatu claims. The Crown did not oppose Ngāti Kauwhata doing so, but did object to Ngāti Wehi Wehi. In chapter 1 we determined that the Tribunal has jurisdiction to hear both groups.

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992. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 254–260. See also doc R23, pp 10–11; doc A54, pp 130–261.

993. Statement 1.3.1, pp 44–45, 49.

994. Submission 3.4.300, pp 8, 15.

995. Submission 3.4.300, p 2; submission 3.4.310(e), pp 31–37.

The Crown made no response to the evidence on the record of inquiry as to the extent of Ngāti Maniapoto land interests in Taranaki, other than to state that those interests ‘were away from Waitara, where the conflict arose’ and that war in Taranaki ‘never extended into the Rohe Pōtae itself’.<sup>996</sup>

It is therefore left to the Tribunal to conduct an assessment of these rights and interests in both confiscation districts. Despite the relatively broad nature of the Crown’s concessions, the way they were subsequently qualified in submissions means that this assessment needs to be carried out as a first step in our analysis.

The claimants raised several matters in relation to the confiscations. They said war and confiscation was in effect a single process intended not to ensure peace but ‘to ensure British control of New Zealand and gain land for settlement’. The Crown ‘failed to provide opportunities for Te Rohe Potae Māori to negotiate terms and retain their lands, or inquire into culpability, before implementing confiscation’. Confiscation was planned as a speculative operation. Much of the land taken for the Military Settlements block in upper Waikato, they said, was ‘not suitable for settlement’. Because this was the only purpose for which land could legally be taken, they said, it was ‘arguably’ confiscated contrary to the requirements of the New Zealand Settlements Act 1863.<sup>997</sup>

The compensation process, the claimants said, provided no real choice but to participate, or risk missing out altogether. The claimants identified a range of failures of process and policy. They argued that the Crown promised “‘loyal” and neutral’ Māori would be compensated by way of return of the full extent of the lands which they claimed’. This did not happen. Individuals, rather than iwi or hapū, ‘belatedly received scant reserves’. This, the claimants said, was a serious breach of the Treaty, ‘because it assisted in the breakdown of the Māori social structure’. The avenues made available by the Crown to Māori to raise grievances relating to the raupatu, specifically petitioning Parliament and the investigation by the Sim commission, were inadequate, the claimants said.<sup>998</sup>

The issues before us require more than simply an assessment of the prejudice suffered by Te Rohe Pōtae iwi and hapū as a result of the confiscations in Taranaki and Waikato. Our analysis is grouped around three sets of questions:

- ▶ Why and how did the Crown confiscate Te Rohe Pōtae iwi and hapū lands?
- ▶ How was the Compensation Court established and was that process adequate?
- ▶ Were the Crown’s efforts to return land to ‘rebels’ and investigate raupatu grievances adequate?

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996. Submission 3.1.300, pp 7, 15.

997. Submission 3.4.127, pp 12, 30, 34; submission 3.4.130(e), pp 17–18.

998. Submission 3.4.127, pp 35–39.

## 6.9.1 What interests and manawhenua did Te Rohe Pōtae hapū and iwi hold in Taranaki in 1865?

### 6.9.1.1 What was the situation when war broke out?

Although the Crown has conceded it breached the Treaty by confiscating Ngāti Maniapoto interests in Taranaki, it is left to the Tribunal to assess the extent of those interests.

Written archival evidence about the extent of Ngāti Maniapoto interests in Taranaki at the time of the confiscation in 1865 is sparse. Earlier (see section 6.4.2), evidence was addressed about the nature and extent of the tribe's involvement in Taranaki in the two decades after 1840. There, we did so to answer the question of why Te Rohe Pōtae Māori went to fight in Taranaki in 1860. Relevant here are the following points.

By 1840, many of the former inhabitants of northern Taranaki had been either taken north by Waikato-Maniapoto taua or forced to retreat south to take refuge with Ngāti Toa and Ngāti Raukawa. Some Ngāti Maniapoto rangatira were involved in attempts to 'purchase' Taranaki lands by the New Zealand Company and by William White.

In 1842, Governor Hobson effectively recognised a Ngāti Maniapoto claim to rights in Taranaki that was separate from that of Waikato. Hobson paid Te Wherowhero for interests there, but he consented to Ngāti Maniapoto occupying land as far south as Urenui. Ngāti Maniapoto told Protector of Aborigines TS Forsaith when he visited Kāwhia in 1844 that the land as far as Urenui was theirs 'by right of conquest, and some part of it by possession.'<sup>999</sup> Later, Governor Browne accepted that Hobson had not 'obtained any formal cession of their rights from the Ngāti Maniapoto chiefs.'<sup>1000</sup>

Te Ātiawa, Ngāti Mutunga, and Ngāti Tama began to return to northern Taranaki during the 1840s. At first the returnees were mainly those who had been taken prisoner by Waikato-Maniapoto.<sup>1001</sup> The return of the southern exiles was endorsed by Te Wherowhero and Te Awaitaia, but Ngāti Maniapoto were less approving. A long and tense hui in 1848 at Pukearuhe, where Te Rangitake and Te Ātiawa were hosted by Takerei Waitara and other Ngāti Maniapoto, agreed to a boundary being established at Waikāramuramu.<sup>1002</sup>

In 1856, Mōkau rangatira Tikaokao, Ngatawa (Te Kaka), Tākerei, and Wetini heard that Ngāti Tama and Ngāti Mutunga at the Chatham Islands were offering to sell land to the north. They told Donald McLean: 'our boundary is at Waikāramuramu, for it is a Red Sea for us, and for ever and ever and ever.'<sup>1003</sup> This Red Sea analogy was repeated by Wetere Te Rerenga in 1882 when he gave

999. Forsaith to Fitzroy, 22 October 1844 (doc A23, p102); doc A147(b), p14.

1000. Browne to colonial secretary, 4 December 1860 (doc A147(b), p14).

1001. Document A28, pp 61–62.

1002. Document A28, p 62.

1003. Te Motutapu Te Karoa, Tikaokao, Ngatawa Te Kaka, Takerei, and Te Wetini, Mokau, to Governor and McLean, 26 December 1856 (doc A147(b), p 29).

evidence to the Native Land Court. He added: 'Our land extended to Paritutu [in New Plymouth], but we gave the land back as far as Waikaramuramu.'<sup>1004</sup>

After 1848 and until as late as August 1859, Ngāti Maniapoto continued to take an active interest in events in Taranaki, as far as the New Plymouth settlement itself. This interest extended to mediating in disputes among Taranaki Māori and was frequently welcomed by Crown officials.

Some Ngāti Maniapoto continued to live south of Waikāramuramu after 1848, often taking wives from the returning tribes (section 6.4.2). New Plymouth inspector of police, George Cooper, reported a somewhat mixed population north of Waikāramuramu in 1854. The coast between Parininihi and Mōkau, he recorded, was 'inhabited by a few Natives (numbering probably about 60) belonging chiefly to Ngatimaniapoto, but who are also so much mixed up with the Ngatiawa that it is difficult to assign to them any distinctive name.'<sup>1005</sup>

### 6.9.1.2 *Was there an exclusive interest?*

William Wetere, for the Wai 535 claimants, asked this Tribunal for a finding on 'Maniapoto's exclusive southern boundary'.<sup>1006</sup> We note Mr Wetere's observation that 'many of those from Mokau can equally make whakapapa claims to Ngati Tama and other Taranaki Iwi'.<sup>1007</sup> He was presumably referring to intermarriage between the tribes, but in addition customary tenure was seldom, if ever, as 'hard-edged' as European notions of land tenure, so that Māori 'boundaries' were more often zones with overlapping interests.

We did not hear from Ngāti Tama, nor from any of the groups who earlier took claims to the Taranaki Tribunal. (Nor did that Tribunal hear from Ngāti Maniapoto.) The matter of boundaries and exclusivity was raised in 1999 by the Wai 788 and Wai 800 claimants in the context of a proposed settlement between the Crown and Ngāti Tama. Mediation failed to resolve the differences between the parties, and this led to the Ngāti Maniapoto/Ngāti Tama Settlement Cross-Claims inquiry in 2001.<sup>1008</sup> By the time the hearing began, though, the Ngāti Tama settlement package had already been revised so as to withdraw four properties north of the confiscation line which the Crown had previously proposed to vest in Ngāti Tama. Also withdrawn were 'offers of nohoanga (camping entitlements), statutory acknowledgements, and deeds of recognition in respect of certain areas around the Mōkau River where Ngāti Tama's interests were considered to be insufficiently strong'. In addition (and significantly, from the point of view of the present discussion), the deed of settlement would no longer refer to the area south of the confiscation line as Ngāti Tama's 'exclusive area' but rather as its 'right of

1004. Evidence of Wetere Te Rerenga Takerei, 6 June 1882 (doc A28(a), vol 2, pp 433, 437). See also doc A28, p 19; doc A28(a), vol 2, p 427).

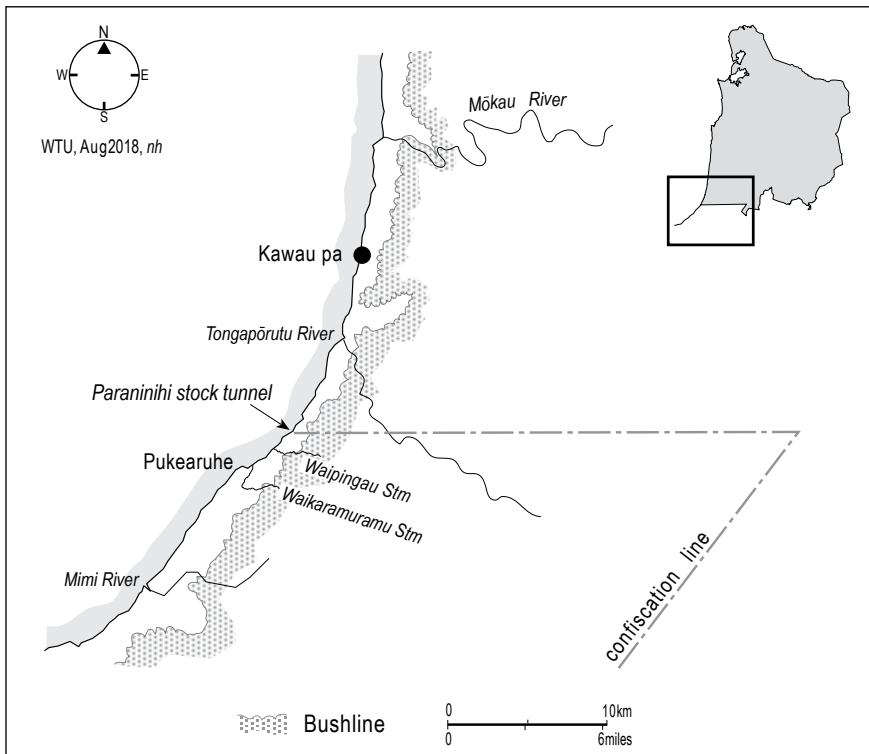
1005. G Cooper to colonial secretary, 24 April 1854 (doc A23, p 119).

1006. Document Q29(b) (Wetere), para 48.

1007. Document Q29(b), para 21.

1008. Waitangi Tribunal, *Ngāti Maniapoto/Ngāti Tama Settlement Cross-Claims Report* (Wellington: Legislation Direct, 2001).





Map 6.4: The northern boundary of the Taranaki confiscation

first refusal area.<sup>1009</sup> The Cross-Claims Tribunal found that the Crown ‘would not breach the principles of the Treaty of Waitangi by concluding a settlement of Ngāti Tama’s Treaty claims on the basis of the revised settlement package.’<sup>1010</sup>

As to the 1865 confiscation line, the Crown acknowledged in that inquiry that it was an artificial boundary marker and did not align with iwi boundaries. Crown counsel nevertheless indicated that the Crown was still planning to use the line in a limited way in the settlement, for the sake of convenience. Counsel further added that the Crown considered Ngāti Maniapoto’s interests south of that line to be ‘very limited’ – despite not having heard in-depth evidence from Ngāti Maniapoto on the matter.<sup>1011</sup> The Cross-Claims Tribunal encouraged the Crown to avoid use of the confiscation line in the settlement if at all possible (and indeed any other hard-edged boundary). ‘Such lines’, it said, ‘are simplistic and bald, and

1009. Waitangi Tribunal, *Ngāti Maniapoto/Ngāti Tama Settlement Cross-Claims Report*, p 7.

1010. Waitangi Tribunal, *Ngāti Maniapoto/Ngāti Tama Settlement Cross-Claims Report*, p 24.

1011. Waitangi Tribunal, *Ngāti Maniapoto/Ngāti Tama Settlement Cross-Claims Report*, p 8.

bear no relation to tikanga’, adding that ‘[w]hile convenient, they will usually be wrong.’<sup>1012</sup> We agree.

### **6.9.1.3 Conclusions on interests in Taranaki**

When the wars began in Taranaki in 1860, the Crown knew Ngāti Maniapoto had asserted rights and authority as far south as Waikāramuramu. This accords with what the Ngāti Maniapoto Lands and Resources (Wai 535) claimants argued.<sup>1013</sup>

When they described Waikāramuramu as a Red Sea, Ngāti Maniapoto likened their position to the pharaoh who was drowned when he attempted to pursue Moses after allowing him to lead his people out of Egypt into Canaan. This statement, repeated in 1882, shows that Ngāti Maniapoto acknowledged they would not contest the right of Te Atiawa and others to reoccupy their former homes in Taranaki to the south of that boundary.

In our view, before the Taranaki war the Crown implicitly acknowledged what Mr Stirling calls ‘less well-defined’ Ngāti Maniapoto interests reaching as far south as New Plymouth.<sup>1014</sup> We do not wish to overstate this point. We acknowledge that the overall situation was both more complex and more fluid than the idea of a Red Sea can encompass. The return of Ngāti Mutunga and Ngāti Tama in more significant numbers later in the 1860s added a further layer of complexity.

The evidence reviewed above (section 6.4.2) suggests that the main considerations for Ngāti Maniapoto in Taranaki at that time were to allow the former inhabitants to resume occupation in accordance with tikanga and in a way that acknowledged Ngāti Maniapoto mana, and to keep the peace so as not to deter European settlement. Crown officials appear to have condoned this exercise of Ngāti Maniapoto interests and tikanga.

Also relevant is that, when the Compensation Court (discussed below at section 6.9.5) sat in 1866 to hear claims about the confiscated lands in Taranaki, it regarded ‘Waikato’ (in its widest sense) as having been in control at both Oākura (west of New Plymouth) and at Waitara in 1840.<sup>1015</sup> By then, however, the Crown considered ‘Waikato’ and Ngāti Maniapoto to be rebels who had forfeited their rights. One important reason Ngāti Maniapoto interests in Taranaki remained poorly defined is that they were never formally investigated by the Crown.

### **6.9.2 What interests and manawhenua did Te Rohe Pōtae iwi and hapū hold in Waikato?**

The Ngāti Paretekawa and Ngāti Apakura claimants provided the clearest accounts of the interests that were taken from them in the confiscation.

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1012. Waitangi Tribunal, *Ngāti Maniapoto/Ngāti Tama Settlement Cross-Claims Report*, p 17.

1013. Document Q29(b), para 27.

1014. Document A147(b), p 10.

1015. ‘Papers relating to sitting of Compensation Court at New Plymouth’, AJHR, 1866, A-13, pp 3, 16.

**6.9.2.1 Ngāti Paretekawa**

The primary assertion of Ngāti Maniapoto mana north of the Pūniu was made by Harold Maniapoto. He stated that his tupuna Peehi Tūkōrehu wrested control of the area from his Ngāti Raukawa kin. Tūkōrehu lived at Mangatoatoa pā on the Pūniu River until his death in about 1835.<sup>1016</sup> Mr Maniapoto claimed Tūkōrehu and his immediate descendants had 'exclusive' authority over the lands between the Pūniu River and the Mangapiko and Mangaōhoi (also known as Mangahoe) Streams. This Ngāti Paretekawa territory, he said, encompassed the settlements at Ōtāwhao, Moeāwhā, Kihikihi, and Ōrākau. The mana of Tūkōrehu, he said, extended 'over all the people of the area 'surrounding the Mangatoatoa Pā extending from Kakepuku to Wharepūhanga, Wharepapa to Nukuhau on the banks of the Waikato river, to the Waipa river, Kakepuku, and [Te K]awa'. Mr Maniapoto said Ngāti Paretekawa today claim the region north of the Mangapiko to 'just below Whatawhata' and Nukuhau as 'an area of interest of Ngāti Maniapoto, along with a whole heap of others too'.<sup>1017</sup>

One section of Ngāti Paretekawa migrated from Whakapirimata pā, which lay between Kihikihi and the Pūniu River, south to Napinapi in the upper Mōkau valley. But this was not a permanent move. Rewi Maniapoto was a descendant of this section, but later he regarded Kihikihi and Ōtāwhao/Te Awamutu as his home.<sup>1018</sup>

Mr Maniapoto stated that between 50,000 and 55,000 acres immediately north of the Pūniu River belonged to Ngāti Paretekawa and Ngāti Ngutu-Rangiwaero. All of it was confiscated by the Crown.<sup>1019</sup>

Mr Maniapoto acknowledged that other hapū also asserted interests in this area. He said some Waikato tribes were invited to live at Ōtāwhao by Tūkōrehu.<sup>1020</sup> He stressed that Ngāti Paretekawa's grievances were with the Crown.<sup>1021</sup> It is important to record that no evidence was provided to this inquiry on behalf of Waikato, or from any hapū on the basis of their Waikato affiliations. We did note in chapter 3, however, three Ōtāwhao rangatira who signed the Treaty as Ngāti Ruru.<sup>1022</sup> In the Native Land Court, Rewi Maniapoto referred to Ngāti Ruru as a Waikato hapū who lived at Ōtāwhao. They were invited there, as were other hapū, by Tūkōrehu, following the marriage of his daughters to Te Wherowhero. This was for mutual protection against Ngāpuhi, but Ngāti Ruru subsequently returned

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1016. Document A110, pp 226–228; transcript 4.1.1, p 337 (Maniapoto, hearing week 4, 9 April 2013, Mangakotukutuku campus).

1017. Document K16 (Maniapoto), p 6; transcript 4.1.1, pp 684–685 (Maniapoto, hearing week 4, 9 April 2013, Mangakotukutuku campus).

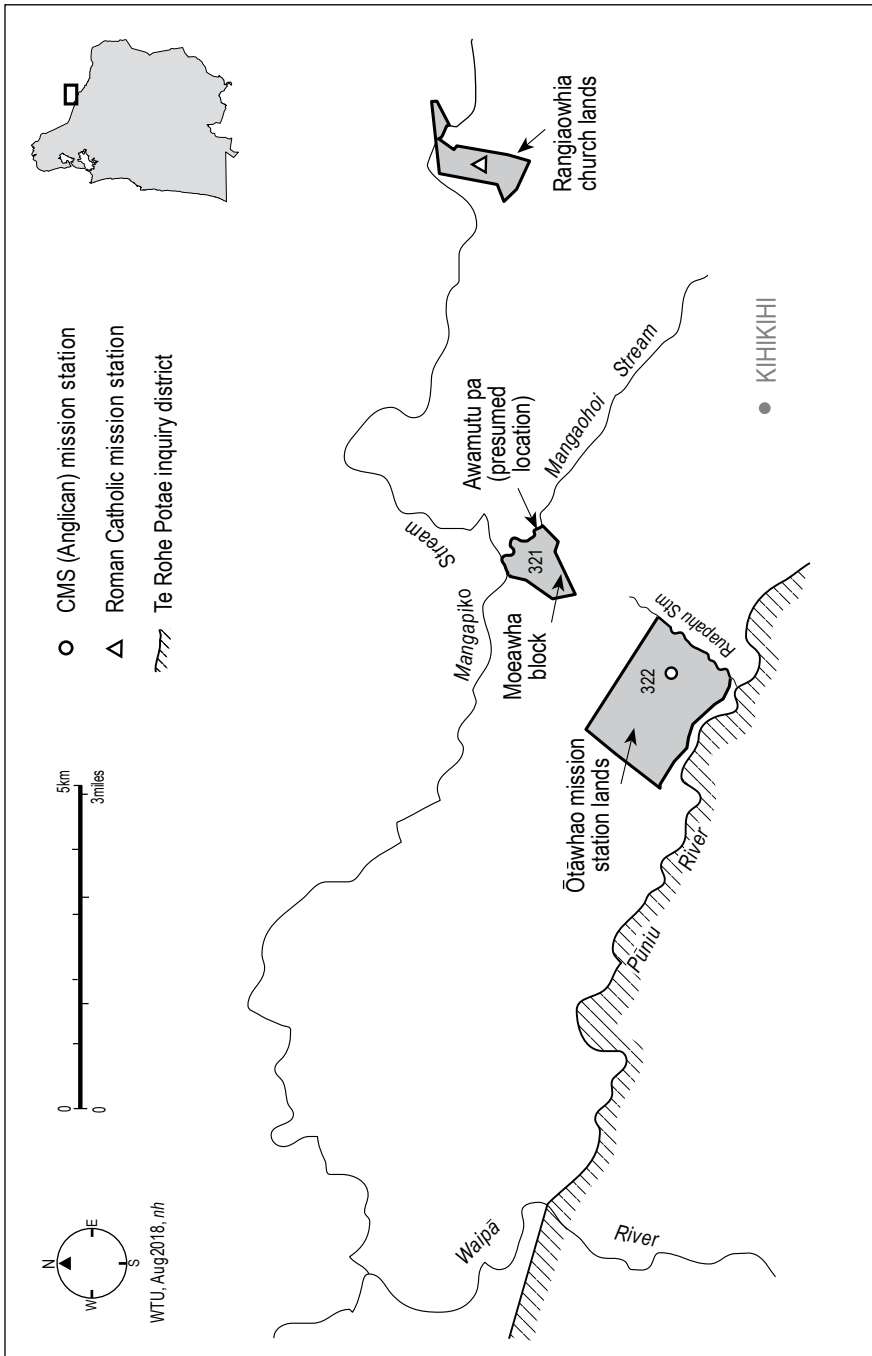
1018. Document B6 (Roa), pp 3–6; submission 3.4.189, p 13.

1019. Document K35, pp 38–39.

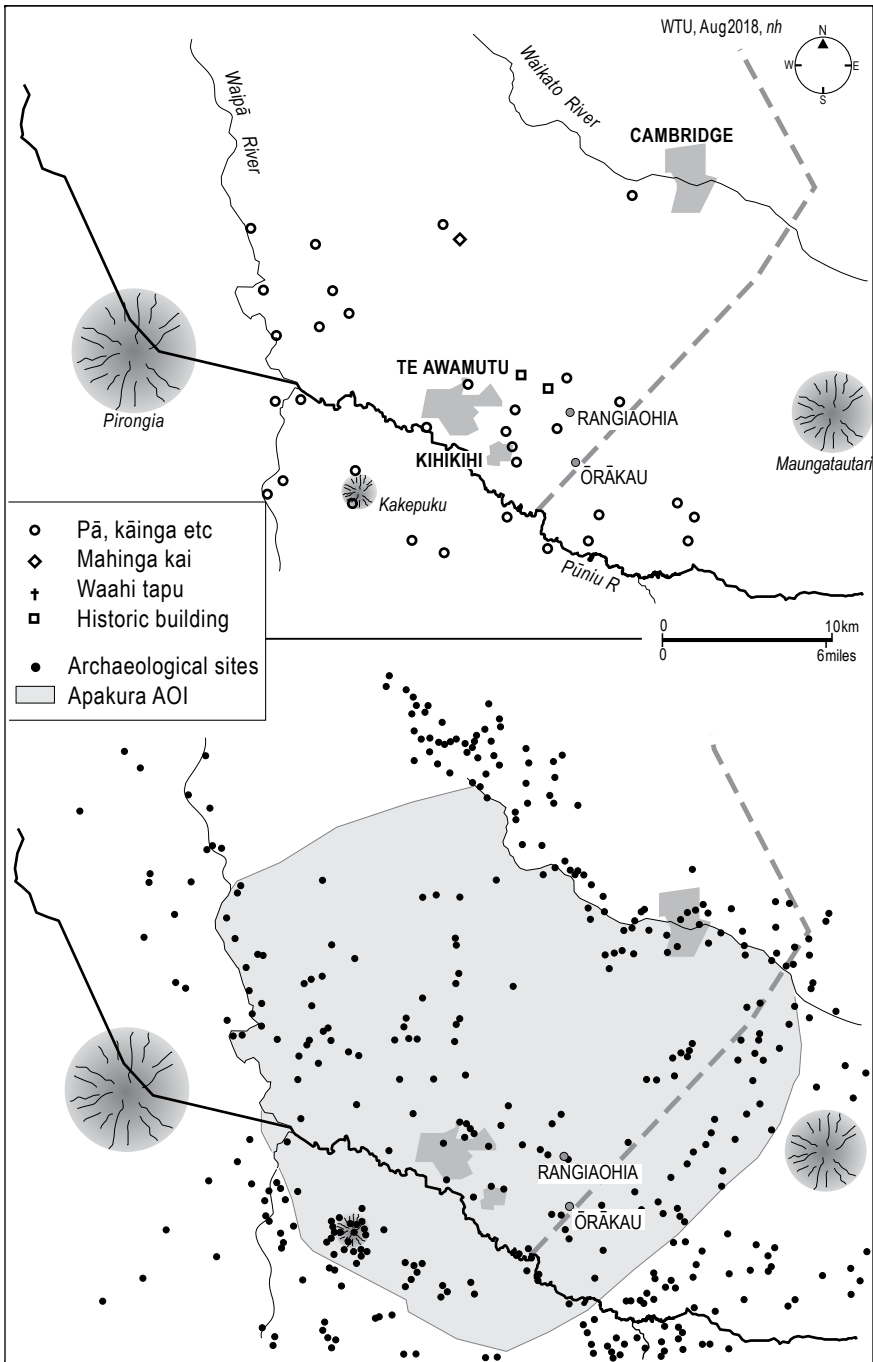
1020. Document K35, p 6.

1021. Document K35, p 45.

1022. Document A110, p 469; doc A23, p 70; doc A97, p 146.



Map 6.6: Approximate areas of interest claimed by Ngāti Paretekawa and Ngāti Apakura within the Waikato Raupatu District (submission 3.1.159)



Map 6.7: Ngāti Apakura claimed area of interest (doc P11, map 4)

to their homelands further north.<sup>1023</sup> Sources in this inquiry variously described Ngāti Ruru as a hapū of Ngāti Kauwhata, Ngāti Apakura, Ngāti Hauā, and Ngāti Korokī.<sup>1024</sup>

### 6.9.2.2 Ngāti Apakura

In their Ngāti Apakura history report, Moepātu Borell and Robert Joseph concluded that traditional Ngāti Apakura territories encompassed 'spheres of interest around Te Awamutu, Kaipaka, Hairini, Rangiaowhia, Puhue, Ōhaupo, Tuhikaramea, Ngahinapouri, Pirongia, and Kāwhia'.<sup>1025</sup> Of particular note were Ngāroto in the north, the Waipā in the west, and the northern and eastern outskirts of modern-day Te Awamutu in the south. Key Ngāti Apakura pā included Taurangamirumiru at Ngāroto, and Rangiaowhia to the east of Te Awamutu.<sup>1026</sup> However, the authors of the Ngāti Apakura history report were reluctant to make statements of exclusivity regarding rights to land. They emphasised that 'Māori concepts of property were fluid, practical and were more about respectful relationships between groups rather than keeping people out'. They suggested that parts of the Ngāti Apakura rohe, especially around Te Awamutu, formed debated lands, although by no means were they a no man's land.<sup>1027</sup>

There does not appear to be any attempt at specific calculation of the area confiscated from Ngāti Apakura. One estimate was that Ngāti Paretekawa and Ngāti Apakura together had 120,000 acres of their lands taken.<sup>1028</sup>

### 6.9.2.3 Other hapū of Ngāti Maniapoto

Claimants speaking for a number of other Ngāti Maniapoto hapū stated they had interests in the Waikato that were taken in the Crown's confiscation.

Fred Herbert said Ngāti Ngutu held extensive interests north of the Pūniu River, but 'because of the raupatu and our forced expulsion from our lands in the Waikato region, our knowledge of Ngutu's lands in this area has been dimmed. This is one of the effects of the raupatu I suppose.' Mr Herbert stated he had interests through his tupuna Ngutu in a large number of land blocks in the northern part of the Te Rohe Pōtae district, from Kāwhia and Aotea across to Wharepūhunga. He said his tupuna Whaita established a fighting pā at Whakapirimata, 'next to the Puniu River, at the end of St Legers Rd, just south of Te Awamutu. There is a reserve now where Whakapirimata once stood.' Ngutu himself had a pā at Ōtāwhao 'where the township of Te Awamutu now stands.' Ngāti Ngutu are named in the

1023. Document A110, pp 227–228; also see doc K35, p 5; transcript 4.1.10, p 346.

1024. Document K22(f) (Lennox), p 1; doc A120, pp 34, 38–40, 56, 166, 212; doc K1 (Tait), pp 20, 29; doc A124 (Young and Belgrave), pp 21–22; doc K16, pp 12–14, 25. Also see Angela Ballara, *Iwi: The Dynamics of Māori Tribal Organisation from c 1769 to c 1945* (Wellington: Victoria University Press, 1998), p 148.

1025. Document A97, p 119.

1026. Document A97, pp 36, 98–102; doc A98, pp 103–104.

1027. Document A97, pp 92–94.

1028. Document K35, p 38.

Waikato settlements, however Mr Herbert stated his iwi affiliation was to Ngāti Maniapoto.<sup>1029</sup>

The Te Ruki whānau stated that Ngāti Unu, Ngāti Kahu, and Ngāti Ngawaero had 'significant interests north of the Pūniu'.<sup>1030</sup> While little evidence was produced about these interests, the claimants urged the Tribunal 'to be mindful that their interests once extended into that region, however, when these lands were confiscated, their freedom of movement was constricted, and in the passage of time, their knowledge of those taonga beyond the Aukati line was also taken'.<sup>1031</sup>

Similarly, the Tūhoro whānau, whose primary hapū affiliations are to Ngāti Urunumia and Ngāti Apakura, no longer have knowledge of their land interests north of the Pūniu. Bruce Stirling, in his report for the whānau, noted a petition dated June 1912 signed by 37 people including Putuputu Tuhoro. It mentioned four pā north of the Pūniu, Mangateatea, Ōtāwhao, Tupapakunui, and Whakapirimata, and said that, after the fighting, those Pūniu lands had been taken.<sup>1032</sup>

As discussed above (section 6.7.5), the Ngāti Te Kanawa and Ngāti Pēhi claimants said they had interests at Te Rore that were lost when Crown troops set up camp there.<sup>1033</sup>

Ngāti Huiāo said they had 'kainga, pa, and wahi tapu in areas around Meremere and Kihikihi'. When the Crown forces invaded they 'voluntarily made a peace pact with local missionaries' and handed over all their firearms. This did not prevent their settlements from being attacked, however, and – unable to defend themselves – they fled south to seek refuge with their Ngāti Kinohaku whanaunga at Ōwhiro. The lands they had left were subsequently confiscated.<sup>1034</sup>

Robert Koroheke noted close ties between Ngāti Huiāo, Ngāti Te Kanawa, Ngāti Ngutu, and Ngāti Paretekawa, and went on to say: 'it is not straight forward to identify hapu interests in land as we are all so closely related'.<sup>1035</sup>

Morehu McDonald said that his tupuna Ingoa, together with his tuakana Te Kanawa, asserted Ngāti Maniapoto mana over Ngāroto in the course of supporting Ngāti Apakura in a dispute there.<sup>1036</sup> He went on to argue that, through the alliance that developed between Waikato and Maniapoto during the early decades of the nineteenth century, 'the very whenua that we are talking about, Ngāroto, Ohaupo, Te Awamutu, Kihikihi, Ōrākau was . . . where the conception and the inception of the Kīngitanga actually originated out of in that area'.<sup>1037</sup>

1029. Document A7 (Herbert), pp 2–6.

1030. Document P24 (Te Ruki whānau), p 3.

1031. Submission 3.4.251, p 2.

1032. Document A144, pp 2, 7, 152–153; doc A63(a), pt1, pp 873–877.

1033. Claim 1.2.81, paras 10–11; doc S50(c), paras 38–43.

1034. Claim 1.2.126, p 7.

1035. Document S36 (Koroheke), p 6.

1036. Transcript 4.1.1, pp 52–54.

1037. Transcript 4.1.1, p 209.

**6.9.2.4 Ngāti Kauwhata and Ngāti Wehi Wehi**

Kauwhata was a descendant of the Tainui ancestor Whatihua. He was born in Kāwhia but later moved to the western side of Maungatautari and established himself with his people at Puhue, west of Ōrākau across the Mangaohoi Stream. The Ngāti Kauwhata and Ngāti Wehi Wehi claimants said Rangiaowhia marked the eastern extent of their traditional rohe at the time of the Crown invasion in 1864.<sup>1038</sup> Claimant historian Peter McBurney supported this assertion, but he acknowledged that: ‘Intermarriage between hapū created complex genealogical networks that overlaid the land.’<sup>1039</sup> He concluded Ngāti Kauwhata came to share ‘close whanaungatanga with Ngāti Raukawa and Ngāti Hauā for many generations, often cohabiting in the same pā and kāinga.’<sup>1040</sup> Mr McBurney described Ngāti Wehi Wehi as a hapū of Ngāti Kauwhata. Wehi Wehi was a son of Kauwhata.<sup>1041</sup>

The claimants identified the Moanatuatua and Rotoorangi swamps, lying between Rangiaowhia and Ōhaupō in the west and Puhue and Pukekura in the east, as significant food resources that were confiscated.<sup>1042</sup> Mr McBurney recorded that these swamps were prized for their tuna. They were a source of conflict between Ngāti Apakura and Ngāti Kauwhata, which was eventually resolved by marriage between Māui of Apakura and Urumakawe of Kauwhata.<sup>1043</sup>

Many Ngāti Kauwhata and Ngāti Wehi Wehi moved south to the Kapiti district in a series of migrations that began about 1824. They maintained that they were not forced out of Waikato and did not relinquish their interests there, that some remained in Waikato and continued to move between their northern and southern homelands, and that their assertion of interests in Waikato continues to the present day and is acknowledged by other Waikato iwi and hapū.<sup>1044</sup>

**6.9.2.5 Conclusions on interests in the Waikato raupatu district**

The evidence reviewed here supports the conclusion drawn in chapter 2 of this report that the Pūniu River region, especially around Kakepuku, Mangatoatoa, Ōtāwhao, Kihikihi, and Rangiaowhia, was historically a sought-after area of considerable strategic and economic value. As a consequence, the region saw much tribal movement and conflict. Claimant counsel described Mangatoatoa as ‘a bustling interface’, and it is a description that well suits the wider area.<sup>1045</sup>

It is clear that, when Crown troops attacked the district, Ngāti Paretekawa and Ngāti Apakura were the predominant groups in the areas those claimants have identified. We make no conclusion on whether any group had an exclusive interest. We note the evidence of Mr Maniapoto that Tūkōrehu sought to control

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1038. Submission 3.4.154(a), p 8; doc K1, pp 12–17.

1039. Document A120, pp 28–29, 43–49; doc A120(c) (McBurney), p 4.

1040. Document A120(c), p 6; see also doc A120, pp 28, 159.

1041. Document A120, p 30.

1042. Submission 3.4.134, pp 18–19, 67.

1043. Document A120, pp 65–68.

1044. Submission 3.4.134, pp 7–12; submission 3.4.147, pp 12–15; submission 3.4.154(a), pp 10–14; doc K1, p 24.

1045. Submission 3.4.198, p 6.



the passage of people and goods across the Pūniu River, especially where conflict or open warfare were likely (chapter 2). This is indicative of his mana in the district. After the death of Tūkōrehu in the mid-1830s, it is not clear to what extent Ngāti Paretekawa were able to maintain the authority their tupuna had wielded. However, the discussion of the expulsion of Gorst from Te Awamutu (section 6.6) provides evidence that by the 1860s Ngāti Maniapoto, through Rewi Maniapoto and Ngāti Paretekawa, were playing a determining, albeit far from uncontested, role in the district.

Other Ngāti Maniapoto hapū also asserted interests to the north of the Pūniu. Their evidence was not as specific. However, their interests in the north of Te Rohe Pōtae are clear and acknowledged and it is implausible that the arbitrary line of confiscation circumscribed or reflected a definition of their customary rights.

The evidence available does not support a conclusion that Ngāti Wehi Wehi had interests at Rangiaowhia. Mr McBurney's report suggested that Ngāti Wehi Wehi interests in Waikato were at Maungatautari and places further east such as Ukaipo marae 'at the foot of the Kaimai'.<sup>1046</sup>

The position of Ngāti Kauwhata is less clear. A great deal of evidence was submitted on the efforts of Ngāti Kauwhata to have their Waikato interests acknowledged by the Crown following the raupatu. Much of this evidence, however, related to the Pukekura, Puahue, Ngamoko 2, and Maungatautari blocks, which lie east of the Military Settlements block. The blocks were excluded from this inquiry except 'to the extent that their title and alienation history' related to blocks which were included. Judge Ambler directed that 'Ngāti Kauwhata Raupatu claims in relation to Rangiaowhia *only* are to be included'.<sup>1047</sup>

There is some evidence of Ngāti Kauwhata being at Rangiaowhia at the time of the raupatu. In statements made to the 1881 Ngāti Kauwhata claims commission, which was established after the Crown admitted they had been unfairly excluded from consideration by the Native Land Court in Waikato, Hoeta Te Kahuhui stated that 20 Ngāti Kauwhata returned from Kapiti in the 1850s at the invitation of two Ngāti Koura rangatira, Porokoru and Haunui. Hoeta named 'Teretiu, Pukarahi, my uncle, and their wives, children and grandchildren' and said they settled first at Rangiaowhia and then at Te Whānake. They fled from the invasion to Taupō, where they all died save three who returned to Kapiti.<sup>1048</sup>

Rewi Maniapoto told the commission that, although Ngāti Kauwhata had been invited back from Kapiti, 'Hoani Te Waru and Hone Papita did not consent'.<sup>1049</sup> Hoani Papita was also known as Kahawai Pungarehu and he signed the Treaty on behalf of Ngāti Apakura. His principal pā was Ngāhuruhuru at Rangiaowhia. Hori Te Waru also signed the Treaty, and arranged for the construction of the first flour mill at Rangiaowhia for Ngāti Apakura.<sup>1050</sup>

1046. Document A120, pp 30–34, especially page 33.

1047. Memorandum 2.5.24, pp 3–4.

1048. 'Report of the Ngati Kauwhata Claims Commission', AJHR, 1881, G-2A, pp 19–20; doc A120, p 210.

1049. 'Report of the Ngati Kauwhata Claims Commission', AJHR, 1881, G-2A, p 33; doc A120, p 224.

1050. Document A97, pp 52, 54, 147–148.

The evidence does not, in our view, support a conclusion that Ngāti Kauwhata maintained interests at Rangiaowhia. However, the evidence does indicate that Ngāti Kauwhata maintained some interests in Waikato to the east of Rangiaowhia and that this would have included the Moanatuatua and Rotoorangī swamps.

### **6.9.3 Why and by what process did the Crown confiscate Te Rohe Pōtae iwi and hapū lands?**

#### **6.9.3.1 Why did the Crown decide on confiscation?**

The claimants argued that confiscation was an essential component of a plan 'to ensure British control of New Zealand and acquire land for settlement' and 'based ultimately on [the Crown's] desire to secure clear title'. Counsel also submitted that the Crown saw confiscation as an opportunity for land speculation.<sup>1051</sup>

In closing submissions Crown counsel said that in 'broad terms . . . the Crown was attempting to exert its authority' when it invaded Waikato in 1863. Counsel went on to quote from Governor Grey's July 1863 proclamation:

Those who wage war against Her Majesty, or remain in arms, threatening the lives of Her peaceable subjects, must take the consequences of their acts, and they must understand that they will forfeit the right to the possession of their lands guaranteed to them by the Treaty of Waitangi, which lands will be occupied by a population capable of protecting for the future the quiet and unoffending from the violence with which they are now so constantly threatened.<sup>1052</sup>

As the Tauranga Raupatu Tribunal pointed out, confiscating land in response to rebellion had a long history in Britain. These confiscations were sometimes accompanied by military settlement. In Ireland, for example, Irish Catholic lands were confiscated and given to Protestant soldiers. Confiscation also occurred in Scotland and in other British colonies in various parts of the world.<sup>1053</sup>

The Crown did not initially try to confiscate land from Māori after the northern Taranaki war ended in March 1861. It is unnecessary to look for reasons beyond the facts that the war ground to a stalemate and was ended by negotiation. But according to Harriet Browne, wife of Governor Browne, the question of whether to confiscate land from Māori was already being considered. She succinctly set out arguments for and against:

For demanding land is 1st the necessity of punishing rebellion. 2nd compensating ruined settlers. Against it is 1st the belief among the Natives that the object of the Government is to seize their lands which fills them with distrust & 2nd the imputation

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1051. Submission 3.4.127, p 30, 35; submission 3.4.130(e), pp 17–18.

1052. Grey to Chiefs of Waikato, 11 July 1863, 'Papers relating to Military Settlements in the Northern Island of New Zealand', AJHR, 1863, E-5, p 6 (submission 3.4.300, p 7).

1053. Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, pp 153–154.

which is cast in England on the motives of the settlers in desiring a war by which they would acquire land.<sup>1054</sup>

Dr O'Malley considered that confiscation was implicit in Governor Browne's May 1861 demand for unconditional submission to the Queen. On that occasion, at Ngāruawāhia, Browne told Māori that if they set aside the authority of the Queen and the law, the land would remain theirs 'so long only as they are strong enough to keep it: – might and not right will become their sole Title to possession.'<sup>1055</sup> The governor's statement was clearly a threat that if Māori did not submit the Crown would have no compunction in taking their land.

Meanwhile, colonial officials grappled with the legal justification for confiscation. Attorney-General Henry Sewell argued that land could be taken by executive decision, while Crown law official FD Fenton said legislation would be required to sanction confiscation.<sup>1056</sup>

The first concrete proposal for land confiscation related to land in Taranaki and was developed in a memorandum from Premier Alfred Domett to Governor Grey dated 5 May 1863 (the day after the Oākura ambush).<sup>1057</sup> Domett 'confirmed the agreement reached between ministers and the governor the previous evening for lands at Taranaki between Omata and Tataraimaka belonging to those implicated in the Oākura ambush to be "forfeited to Her Majesty, and a Military Settlement formed there".'<sup>1058</sup> This policy of establishing military settlements to expand the area under Crown control became the underlying principle behind confiscation in both Taranaki and Waikato. As *The Taranaki Report* explained:

the settlers were to remain behind a protecting ring of redoubts, which the army gradually extended. As the line of fortresses expanded, military settlers were introduced to fill the land behind them. By this means, the frontier was pushed beyond the lands claimed by purchase, to effect a creeping confiscation of Maori land. . . . In support came a series of proclamations, laws, and regulations to make the process legal and to put Maori in rebellion at law, irrespective of the position in fact.<sup>1059</sup>

In June 1863, as the governor and ministers were making the final decision to invade the Waikato, Native Minister Francis Dillon Bell stated that the Government's intention with respect to any land taken by the advancing troops was to 'fill it up with military settlers, & perpetually advance our frontier.'<sup>1060</sup> Domett further developed his Government's policy of confiscation, arguing that a conclusive end to the war would require 'the introduction of an armed popula-

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1054. Harriet Browne, diary, 24 March 1861 (doc A22, pp 256–257).

1055. 'Copy of a Declaration by the Governor to the Natives assembled at Ngāruawāhia', 21 May 1861 (doc A22, p 257).

1056. Document A22, pp 256–265.

1057. Document A22, p 265.

1058. Document A22, p 265.

1059. Waitangi Tribunal, *The Taranaki Report*, pp 91–92.

1060. Bell to Mantell, 7 July 1863 (doc A22, p 268).

tion, to be located on the land taken from the enemy' and that the 'rebellion of the Waikato tribes places within the power of the Government the locality required'.<sup>1061</sup>

In August 1863, Governor Grey set out the twin aims of his policy in a memorandum to the Duke of Newcastle: these were to ensure the permanent security of the country and to deter Māori from murdering Europeans and destroying their settlements. Grey could 'devise no other plan by which both of those ends can be obtained' than to take the lands of the Waikato tribes supposed to have committed such 'outrages' and then settle large numbers of Europeans on them who would be strong enough to defend themselves and guarantee the 'entire command' of the province.<sup>1062</sup>

Grey wrote to Newcastle that raupatu in Waikato would

convince the badly disposed Natives that it is hopeless to attempt either to drive the Europeans from the country, or to place them throughout a great part of its extent under the rule and laws of a king of the Native race, elected by the Maori population, who would soon turn his arms against his brother chiefs, and render the Northern Island from end to end one large scene of murderous warfare . . .<sup>1063</sup>

Also in August 1863, notices were gazetted detailing the conditions upon which 'land in the Waikato country' would be granted to various categories of settler, these being volunteer militia men, military and naval settlers, and general settlers willing to perform military service.<sup>1064</sup> Native Minister Bell had sailed for Melbourne, accompanied by Waikato Civil Commissioner John Gorst, seeking to attract up to 5,000 men who could guard the planned frontier. Bell hoped to 'gradually pour in an armed population to the settlements of the North Island'.<sup>1065</sup> The *Daily Southern Cross* reported Bell telling the volunteers about to embark in Melbourne that they would have to hold by force of arms 'land we have long tried to obtain by peaceable means'.<sup>1066</sup>

A memorandum drafted by Premier Alfred Domett in early October made clear that by then there had been detailed consideration of how the whole plan for military settlement would work, and it was predicated on land confiscation.<sup>1067</sup>

Claimant counsel placed some emphasis on this memorandum, which went in considerable detail into the financial underpinnings of a settlement scheme founded upon confiscated lands. We are not convinced, however, by the claimants' argument that, in effect, the Crown saw raupatu as an opportunity for land

1061. Document A22, pp 271–273; Domett memorandum, 31 July 1863, 'Papers relating to Military Settlements in the Northern Island of New Zealand', AJHR, 1863, A-8, p.2.

1062. Grey to Newcastle, 29 August 1863, 'Papers relating to Military Settlements in the Northern Island of New Zealand', AJHR, 1863, A-8, p.1.

1063. Grey to Newcastle, 29 August 1863, 'Papers relating to Military Settlements in the Northern Island of New Zealand', AJHR, 1863, A-8, p.1.

1064. 'Volunteer Militia Settlers', 5 August 1863, *New Zealand Gazette*, no 35, pp 303–306.

1065. Bell to Mantell, 26 July 1863 (doc A22, pp 363–365).

1066. *Daily Southern Cross*, 19 September 1863 (doc A22, pp 362–365).

1067. Domett, memorandum, 5 October 1863, AJHR, 1863, A-8A, p.2.

speculation. The sums of money required to pay for the war were, in colonial terms, unprecedented and it would have been reckless for the Crown not to have carefully considered the financial risk it faced. Moreover, while Domett wrote that raising a large loan to pay for the war was likely to be ‘not only prudent, but profitable’, he went on to assert that ‘were it neither one nor the other, financially speaking, it is an absolute necessity, unless some other plan can be devised for confronting and crushing the Maori difficulty.’<sup>1068</sup> In other words, the premier was set on war whatever the cost. The evidence does not support the claim that the Crown’s financial gain was a determinant of its war and confiscation policy.

This is not to rule out the likelihood that Ministers and others involved in the machinery of the settler government took advantage of opportunities for personal enrichment. Although the scheme of military settlement appeared to fulfill Bell’s desire to ‘pour in an armed population’, lack of capital, lack of support, distance from markets, the variable quality of the land, and reluctance to leave the perceived safety of the townships for an isolated life on the ‘frontier’ all contributed to the failure of the scheme – not to mention the fact that many of those who had signed up were neither prepared for nor suited to the drudgery of settlement.<sup>1069</sup>

Dr O’Malley discussed evidence that by 1867 nearly half the 50-acre farm lots in Waikato had been sold, for as little as £10 to £15.<sup>1070</sup> In the early 1870s, one visitor wrote that between Alexandra and Ngāruawāhia: ‘There are to be found thousands of acres, formerly supporting a large native population and producing corn in abundance, which have once more returned to a wild state.’<sup>1071</sup> A map of the Military Settlements block from 1871 shows that ‘Thos Russell’ was prominent among the early purchasers. Thomas Russell was Minister of Defence in the Fox–Whitaker Government.<sup>1072</sup> By 1880, Dr O’Malley said, the average price of a 50-acre farm lot was £300.<sup>1073</sup>

The evidence does support the claimants’ argument that confiscation was an essential component of a plan ‘to ensure British control of New Zealand and acquire land for settlement.’<sup>1074</sup> Grey’s August 1863 memorandum to Newcastle amounted to an explicit rejection of the possibility that Māori might continue to live on their own lands under the rules and laws of the Kīngitanga. Under Domett’s plan, settlements ‘would reach as far as Rangiawhia, and the upper parts of the great Waikato basin.’<sup>1075</sup> This shows that, from an early stage of the invasion, the confiscation of Te Rohe Pōtae lands formed a key part of the colonial government’s plans.

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1068. Domett, memorandum, 5 October 1863, AJHR, 1863, A-8A, p 11 (submission 3.4.130(e), pp 17–18).

1069. Document A22, pp 445–451.

1070. Document A22, p 447.

1071. JH A St John, *Pakeha Rambles through Maori Lands* (doc A22, p 450).

1072. Document A30(g)(1), pp [21, 37].

1073. Document A22, p 448.

1074. Submission 3.4.127, p 30.

1075. Domett, memorandum, 5 October 1863, AJHR, 1863, A-8A, p 2.

Despite the Crown's important concessions that the confiscations were wrongful and in breach of the Treaty, by quoting Grey's July proclamation in closings the Crown explicitly linked confiscation with the supposed threats of violence made by Māori. We have already concluded (section 6.6.5) that these allegations were unfounded and that it was wrong for the Crown to attribute, even in part, the responsibility for the war to Māori. We think it is important to be very clear that the same applies here: in no way can responsibility for the confiscations be attributed to Kīngitanga Māori generally or to Rewi Maniapoto in particular.

We turn now to examine the establishment of the processes by which the confiscations were effected.

### **6.9.3.2 How was the confiscation scheme established?**

The Taranaki and Waikato raupatu were carried out when New Zealand was in a state of transition with respect to policy decisions about matters affecting Māori. Up to 1862, responsibility for native affairs had rested with the governor, as the British Crown's representative. Between then and 1865, when full responsibility for such matters passed to the New Zealand settler government, there was a period of transition. During that time, the settler assembly nominally decided 'the direction of Native policy and the management of Native affairs', as Governor Grey described it, but the assent of the governor was still required.<sup>1076</sup>

When Parliament convened in October 1863, the governor and his Ministers were agreed on the desirability of large-scale land confiscation and military settlement in Taranaki and Waikato. We have seen that plans were already well advanced and formed an integral part of the overall war strategy.<sup>1077</sup>

The resignation of Domett's ministry on 30 October did not affect plans for the scheme, which continued under the new government led by Frederick Whitaker.<sup>1078</sup> Reader Wood, the new colonial treasurer, noted with satisfaction that the population of New Zealand had increased by nearly 60 per cent over the past two years, and he indicated that new settlement would henceforth be directed to particular locations, with a view to swinging the balance against the 'rebel Natives' living there:

We propose to commence a system of immigration, a system of colonization by which a population will occupy the waste lands of the rebel districts, and prevent the possibility at any future time of these Natives again rising in insurrection against us.<sup>1079</sup>

Ministers continued to hope that confiscation would pay for itself. The essential outline of Domett's plan remained: to take more land than necessary for this new

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1076. Sir George Grey, NZPD 1861–1863, 19 October 1863, p734.

1077. Sir George Grey, NZPD 1861–1863, 19 October 1863, p735.

1078. NZPD, 1861–1863, and Frederick Whitaker, 29 October 1863, p749.

1079. Wood, 10 November 1863, NZPD, 1861–1863, pp 829, 831.

settlement so that the excess could be sold to help repay a loan being obtained from the British government:

when the lands in rebel districts are taken and sold the loan itself will be a first charge upon the proceeds of the sale thereof. Exactly what amount of land will be available it is difficult to say; but, if we take all the land that belongs to the rebel natives in the Thames and Waikato, at Taranaki, and at Wanganui, I think there will be nearly – after location the settlers upon it – a balance of something closely approaching to two millions of acres.<sup>1080</sup>

Four Acts were passed late in December 1863 to put this scheme into operation.

#### **6.9.3.2.1 SUPPRESSION OF REBELLION ACT 1863**

In a ministerial statement made in November 1863, Premier Frederick Whitaker said that the Suppression of Rebellion Bill was founded on similar Acts by the British government, including its Suppression of Disturbances (Ireland) Act of 1833. Describing it as ‘a mitigated form of martial law’, he said that it would be applied not to particular districts but rather to certain offences.<sup>1081</sup> William Fox later went so far as to say the Bill copied the 1833 Act ‘word for word’. No one, he said, would be able say that the nature of the Bill was unheard of, or that it was ‘abhorrent to the spirit of the British Constitution’. Fox claimed that the British Act had been passed not for the suppression of open rebellion but rather for ‘putting down illegal disturbances, secret associations, and agrarian riots’. Henry Sewell, member for Auckland, said that the 1833 Act had merely established ‘military Courts . . . in disturbed districts’, which was not the same as establishing martial law.<sup>1082</sup>

The Act gave the governor sweeping and draconian powers to repress what the preamble called ‘a combination for the subversion of the authority of Her Majesty and Her Majesty’s Government’. The Act did not mention confiscation as such. It did, however, authorise the taking of ‘vigorous and effectual measures’, not only to suppress the so-called rebellion but also ‘to punish all persons acting aiding or in any manner assisting in the said Rebellion or maliciously attacking or injuring the persons or properties of Her Majesty’s peaceable and loyal subjects in furtherance of the same’. The Act was signed into law on 3 December 1863.

#### **6.9.3.2.2 NEW ZEALAND SETTLEMENTS ACT 1863**

The New Zealand Settlements Act was signed into law the same day, on 3 December 1863. The stated purpose of the Act was to introduce peace and good order in districts where they had been absent, by means of establishing military settlements. It was hoped to attract ‘from fifteen to twenty thousand’ men for these

1080. Wood, 10 November 1863, NZPD, 1861–1863, p 832.

1081. Whitaker, 3 November 1863, NZPD, 1861–1863, p 755.

1082. Fox, 3 November 1863, 5 November 1863, NZPD, 1861–1863, pp 760, 791–792, 799; Sewell, 13 November 1863, NZPD, 1861–1863, pp 858–860.

settlements, of whom ‘about ten thousand’ would be directed to the Waikato. The settlers would also be allowed to bring ‘a moderate proportion of their wives and families.’<sup>1083</sup> The Government intended that the establishment of the settlements should ‘as much as possible follow the course of the troops’: ‘that is to say, that, as the land is taken up by military occupation and secured, settlement shall follow as soon as possible upon the land so secured.’<sup>1084</sup>

The Act provided that, where the governor was satisfied tribes had rebelled, land could be taken for settlement under a three-stage process:

- ▶ first, a district where tribes were in rebellion was to be declared (section 2);
- ▶ secondly, ‘eligible sites’ within the district would be set apart for settlement (section 3); and,
- ▶ thirdly, the governor-in-council could then ‘reserve or take any Land within such District’ as might be needed for the purposes of the Act (section 4).

By doing so, the provisions of the Act effectively authorised the transformation of customary land into Crown land.

During the parliamentary debate on the Bill, Premier Frederick Whitaker was at pains to dispel any notion that the Government did not have the power to take land. It was clear, he said, that such power might ‘justly and properly be exercised in cases of State necessity’. A further principle he invoked to justify the takings was that ‘when one side of a treaty was violated the other party was discharged from all obligation; and the Natives had most certainly violated the Treaty of Waitangi.’<sup>1085</sup>

When William Fox introduced the Bill for its second reading in the House of Representatives on 5 November 1863, he offered the assurance that ‘in any district it should appear that any section of the Natives have not been in rebellion, it will be open for them to receive compensation as awarded by the Court to be constituted under this Bill.’<sup>1086</sup> He later claimed that the Government did not anticipate taking land from non-rebels, but then immediately added the caveat ‘not at present, at all events.’<sup>1087</sup>

James FitzGerald (Member for Ellesmere, in Canterbury) was the only speaker to oppose the Bill.<sup>1088</sup> He objected that it was contrary to the guarantees of the Treaty, and he criticised the proposed Compensation Court, which he saw as offering reimbursement only after the ‘robbery’ had occurred.<sup>1089</sup>

### 6.9.3.2.3 NEW ZEALAND LOAN ACT 1863, AND LOAN APPROPRIATION ACT 1863

The New Zealand Loan Act 1863 envisaged raising a loan of £3 million in London to fund the war. It was passed into law on 14 December. Also passed that day was the Loan Appropriation Act, which set out how the money was to be spent. Included in those calculations were:

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1083. Wood, 12 November 1863, NZPD, 1861–1863, p 847.

1084. Wood, 12 November 1863, NZPD, 1861–1863, p 847.

1085. Whitaker, 13 November 1863, NZPD, 1861–1863, p 869; doc A22, p 306.

1086. Document A22, p 303.

1087. Fox, 17 November 1863, NZPD, 1861–1863, p 891.

1088. Document A22, p 305.

1089. Document A22, p 304.



- ▶ (at section 2) £300,000 for introducing settlers from Australia, Great Britain, and elsewhere (with £150,000 of that being for the province of Auckland, £75,000 for Taranaki, and the rest for Hawkes Bay and areas south of Whanganui);
- ▶ (section 3) £900,000 towards the cost of surveying and putting settlers on land; and
- ▶ (section 4) £100,000 for ‘payment of Compensation in respect of land taken under the New Zealand Settlements Act’.

This nine-to-one weighting of expenditure in favour of settlers in the appropriations made it clear that the primary object of the Government’s scheme was to actively assist settlers on to confiscated land. The appropriation of £100,000 for compensation appeared to almost immediately contradict Fox’s guarantee that the land of ‘loyal’ Māori would not be taken.

From London, Secretary of State for the Colonies Edward Cardwell sent the governor a prescient analysis of the legislation. The number of military settlers Domett had proposed had quadrupled and

consequently the immediate amount of confiscation, is quadrupled, the compulsory power of acquiring land within a proclaimed district is, by the terms of the Act, applied alike to the loyal and the disloyal; the right of compensation is jealously limited, and is denied even to the most loyal native if he refuses to surrender his accustomed right of carrying arms, and these powers are not to be exercised exceptionally and to meet the present emergency, or by regularly constituted courts of justice, but are to be permanently embodied in the law of New Zealand; and to form a standing qualification of the treaty of Waitangi.<sup>1090</sup>

Rather than disallow the Act, however, Cardwell decided to place his faith in the governor:

not having received from you any expression of your disapproval, and being most unwilling to take any course which would weaken your hands in the moment of your military success, Her Majesty’s Government have decided that the Act shall for the present remain in operation.<sup>1091</sup>

A clearer official acknowledgement that the Treaty would not be upheld is difficult to imagine.

#### **6.9.4 How were the confiscations carried out?**

A formal proclamation of the Government’s intentions towards Waikato-Maniapoto Māori did not come until late October 1864, followed nearly two months later by one relating to Taranaki Māori. From comments made by former native affairs minister Bell, this hiatus would seem to have been due, at least in

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1090. Cardwell to Grey, 26 April 1864, AJHR, 1864, E-2, p 20 (doc A22, p 344).

1091. Cardwell to Grey, 26 April 1864, AJHR, 1864, E-2, pp 21–22 (doc A22, p 347).

part, to 'a dispute between the Governor and the late Ministry' about 'the extent to which the lands were to be confiscated under the [New Zealand Settlements] Act'.<sup>1092</sup> As explained above (section 6.7.9), the governor and his Ministers also appear to have disagreed over whether to continue military operations in Waikato, and to what end. The proclamations urged Māori to 'come in' and submit to the Queen's authority or risk confiscation. Proclamations about the land to be taken in each district then followed a few weeks after that.

#### **6.9.4.1 The Waikato confiscation districts**

By March 1864, more than 4,000 men from Australia and the Otago goldfields were engaged on military service in Waikato, with the promise of land as their reward.<sup>1093</sup> General Cameron ordered redoubts to be constructed from Ōrākau to Alexandra, along the southern extent of the land he had occupied.<sup>1094</sup> This territory, bounded by the Pūniu River, eventually came to define the limit of the Crown's confiscation. The claimants' interests in the Waikato confiscated lands lie primarily in this region adjacent to the Pūniu River (section 6.9.2).

How this situation on the ground would be reconciled with the process the Government had set out in its confiscatory legislation remained to be seen. An official notice issued by the Government on 2 February 1864 set out terms under which Māori submission to the Crown would be accepted. How widely this notice was circulated is unclear, but it made plain that the Crown was intent on confiscation, stating that for those who had joined the enemy, but did not fight, 'the disposal of their lands rests with the Governor'.<sup>1095</sup>

In April, Ministers drafted an ultimatum. It was signed by Governor Grey and required all who desired peace to submit to the Crown by 1 July 1864. While those who had resisted the Crown had 'justly forfeited all their lands', an opportunity was to be given them to live in peace if they took an oath of allegiance, surrendered their arms, and went where they were told until a permanent place could be given by Crown grant. Military settlers would be placed throughout Waikato for the protection of all.<sup>1096</sup> Then, on 29 April, the British suffered a severe defeat at Gate Pā near Tauranga, and the proclamation was never issued.

On 17 May, Ministers proposed declaring the entire district south of the Tāmaki portage, as far as a line between Arowhenua (likely near or at what is today Wharepūhunga maunga), Hangatiki, and the mouth of the Awaroa River on the southern side of Kāwhia Harbour.<sup>1097</sup> Hangatiki lies about 30 kilometres south of the Pūniu River, deep within Ngāti Maniapoto territory, where Rewi was reported

1092. Weld, 5 December 1864, NZPD, 1864–1866, p100.

1093. Document A22, p 367.

1094. Document A22, pp 178, 362.

1095. 'Regulations in reference to Maoris who have taken part in the War and in the King Movement', 2 February 1864, AJHR, 1864, E-2, pp 32–33.

1096. Whitaker, 'Memorandum by Ministers enclosing Draft Proclamation', 22 April 1864 (doc A22, pp 370–372).

1097. Document A22, p 377.

to have built large new fortifications.<sup>1098</sup> In June, Premier Whitaker informed Grey of Ministers' view that Ngāti Maniapoto lands were not 'sufficiently touched'.<sup>1099</sup> At about this time, according to the long-time missionary at Ōtāwhao, John Morgan, defence minister Thomas Russell told Morgan the Government still intended to 'deal separately with Ngatimaniapoto'.<sup>1100</sup> With the military settlers still on full pay and rations, Grey and Cameron agreed that village settlements needed to be set up, although no formal proclamation of confiscation had been made.<sup>1101</sup>

On 30 September, however, the Whitaker government resigned (although Ministers continued to hold office as 'Responsible Advisers' until a new administration could be formed). The same day, Grey sought clarification of precisely how much land Ministers had intended to confiscate. A curt memorandum was tendered (with reluctance, lest it be construed as 'deal[ing] with important questions of policy', which given their resignation would be 'both irregular and improper') together with a calculation of the fate of one million acres of Waikato land: 360,000 acres would be allocated to the military settlers; 240,000 acres set aside for immigrants from England; and the remainder sold. A map was also provided, showing the intention to take land as far south as Hangatiki.<sup>1102</sup>

Not until 24 October 1864 was a proclamation finally published, and even then it did not specify what land was to be taken, or from whom. Instead, the governor undertook to pardon 'rebels' who, by 10 December, took an oath of allegiance and ceded land 'as may in each instance be fixed by the Governor and the Lieutenant General Commanding Her Majesty's Forces in New Zealand'. Those who wished to return to land they had 'ceded' were to first give up their arms and ammunition.<sup>1103</sup> It is difficult to see how this statement by the governor aligned with the provisions of the New Zealand Settlements Act.

A week after the expiry of Grey's deadline for 'rebels' to cede their lands and give up their arms, the governor proclaimed he would 'hold as land of the Crown all the land in the Waikato taken by the Queen's Forces, and from which the Rebel Natives have been driven'. The southern boundary was to extend from Pukekura, south-east of Cambridge, in a straight line to Ōrākau, thence to the Pūniu River, along that to its junction with the Waipā, and then in straight lines to the summit of Pirongia and the nearest point on the Waitetuna River, thence to Whāingaroa Harbour.<sup>1104</sup>

The December proclamation acknowledged the practical equivalence of war and confiscation. It was also used to propagate the myth that Ngāti Maniapoto escaped punishment for their role in the war. Morgan, who resigned from his missionary role in October 1864 and was appointed chaplain to the British troops in Waikato,

1098. Document A22, p 177.

1099. Whitaker, memorandum, 25 June 1864 (doc A22, p 430).

1100. Morgan to Browne, 29 December 1864 (doc A22, p 405 n).

1101. Document A22, p 381.

1102. Document A22, pp 388–389; 'Memorandum by Ministers', 30 September 1864, AJHR, 1864, E-2, p 95; Whitaker, memorandum, 5 October 1864, AJHR, 1864, E-2, p 96.

1103. *New Zealand Gazette*, 26 October 1864, no 41, p 399 (doc A22, pp 391–392).

1104. *New Zealand Gazette*, 17 December 1864, no 49, p 461 (doc A22, pp 398–400).

claimed that the governor's 'Confiscation Proclamation' meant Ngāti Maniapoto would 'not lose a single acre of their own country' but merely 'suffer in the loss of a few hundred acres at Alexandra and Kihikihi held by them by conquest'. Morgan distinguished between Ngāti Maniapoto and what he called 'the Rangiawhia and Kihikihi tribes', noting that the latter would 'lose every inch of their land'.<sup>1105</sup> *The Times* correspondent's view of Ngāti Maniapoto was similar, writing in March 1865 that the 'omission lets off the worst tribes – Rewis included – scot free, or nearly so'.<sup>1106</sup> The grudging qualification tended to be lost from later assessments. These claims were clearly false. The proclamation included all the lands north of the Pūniu River in which the raupatu claimants in this inquiry held interests.

The governor's proclamation also promised: 'The land of those Natives who have adhered to the Queen shall be secured to them; and to those who have rebelled, but who shall at once submit to the Queen's authority, portions of the land taken will be given back for themselves and their families.'<sup>1107</sup> There was no reference to the New Zealand Settlements Act or to the procedures laid out in the Act. It simply stated an intention to convert conquered land into Crown land. Despite this, the evidence suggests the proclamation was widely understood by both Māori and Pākehā to have effected a confiscation.

In any case, the first proclamation under the provisions of the New Zealand Settlements Act was made only weeks later, on 5 January 1865. It declared the southernmost part of the occupied territory as a district for settlement under the Act, comprising 316,000 acres between Ngāruawāhia and the Pūniu River.<sup>1108</sup> This was about a quarter of the Waikato land that was eventually taken and it came to be known as the Military Settlements block. The lands in which the raupatu claimants in this inquiry held interests were in the southern part of this block.

Noted here, for completeness, is that two further districts were proclaimed during 1865. On 7 June 1865, the Central Waikato district was proclaimed, essentially confiscated the land north and west of the Military Settlements block, as far as Mangatāwhiri. A third proclamation, on 5 September 1865, declared all land between the Mangatāwhiri and the Pūniu not already taken to be subject to the provisions of the New Zealand Settlements Act.<sup>1109</sup> The Waipa-Waitetuna block, which was purchased by the Crown in September 1864 (see chapter 5), was effectively incorporated within the Military Settlements and Central Waikato blocks when they were proclaimed.

In terms of process, with respect to the land taken in the Military Settlements block, there are a number of inconsistencies with the legal process laid out in the New Zealand Settlements Act:

- ▶ The governor's 17 December proclamation made no mention of the Act.

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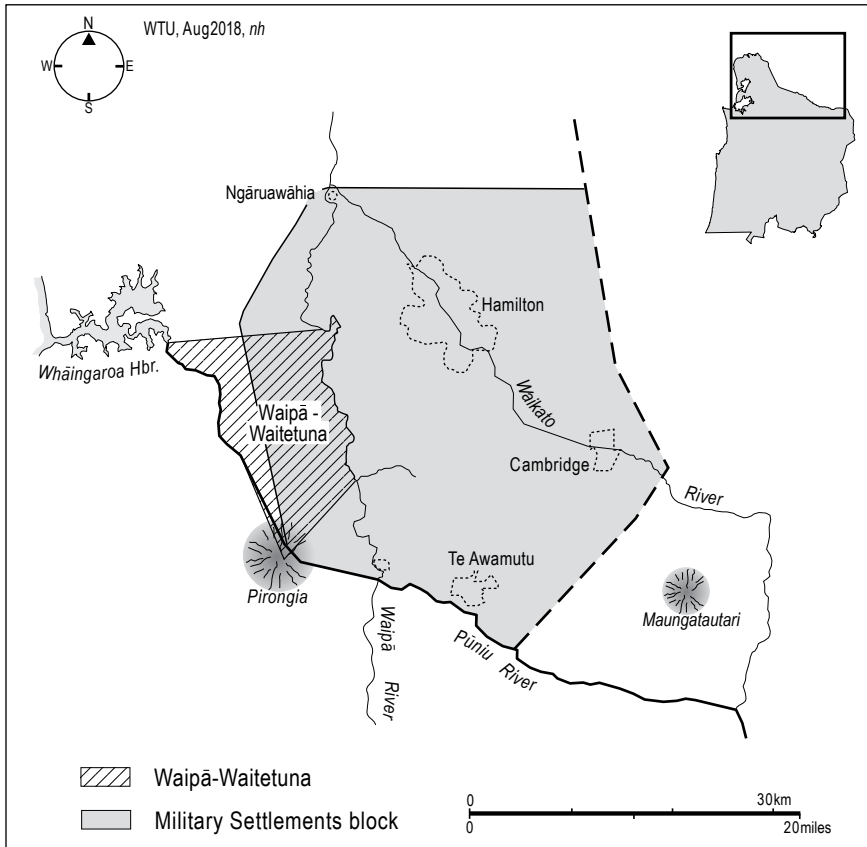
1105. Morgan to Browne, 29 December 1864 (doc A22, p 405 n).

1106. *The Times*, 16 March 1865 (doc A22, pp 405–406).

1107. *New Zealand Gazette*, no 49, 17 December 1864, p 461 (doc A22, pp 399–400).

1108. Document A22, p 412; *New Zealand Gazette*, no 1, 5 January 1865, p 1.

1109. Document A22, pp 414–416.



- ▶ The Act required three distinct steps: to declare districts; to define eligible sites; and then to proclaim takings. This did not happen.
- ▶ The Act referred only to land being taken for 'sites for settlement'. A return of land compiled in August 1865 showed that nearly half of the Military Settlements block was 'unappropriated' or intended for 'Native Reserves and Claims' (table 6.1). District surveyor AK Churton observed in December 1865 that, after the military settlers' and immigrants' needs had been met, there remained 'a great extent of mountainous, broken and poor land, with an unusually large extent of swamp'.<sup>1110</sup>
- ▶ Not even all the land intended for the military farm settlements was fit for that purpose. A map provided in evidence by researcher Craig Innes indicated

1110. Churton, report, 28 December 1865 (doc A22, p 417).

Type of usage	Area
Military townships	4,673
Military settlements (farms)	162,948
Roads and landings	3,240
Old land claims	1,669
'Native reserves and claims'	21,600
Surveyed ready for sale	4,763
Unappropriated	117,707
<b>Total</b>	<b>316,600</b>

Table 6.1: Land allocations military settlements block, August 1865  
 Source: 'Return of Land Taken under the New Zealand Settlements Act 1863',  
 17 August 1865, AJHR, 1865, D-13, p 3.

substantial areas bordering the Moanatuatua swamp and near Lake Ngāroto that were later rejected by military settlers as unsuitable for settlement.<sup>1111</sup>

The claimants said this meant the takings were arguably illegal. We do not think it necessary to pursue this point. It is clear that the entire process by which the claimants' lands were confiscated was poorly conceived and shambolic in execution. In Treaty terms, the confiscations were a serious breach of the guarantees in article 2 and the principle of partnership. The Crown is right to acknowledge this.

The confiscation affected all Māori with interests in the Military Settlements block indiscriminately, no matter whether the Crown considered them rebel, loyal, or neutral. This conformed to the law at the time, which made no provision for compensation in land (section 6.9.5). Nevertheless, 21,600 acres (6.8 per cent) of the Military Settlements block appear to have been set aside for 'Native reserves and claims' at an early stage of the process (table 6.1). We have no information about how this amount was decided, where these lands were located, or why they were chosen. It certainly cannot have been the result of any inquiry into what obligations the Crown owed the former owners. It is notable that, in the portion of the block immediately north of the Pūniu River analysed by Mr Innes, the proportion of land granted to Māori was also 6.8 per cent.<sup>1112</sup> Decisions on claims by Māori for compensation, which are discussed in section 6.9.5, were not taken until the Compensation Court hearings in January 1867.

#### 6.9.4.2 *The Taranaki confiscation districts*

In October 1864, Te Ārei pā on the Waitara River, which the Crown troops had not succeeded in occupying in 1861, was taken without a fight. Troops built redoubts

1111. Document A30, p 276.

1112. Document A30, p 262.

along the river between there and the coast, and military settlers began to move onto the land.<sup>1113</sup>

A formal confiscation proclamation was made on 17 December 1864, but it was open-ended: it merely announced the governor's intent to 'retain and hold as land of the Crown . . . such land belonging to the Rebels as he may think fit' in Taranaki.<sup>1114</sup>

The Middle Taranaki confiscation district, which extended from the Waitara River south to the Waimate River, was proclaimed on 31 January 1865. This included Te Ārei (and the adjacent pā of Pukerangiora). Two 'sites for settlement' were reserved under the New Zealand Settlements Act within this district, at Ōākura and Waitara South.<sup>1115</sup>

The rest of northern Taranaki, extending from Waitara to Parininihi, and from there in a straight line due east for 20 miles, was proclaimed as the 'Ngatiawa' confiscation district on 5 September 1865. This was land in which Te Ātiawa, Ngāti Tama, Ngāti Mutunga, and Ngāti Maru all claimed interests. The Taranaki Tribunal concluded that Parininihi was chosen as the northern confiscation boundary 'purely to accommodate a stockade at one frontier'. Crown troops had already, in April 1865, built a military redoubt at Pukearuhe on the south bank of the Waikāramuramu Stream. This was done apparently to satisfy the wishes of the governor and despite no order to that effect being given by General Cameron.<sup>1116</sup>

Dr O'Malley described Pukearuhe as 'an obvious location from which to attempt to prevent Ngāti Maniapoto and Waikato incursions south into Taranaki'. Parininihi is the high point of the massive mudstone bluffs that bar the coastal route north to Mōkau. Pukearuhe is about four kilometres to the south. As both Ngāti Maniapoto and the Crown recognised, the area was crucial to the control of traffic between Taranaki and Mōkau. From Mōkau, there was open travel south along the coastal terrace as far as Te Kawai pā, which dominated that part of the coast, being set on an inaccessible coastal escarpment between the Mohakatino and Tongaporutu Rivers. South again, the path narrowed until forced to climb high above and behind the Parininihi cliffs, returning to the coast via either the Waipingao (Waipingau) or Waikāramuramu (Waikaramarama) Streams.<sup>1117</sup>

The Taranaki Tribunal concluded that the confiscation of north Taranaki was probably unlawful 'in terms of the confiscation legislation itself'. This was because no act of rebellion was known to have occurred within the district after 1 January 1863, when the New Zealand Settlements Act came into effect.<sup>1118</sup> At Pukearuhe itself, there had been no fighting and no opposition to the construction of the redoubt. Despite this, the entire district (along with the 'Ngatiruanui' district

1113. Waitangi Tribunal, *The Taranaki Report*, pp 93–94.

1114. *New Zealand Gazette*, 17 December 1864, no 49, p 461 (doc A22, pp 399–400).

1115. Document A22, p 414.

1116. Waitangi Tribunal, *The Taranaki Report*, p 128; doc A22, p 655; *New Zealand Gazette*, 5 September 1865, no 35, p 266.

1117. Document A22, pp 654–656; doc A28, p 224.

1118. Waitangi Tribunal, *Taranaki Report*, pp 96, 102.

in southern Taranaki) was declared an eligible site for settlement. The Taranaki Tribunal called this ‘the grossest act of confiscation.’<sup>1119</sup>

The district’s northern and eastern boundaries remained no more than notional lines on a map for at least 15 years, so that the exact extent of the confiscation remained unclear. For example, following sittings of the Compensation Court in 1866 (about which see more below), Judge Rogan signed certificates for awards in various areas of the compensation district, of which the first, and most northerly, was defined as running from ‘Waipingao to Titoki.’<sup>1120</sup> Waipingao is about half way between the proclaimed confiscation boundary and the ‘Red Sea’ line, while Titoki is south of Pukearuhe. Robert Parris (who had appeared for the Māori claimants during at least one of the sittings) later said that if land court judges (and presumably, by extension, Compensation Court judges) had referred to Waipingao as the boundary, ‘they made a mistake.’<sup>1121</sup>

Māori were likewise unclear about exactly where the boundary lay. In 1881, Mōkau Māori demanded a meeting with the Native Minister to sort the matter out. Gold prospectors had been found in the vicinity and, when challenged by Wetere Te Rerenga, they said ‘they were on Government land.’ He wanted certainty about the confiscation boundary so that he knew what was his and what had been taken by the Crown. In the event, it was Parris, not the Native Minister, who made the journey to White Cliffs to represent the Crown, at a meeting which was attended by about 30 Mōkau Māori. Parris told them that the boundary had been ‘fixed at Te Horo.’<sup>1122</sup> This was the location at Parininihi where construction of a stock tunnel had been started in 1859 (see section 6.4.2).<sup>1123</sup> Parris thought that perhaps the reason why the boundary had been fixed there was that ‘of old there were no maps showing that part of the country, and the Tunnel was a mark known to all.’ From the tunnel, said Parris, the boundary ran 20 miles inland. Looking at a map Parris had brought with him, Te Rerenga thought that ‘the eastern corner of the [confiscation] block was most likely Tahoraparoa.’ Parris replied that ‘he could not say if it were so or not, as the boundary had not been surveyed.’<sup>1124</sup> Those Māori present then indicated they wanted the line moved back by ‘about a mile and a-half or two miles,’ to Waipingao.<sup>1125</sup> Paul Thomas observed that the mouth of the Waipingao Stream was ‘a highly significant area’ for Mōkau hapū, being important to their transport network and also ‘a place of whare and urupa.’<sup>1126</sup> No evidence was presented to explain why Waipingao rather than Waikāramuramu was identified as a boundary at this time. In later dealings with the Crown during the 1880s, however, Waipingao continued to be used by Ngāti Maniapoto leaders to describe the

1119. Waitangi Tribunal, *Taranaki Report*, pp 95, 122.

1120. AJHR, 1880, G-2, appendix B, p 17, appendix E, p 1.

1121. ‘Native Meeting at White Cliffs’, *Taranaki Herald*, 25 June 1881, p 2; doc A28, p 225.

1122. ‘Mr Parris’s Visit to the White Cliffs’, *Taranaki Herald*, 23 June 1881, p 2; ‘Native Meeting at White Cliffs’, *Taranaki Herald*, 25 June 1881, p 2; doc A28, p 225.

1123. Document A28, pp 136, 152–153.

1124. ‘Native Meeting at White Cliffs’, *Taranaki Herald*, 25 June 1881, p 2; doc A28, p 225.

1125. ‘Mr Parris’s Visit to the White Cliffs’, *Taranaki Herald*, 25 June 1881, p 2.

1126. Document A28, p 224.



southern extent of the area over which they claimed authority. These matters are addressed in chapters 8 and 10.

The evidence presented in this inquiry by William Wetere relating to confiscation in Taranaki, however, referred to the 'Red Sea' Waikāramuramu boundary. Mr Wetere stated that setting the confiscation line at Parininihi resulted in approximately 14,650 hectares (about 36,200 acres) of Ngāti Maniapoto lands being confiscated.<sup>1127</sup>

### **6.9.5 Was the Compensation Court's process adequate, insofar as it affected Te Rohe Pōtae groups?**

Although the Crown acknowledged the confiscations were 'compounded by inadequacies' in the Compensation Court, the claimants argued that the court processes themselves were in breach of the Treaty.<sup>1128</sup> The claimants alleged that:

- ▶ no definition of rebellion was attempted in the legislation, but because a high bar was set for eligibility for compensation this had the effect of defining many more Māori as rebels;
- ▶ no real choice was given as to whether or not to take part, while applicants were required 'to acknowledge that their customary lands had been taken from them because of wrongdoings against the Crown'; and
- ▶ the process itself did not set out how land was to be valued or how compensation should be assessed or awarded, gave no role to Māori in deciding title but suffered from the Crown's 'strong direct influence', was beset by delays, and made awards to individuals rather than hapū.<sup>1129</sup>

We begin with an outline of the rules and processes that governed the Compensation Court that was established by the New Zealand Settlements Act. The operation of the court is then examined in more detail as it affected Te Rohe Pōtae Māori interests in Taranaki and Waikato.

#### **6.9.5.1 How was the compensation process established?**

Section 5 of the New Zealand Settlements Act stated that compensation would be granted to anyone with 'title interest or claim' in land taken under the Act. Five sub-sections then circumscribed this promise by setting out a wide range of disqualifications. Claimants had to demonstrate their eligibility as 'non-rebels' before the court. Compensation would not be granted to anyone 'engaged in levying or making war or carrying arms against Her Majesty the Queen or Her Majesty's Forces in New Zealand' since 1 January 1863. Anyone who had 'adhered to aided assisted or comforted' those making war or who had 'counselled advised induced enticed persuaded or conspired with any other person to make or levy war . . . or to carry arms' or who had been 'concerned in any outrage against person or property' was ineligible. The Act also excluded anyone who refused to comply with a proclamation from the Governor to deliver up their arms.

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1127. Document Q29(b), para 28.

1128. Document 3.4.300, p 23.

1129. Submission 3.4.127, pp 34-37.

Section 6 of the Act barred from compensation anyone 'engaged' in the section 5 offences who did not submit themselves to trial by a date set by proclamation. Section 7 specified that any claim for compensation must be made to the Colonial Secretary within six months of the proclamation of a confiscation (or within 18 months for non-residents).

Sections 8 to 15 then set out the composition of the Compensation Court itself. Judges would be appointed or removed by the governor-in-council and the judges could compel the attendance of witnesses. Section 14 declared: 'The Judge shall grant to every Claimant who shall be entitled to compensation a Certificate specifying the amount thereof and describing the land in respect of which the same is granted and the nature of the Claimant's title interest or claim therein.' An entitled claimant could also have the amount of compensation determined by 'two indifferent Arbitrators', one selected by the claimant and the other appointed by the Colonial Secretary. Though compensation in land was not explicitly rejected, these clauses suggested that compensation would be restricted to cash payments.<sup>1130</sup>

What opposition there was in the settler assembly to the confiscation legislation focused on how Māori who had not participated in the supposed rebellion would be compensated, if their lands were taken. In November 1863, after consulting with James FitzGerald, who had raised the issue, Fox added a clause that would give the governor 'discretion to call upon tribes or individuals who had engaged in acts of rebellion to come in and submit to the law by a specified date or render themselves ineligible for compensation under the legislation.'<sup>1131</sup> FitzGerald accepted this as an assurance that 'only the land belonging to the Natives in rebellion' would be confiscated, and on that basis encouraged the Government to publish a 'Proclamation to the Native race' as soon as possible.<sup>1132</sup> No specific prohibition of the circumstances FitzGerald objected to was written into the Act, and in providing for compensation to be paid for land taken from those not in rebellion, taking such land continued to be a real prospect.

#### **6.9.5.1.1 AMENDING LEGISLATION, 1864–1866**

The rules and processes of the Compensation Court were subject to frequent legislative changes in its the first few years.

The short New Zealand Settlements Amendment Act 1864, passed on 13 December, allowed the governor-in-council to override decisions of the Compensation Court and award compensation to claimants previously denied by the Compensation Court, or to raise the amount of compensation originally awarded by the Court.

In August 1865, the Attorney-General asserted that 'one of the cardinal objects' of the settlements legislation had been to 'affect the lands of all persons, whether innocent or guilty, within the limits of a district'. Nevertheless, the present government had, he claimed, acted 'so far as possible' upon the principle that the

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1130. Document A22, pp 308–311.

1131. Document A22, p 305

1132. FitzGerald, 20 November 1863, NZPD, 1861–1863, p 910.

lands of 'friendly' Maori should be excluded. Yet the New Zealand Settlements Amendment and Continuance Act 1865 placed the former owners at the end of the queue when setting priorities for use of the proceeds from the sale of confiscated land, which:

should, in the first place, be used for defraying the charges incurred in surveying and laying out the land for sale, also charges incidental to confiscation, all expenses of the Compensation Court, repayment of expenses incurred in introducing immigrants, including military settlers, but exclusive of pay and rations.<sup>1133</sup>

Only after all these expenses had been met, the Attorney-General said, should any proceeds be 'applicable and payable to persons who had sustained losses in the insurrection'.

Section 3 of the 1865 Act provided for the governor-in-council to regulate the practice and procedure of the Compensation Court, and allowed the Crown, under certain conditions, to abandon its right to confiscate land sought for compensation. No longer falling under the Act, the land in question would no longer be subject to confiscation and therefore would remain in customary title.

Crucially, sections 9 and 10 allowed for compensation to be given in land rather than money. Under section 9, compensation in land (or in a mixture of land and cash) could be agreed between the colonial secretary and the claimant. Alternatively, under section 10, the colonial secretary could, on his own initiative, elect 'at any time before judgment or award' to give the claimant land instead of cash.<sup>1134</sup> Under both scenarios, this considerably reduced the role of the Compensation Court.

We agree with the Tauranga Raupatu Tribunal's view that these amendments to the 1863 Act 'facilitated the Crown's assumption of control over the compensation process'.<sup>1135</sup>

In response, it appears, to criticism of the operation of the Compensation Court, the Crown further extended its control of the compensation process in 1866.<sup>1136</sup> The New Zealand Settlements Act Amendment Act 1866 was, according to Dr O'Malley, designed to correct 'defects' in the 1865 Act. It provided for the colonial secretary to make partial or full awards of land or scrip (in effect a kind of voucher, promising land) instead of money. Section 3 of the Act gave the colonial secretary discretion to award compensation either before or after any court judgment or award. Section 5 allowed the governor to set aside reserves. It also stated that the governor's peace proclamation of 2 September 1865, promising the return of confiscated land and amnesty to 'rebels' who submitted to the Crown and its laws, did not relieve those excluded from compensation under the 1863 Act.<sup>1137</sup> Section

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1133. Sewell, 8 August 1864, NZPD, 1864–1866, pp 263–264.

1134. The New Zealand Settlements Amendment and Continuance Act 1865

1135. Waitangi Tribunal, *Te Raupatu O Tauranga Moana*, p 156.

1136. See the debates in the House on 25–26 July 1866, NZPD, 1864–1866, pp 810, 814.

1137. Document A22, p 356.

6 also made the sweeping statement that all previous proclamations, regulations, and awards made under the authority of the Settlements Acts remained valid irrespective ‘of any omission or defect of or in any of the forms or things provided in the said Acts.’<sup>1138</sup>

Assessing the law relating to confiscation and compensation, legal historian Richard Boast wrote: ‘The mountains of statute built up were also disregarded, flouted, or ignored when the occasion demanded. Sometimes the various floutings and shortcuts necessitated further validating enactments. The law was, in short, a mess.’<sup>1139</sup> This, in our view, is an accurate description.

#### 6.9.5.1.2 RULES AND PRACTICE OF THE COMPENSATION COURT

Many of the judges appointed to the Compensation Court, including two of the three founding members, Senior Judge Francis Fenton and Judge John Rogan, were also judges in the Native Land Court that was established at the same time.<sup>1140</sup> In contrast with the Native Land Court, which was tasked with investigating title to land held by Māori, the Compensation Court’s role was to decide who should receive compensation for land that was, by virtue of confiscation, already held by the Crown. Under section 5 of the New Zealand Settlements Act 1863, the decision was supposed to include a consideration of who might have ‘title interest or claim’ in the land in question. In practice, it seems there was rarely if ever any in-depth inquiry into who might have held land rights in a particular area. Unlike the Native Land Court, there was no provision for assessors or any role for Māori in the court’s decision-making. The Ngati Awa Raupatu Tribunal found that lands were ‘returned’ in that district with minimal regard for customary rights.<sup>1141</sup> The Hauraki Tribunal, for its part, pointed out that the brevity of the hearing conducted by the East Wairoa Compensation Court was such that it simply would not have had time to carry out any ‘detailed search for ancestral right.’<sup>1142</sup> We will consider whether the same applied for the hapū bringing claims in this inquiry when the court’s operations in Taranaki and Waikato are examined.

Rules and regulations specifying the processes and practices to be followed by the Compensation Court were in place in May 1865, although their utility is doubtful.<sup>1143</sup> A new set was issued in June 1866, comprising just nine clauses. Dr O’Malley agreed with Crown counsel that these could be said to be ‘something

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1138. Document A22, pp 356–357.

1139. Richard Boast, ‘“An Expensive Mistake”: Law, Courts, and Confiscation on the New Zealand Colonial Frontier’, in Richard Boast and Richard Hill (eds), *Raupatu: The Confiscation of Maori Land* (Wellington: Victoria University Press, 2009), p 151.

1140. Document A22, pp 469, 483–485.

1141. Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 90.

1142. Waitangi Tribunal, *Hauraki Report*, vol 1, pp 227–228.

1143. ‘Papers relating to the Sitting of the Compensation Court at New Plymouth’, AJHR, 1866, A-13, p 9.

resembling a comprehensive set of rules.<sup>1144</sup> Although far from detailed, they did specify that two months' notice was to be given, in the *Gazette* and also one or more local newspapers, before a sitting could be held; adjournments were to be allowed if necessary for the gathering of evidence; and careful records were to be kept: 'All evidence given in Court shall be taken down in writing, and a copy thereof, together with the particulars of judgment or award, shall be transmitted without delay to the Colonial Secretary.'<sup>1145</sup>

Despite the latter injunction, present-day historians trying to research the work of the court have found the records to be 'incomplete', in some cases 'distorted', and, overall, '[w]holly inadequate'. Also gazetted were three sample court orders, for use when making awards.<sup>1146</sup>

The rules did not, however, address some of the critical issues faced by the court. For example, although the very necessity for confiscatory legislation implicitly recognised the existence of Māori title to land, it gave no guidance on the question of how traditional concepts of landholding might impact on the court's work. In mid-1866, the court sat in New Plymouth to hear Oākura and southern Waitara claims. Senior Judge Fenton pointed out that the English language had no words to 'fitly express the idea of a Maori holding'. 'The tribal estate belonged to the tribe', he said, and any alienation 'must be the act of the tribe'. With the arrival of the British, however, 'new ideas were introduced and the idea of ownership began to be asserted, and to be encouraged by the Government'. Nevertheless, Māori did not always stay in a fixed location: they might move because of war or for other reasons. Deciding 'ownership' was therefore problematic. For this reason, the court felt '[c]ompelled by absolute necessity to lay down a rule for [its own] guidance' and fix some point in time at which titles could be regarded as settled. Judge Fenton went on: '[W]e have decided that that point of time must be the establishment of the British Government in 1840.'<sup>1147</sup> Thus it was that the Compensation Court gave rise to the '1840 rule'.

Likewise, after the passing of the 1865 Act (which allowed compensation in the form of land rather than money), there was the question of how to find enough land to satisfy all parties entitled to receive it. As Fenton wrote:

If the Act of 1865 had been perfectly clear, and the several rights of the Crown, and of the claimants thereunder had been unmistakably set forth, we should have interpreted the law even if in our judgment honor and equity had failed. But when the

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1144. Transcript 4.1.10, pp 849–850 (O'Malley questioned by McKay, hearing week 4, Mangakotukutuku campus, 10 April 2013).

1145. *New Zealand Gazette*, 20 June 1866, no 36, pp 250–251 (doc A22, pp 490–491).

1146. Document A22, p 565.

1147. 'Papers relating to the Sitting of the Compensation Court at New Plymouth', AJHR, 1866, A-13, pp 3–4.

intention of Parliament is not clear, surrounding circumstances must be admitted as a guide thereto and even contemporaneous exposition.<sup>1148</sup>

In short, even months down the track, the standards and procedures to be followed by the Compensation Court were still far from clear. In the view of one historian:

The Court was hurriedly set up, with little guideline for its work. Much power [was] granted to individual Judges, particularly Senior Judge Fenton. The procedure for applying for compensation was unclear, the forms ambiguous, the process of negotiations undefined and unrecorded, the roles of pivotal personnel at times blurred and conflicting.<sup>1149</sup>

### 6.9.5.2 *In Taranaki*

When war began in Taranaki, we consider that the Crown knew that Ngāti Maniapoto asserted interests in northern Taranaki as far south as Waikāramuramu, as well as less well-defined interests further south that have never been investigated by the Crown (sections 6.4.2 and 6.9.1).

As already described, it was at the hearing to determine compensation in the Oakura and Waitara South blocks that the court established the 1840 rule. However, having made the rule, the court seemed almost immediately to acknowledge its limitations, stating:

Great numbers of prisoners of war have returned to Taranaki since the establishment of the [Queen's] Government. With the tacit if not with the expressed approval of the Government they have rejoined their tribes, and taken possession of their ancestral lands. These persons now appear in the ranks of the Resident Claimants, and their rights have been admitted by the Government so completely that the Land Purchase Commissioners have purchased lands from them and required their signatures to deeds of conveyance. Their claims are therefore admitted, but those prisoners of war who did not return to occupy are on the rule above laid down excluded.<sup>1150</sup>

How it was that the Waikato-Maniapoto who had arrived with the 'great Waikato invasion between 1820 and 1830' were no longer to be regarded as the 'resident population' was not explained. Nor does the possibility seem to have been considered that Waikato-Maniapoto people might have remained in Taranaki and married into local hapū.

What can be said is that the great majority of claims to compensation were rejected, either because the claimants had 'fled South from the Waikato invasion'

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1148. 'Papers relating to the Sitting of the Compensation Court at New Plymouth', AJHR, 1866, A-13, p 11.

1149. Heather Bauchop, 'The Aftermath of Confiscation – Crown Allocation of Land to Iwi: Taranaki, 1865–80 – A Case Study in Confusion' (Wai 143 RO1, doc 118), pp 2–3 (doc A22, p 468).

1150. 'Papers relating to the Sitting of the Compensation Court at New Plymouth', AJHR, 1866, A-13, pp 4–5.

and never returned or because they were classed as rebels under section 5 of the New Zealand Settlements Act.<sup>1151</sup> In August 1866, civil commissioner Robert Parris wrote that, after a visit to New Plymouth from the Minister of Native Affairs, claims to the two blocks had been settled out of court.<sup>1152</sup>

Claims in what the Crown had termed the Ngatiawa confiscation district, to the north of the Waitara River, were not heard until September and October 1866, when the court again sat in New Plymouth. Of the more than 1,500 claims submitted, 560 were disallowed by reason of non-possession or insufficient occupation, and another 403 claimants were dismissed for contravening section 5 of the New Zealand Settlements Act. We have no evidence that any of the latter were filed by Waikato-Maniapoto Māori. The remaining 575 claimants were found eligible for compensation, to be made in land. Once again, settlements were arrived at out of court by civil commissioner Parris.<sup>1153</sup>

The risk of injustice inherent in out-of-court arrangements was raised with Premier Edward Stafford by New Plymouth's provincial superintendent. Although professing 'great confidence' in Parris's integrity, the superintendent said placing such 'very large powers' in the hands of 'any person not . . . bound by any rules of evidence or defined principles of procedure' was 'in itself exceedingly objectionable'. He also thought that the 'private and irregular nature of the arrangements which the civil commissioner is authorised to make' placed him 'in the greatest danger of unconsciously allowing his judgment to be influenced by partialities or dislikes.'<sup>1154</sup>

Fourteen years then passed until, in 1880, a West Coast commission was set up to resolve the problems created by the confiscation process in Taranaki. When it reported, the commission's opening comment about the entire process was damning: 'it would be hard,' it said, 'to match the tangle into which what ought to have been a simple matter has been allowed to get.'<sup>1155</sup>

In terms of the Taranaki confiscations in particular, the commission noted that in the Ngatiawa district the court had awarded 14,843 acres to 251 claimants. Out-of-court agreements had been reached in respect of these awards in October 1866, but this was not notified in the *Gazette* until November 1867. As of 1880, only the 1,485 acres of awarded land nearest Waitara had been actually subdivided and given title. Nothing had been done for the remaining 13,385 acres: no Crown grants had been awarded and no land had been returned. This included 3,458 acres in the 'Waipingao to Titoki' district.<sup>1156</sup> A point not picked up by the commission is that, as noted earlier, Waipingao is slightly south of the supposed northern boundary point of the confiscation district (which had been defined as Parininihi).

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1151. 'Papers relating to the Sitting of the Compensation Court at New Plymouth', AJHR, 1866, A-13, pp 3-4, 16.

1152. 'Papers relating to the Sitting of the Compensation Court at New Plymouth', AJHR, 1866, A-13, p 19.

1153. Document A22, pp 471, 643-644; AJHR, 1880, G-2, p xxxv.

1154. HR Richmond to EW Stafford, 8 February 1866 (doc A22, p 651).

1155. AJHR, 1880, G-2, p xxxv.

1156. AJHR, 1880, G-2, pp xxxv-xxxvi; doc A22, pp 644-645.

There is no evidence that Ngāti Maniapoto participated in any way in the Taranaki Compensation Court process, either by making applications or by attending. Dr O'Malley thought that Ngāti Maniapoto probably deliberately abstained as 'part of a broader pattern of resistance to the confiscations'. Another, less likely, possibility is that they were unaware the hearings were taking place.<sup>1157</sup> Even had they lodged claims, the exhaustive scope of section 5 of the Settlements Act meant that they would doubtless have been regarded as 'rebels' and had those claims disallowed. Indeed, an indication that they had regarded applications as an exercise in futility came some years later, in 1881, when Mōkau Māori met with Robert Parris at White Cliffs. Trying to justify the Crown's taking of land in Taranaki, Parris equated it with Waikato-Maniapoto's earlier conquest of the area: 'Therefore do not say we have not previous example of confiscation amongst your own people'. Wetere Te Rerenga pointed out that, in the case of their own conquest, they had unilaterally allowed 'Ngatiawas and others' to return. Another of those present, Te Huria, added that they had done this in line with Christian teaching. The implication was that the Crown should have behaved in the same way, and allowed Mōkau Māori to return to land when they asserted interests. Another named Tiki added: 'You are taking the land . . . which is stealing'. Parris countered, saying that the land had not only been taken by conquest but confiscated under the law, and he could not alter the law.<sup>1158</sup> Te Huria's response indicated that he felt they had been hoodwinked and that the deck was stacked against them: 'We received the Gospel not knowing that it and the law came together. You concealed that from us; now the law has taken the land.'<sup>1159</sup>

We can confirm, therefore, that the evidence shows no compensation of Ngāti Maniapoto for their confiscated interests in Taranaki.

### 6.9.5.3 In Waikato

Native Minister Walter Mantell asked that the eight Waikato blocks confiscated on 5 January 1865 'should be dealt with by the Court as quickly as possible, and you will please give your early attention to clearing off all claims on these blocks'. Where compensation was necessary, the court was to make orders for 'a certain sum of money'.<sup>1160</sup> The amendment to the court's governing legislation later in 1865, however, allowed for land to be awarded in lieu of money and so aligned the court's powers with the governor's December 1864 proclamation that 'The lands of those Natives who have adhered to the Queen shall be secured to them'.<sup>1161</sup>

Mantell also stated that an 'Agent of the Crown' would be appointed to represent the Crown's interests in the court and '(when necessary) resist the claims set up'.<sup>1162</sup> One of the three founding judges of the court was James Mackay Junior, a civil servant, being the civil commissioner for the Hauraki district. Dr O'Malley

1157. Document A22, p 663.

1158. 'Native Meeting at White Cliffs', *Taranaki Herald*, 25 June 1881, p 2; doc A28, p 225.

1159. 'Native Meeting at White Cliffs', *Taranaki Herald*, 25 June 1881, p 2.

1160. Mantell to Fenton, 11 January 1865 (doc A22, p 483).

1161. *New Zealand Gazette*, 17 December 1864, no 49, p 461 (doc A22, p 487).

1162. Mantell to Fenton, 11 January 1865 (doc A22, pp 483-484).



considered that Mackay's appointment to the Compensation Court was planned to 'ensure official Crown representation on the bench'.<sup>1163</sup> But in any case, from early 1866 Mackay acted as the Crown's agent. In that capacity he negotiated out-of-court settlements of compensation claims in the Military Settlements block in January 1867.<sup>1164</sup>

A list of claims for compensation in Waikato, containing about 1900 names, was published in the *Auckland Provincial Government Gazette* in December 1865. This list contained individuals' names and residences and described the land they claimed. Dr O'Malley noted that there were no claims from residents of Tokangamutu (Te Kūiti), Hangatiki, or Kihikihi, and only a few from Ōtāwhao and Rangiaowhia. Claims also came from Kāwhia and Aotea. Some of those listed lived at Ōtaki and claimed land at Maungatautari and Rangiaowhia.<sup>1165</sup> Hapū or iwi affiliations were not included, although Dr O'Malley considered the list was clearly arranged to reflect hapū or iwi, and that the names seemed intended as representatives of their whānau. Despite this, Dr O'Malley thought the limitations of the list and the poor records of the court's process made it 'virtually impossible to provide a meaningful overview of [the court's] operations in broad tribal terms'.<sup>1166</sup>

In this inquiry, the interests asserted by the claimants within the Waikato Raupatu District lie within the area confiscated as the Military Settlements block. Claims to compensation in this block were not heard by the court until January 1867. This was three years after the military occupation began, two years after the confiscation was proclaimed, and a year and a half after an initial survey had allocated 21,600 acres for 'Native purposes'.<sup>1167</sup>

The delay did mean that improved procedural rules were in place by the time the court sat.<sup>1168</sup> Adequate notice appears to have been given of the January 1867 hearing, published in the *Auckland Provincial Government Gazette* on 6 October 1866, and in the *New Zealand Gazette* on 15 October.<sup>1169</sup> Unfortunately, the hearings suffered significant additional delays and adjournments. Concurrent out-of-court settlements obscured the process further.<sup>1170</sup>

The hearing began at Ngāruawahia on 9 January 1867, although Crown agents Mackay and Charles Marshall had arrived a week earlier and travelled as far as Taupiri and Raglan to negotiate out of court arrangements. According to Dr O'Malley, 'there is little to no indication from the available documentary sources as to the process by which they had been negotiated'. Chief Judge Fenton,

1163. Document A22, p 485.

1164. Document A22, pp 484–485, 495, 509; Harry C Evison, 'James Mackay', in *The Dictionary of New Zealand Biography* (Wellington: Ministry for Culture and Heritage, <http://www.teara.govt.nz/en/biographies/1m29/mackay-james>).

1165. Document A22, pp 503–504.

1166. Document A22, pp 503–504.

1167. 'Return of Land Taken under the New Zealand Settlements Act 1863', 17 August 1865, AJHR, 1865, D-13, p 3 (doc A22, p 417).

1168. Transcript 4.1.10, pp 847–850, 1028 (O'Malley, hearing week 4, Mangakotukutuku campus, 10–11 April 2013).

1169. Document A22, p 538.

1170. Document A22, pp 539–540.

suffering gout, returned to Auckland after just two days. Court proceedings did not resume until 17 January, when John Rogan, as senior judge, joined Colonel William Lyon.<sup>1171</sup> It was at this 17 January hearing, in Dr O'Malley's assessment, that arrangements negotiated by Mackay over the Military Settlements block were confirmed. A further sitting of the court in March 1867 also seems to have been largely concerned with confirming out-of-court arrangements in money or land relating to claims in the Military Settlements block.

The operation of the court, Dr O'Malley said, 'remains, in many respects, a total mystery, given that even something as basic as where and when it sat remains open to some speculation'.<sup>1172</sup> Dr O'Malley considered that information from newspaper accounts suggested that the Compensation Court minutes that have survived were a partial and even misleading description of the sittings: 'Those minutes, it would seem, can hardly be taken as anything like a reliable guide to proceedings.'<sup>1173</sup>

We saw no evidence, however, of official minutes of the January 1867 hearings. What evidence we have comes in the form of newspaper reports, and Dr O'Malley located only limited first-hand coverage in the *Daily Southern Cross* of the Compensation Court sittings after the 10 January session. No detailed account appears to exist of the 17 January session.

There can be little confidence, therefore, that the court made thorough inquiries when it considered claims or that customary interests or the requirements of tikanga were considered. The 316,000-acre Military Settlements block was disposed of in just a few days. The Native Land Court, for all its flaws, could spend months hearing a block of similar size.<sup>1174</sup> Dr O'Malley found that 'awards were generally made to named individuals, without any specified tribal affiliations' and was unable to discern any pattern to the court's process of making awards.<sup>1175</sup>

It seems probable that, where the Military Settlements block was concerned, the court did little more than confirm arrangements already negotiated by the Crown agents. On 23 January the *Daily Southern Cross* reported: 'The claims for land further south, which present no difficulties, are still being settled by Mr Mackay out of Court, who, contrary to the orthodox official hours of from 10 to 4, seldom ceases his labours till close upon midnight.'<sup>1176</sup> Somewhat confusing this interpretation, however is a later report which indicated that, by the end of January, arrangements had not 'proceeded further than Hopuhopu', midway between Ngāruawahia and Taupiri.<sup>1177</sup>

The same newspaper noted that the majority of of claims negotiated by MacKay 'do not, on an average, receive more than one-tenth of the quantity claimed' and that 'Mr Mackay has done all in his power to save the Government from being

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1171. Document A22, pp 538–543; AJHR, 1865, D-13, p 2; *Daily Southern Cross*, 23 January 1867, p 5.

1172. Document A22, p 549.

1173. Document A22, p 549.

1174. Document A22, p 472.

1175. Document A22, p 15.

1176. *Daily Southern Cross*, 23 January 1867 (doc A22, p 542).

1177. *Daily Southern Cross*, 30 January 1867 (doc A22, p 545).

victimised may be inferred from the fact that the Maoris, who are particularly apt in seizing on any prominent characteristic, have named him the “Land-robber.”<sup>1178</sup>

The extent to which the Crown, as a litigant in the court, sought to minimise its obligations and expand the definition of rebellion is clear from Dr O’Malley’s account of Mackay’s concerted effort to oppose granting compensation to the Reverend Tarawhiti, who had done no more than provide spiritual comfort to injured rebels during the conflict.<sup>1179</sup>

A further problem, and one that was noted at the time, was the way a court comprising only a handful of individuals forced hundreds of Māori to leave their communities and crops to travel to and camp in town centres, rather than the court hearing them on the very lands that were the subject of their claims.<sup>1180</sup>

All in all, we consider that Māori participation in the court was more likely a reflection of lack of options than of support for the process.

By the time the Compensation Court heard the Military Settlements claims, the New Zealand Settlements Amendment and Continuance Act 1865 provided for compensation to be awarded in land rather than cash.<sup>1181</sup> The reasons for this change are not clear. In his report, Dr O’Malley suggested the Crown might have been motivated by a desire to act justly towards the claimants, but also that it sought to reduce its costs. Both reasons were suggested by Judge Fenton, who preferred the former on the basis that: ‘The honor of the Crown is to be preferred to its profit.’<sup>1182</sup> Dr O’Malley considered these reasons might in fact be related, insofar as the return of land might have ameliorated tensions within groups who might otherwise be drawn to the Kingitanga.<sup>1183</sup> When questioned by the Crown on this point, however, Dr O’Malley was more certain. He said that by the time of this legislative change the Crown’s confiscation policies were proving far less profitable than expected. In essence, according to Dr O’Malley, the ‘Crown was losing money and I think they wanted the flexibility to award compensation in land in order to save money.’<sup>1184</sup>

We described earlier (section 6.9.4.1) how the awards eventually granted to Māori in the parts of the Military Settlements block of most interest to the claimants appear to have corresponded exactly, in area, with the overall allocation set aside for that purpose when the block was first surveyed in 1865. Given that the awards were based on out-of-court settlements arranged by the Crown’s agent, we think this is unlikely to be a coincidence. As noted, by 1867 the Crown had legislated to exert considerable control over the compensation process. This strongly

1178. *Daily Southern Cross*, 23 January 1867 (doc A22, p 544).

1179. Document A22, pp 554–560.

1180. Document A22, p 550.

1181. Transcript 4.1.10, pp 846–847 (O’Malley, hearing week 4, Mangakotukutuku campus, 10 April 2013).

1182. FD Fenton, Proceedings of the Compensation Court at New Plymouth, 1 June – 12 July 1866, AJHR, 1866, A-13, p 9 (doc A22, p 488).

1183. Document A22, pp 488–489.

1184. Transcript 4.1.10, p 1054 (O’Malley, hearing week 4, Mangakotukutuku campus, 11 April 2013).

suggests that compensation was not offered to fulfil obligations the Crown determined that it owed to 'loyal' Māori. Rather, it was limited by prior allocations that were decided when the block was first surveyed.

We agree with Dr O'Malley that the composition of the court, its improvised and inconsistent processes, and ill-considered implementation on the ground all indicate that "clearing off" Maori claims appears to have been accorded a higher priority throughout than actually doing justice to them.<sup>1185</sup>

Further, the fact that awards were made to individuals rather than to Māori groups was hardly accidental. The court's governing legislation virtually required individualisation: once confiscated, the land became Crown land and customary tenure was extinguished. Dominant figures of the Compensation Court, most notably Senior Judge Fenton, also featured prominently in the Native Land Court. We agree with Dr O'Malley that the two institutions 'can be seen as part of a single Crown drive to eliminate customary (and communal) tenure.'<sup>1186</sup>

The limitations of the court's records make it nearly impossible to assess the extent to which Te Rohe Pōtae Maori participated in the Compensation Court hearings and subsequent awards. We think it likely that some did and that they received individual allocations. Whether these were in their ancestral lands is also difficult to determine, although for the reasons already given it seems unlikely to have been a priority for officials. Dr O'Malley observed that arranging compensation 'along iwi and hapū lines' appears to have been less of a priority in Waikato than in Taranaki.<sup>1187</sup> In addition, as noted earlier, the New Zealand Settlements Act Amendment Act 1866 allowed the colonial secretary to make partial or full awards of scrip. In a letter to Donald McLean, Judge Rogan called it a 'farce' that matters were settled on paper only, as this did not give claimants 'even what the Govt. promised or the Court awarded.'<sup>1188</sup>

The Ngāti Hikairo claimants argued that, in addition, the return of land to individuals by Crown grant with no restrictions on alienation made the subsequent purchase of returned lands by settlers much simpler. The sale of the great majority of the land returned to their tūpuna was raised by them as a non-raupatu claim, and we deal with it on that basis later in the report.<sup>1189</sup>

### **6.9.6 Were the Crown's attempts to return land to 'rebels' adequate?**

In deciding not to disallow the New Zealand Settlements Act, in April 1864, Secretary of State for the Colonies Edward Cardwell wrote that, even for the 'most culpable tribes', punishment should still lead them 'to feel that they may engage in the pursuits of industry on the lands that remain to them with the same security from disturbance which is enjoyed by their most favoured fellow-subjects.'<sup>1190</sup>

1185. Document A22, p 486.

1186. Document A22, pp15–16; transcript 4.1.10, pp1147–1148 (O'Malley, hearing week 4, Mangakotukutuku campus, 11 April 2013).

1187. Document A22, p 638.

1188. Rogan to McLean, 14 August 1867 (doc A22, p 546 n).

1189. Submission 3.4.226, pp 21–26.

1190. Cardwell to Grey, 26 April 1864 (doc A22, p 346).

The New Zealand Settlements Act set a high threshold for eligibility for compensation. As we have seen, the Crown employed it to the full in opposing compensation claims. We agree with Dr O'Malley that, although a legal definition of rebellion was not attempted in the Act, because section 5 of the New Zealand Settlements Act set a high threshold for awarding compensation, that became 'the practical test'.<sup>1191</sup> Nevertheless, in the years after the raupatu, the Crown began to make some attempts to provide for those it considered to be rebels.

In submissions, the Crown stated that it confiscated 1,202,172 acres of Waikato land. Of this, 314,364 acres were returned to Māori, or about a quarter of what was taken.<sup>1192</sup> There was some uncertainty in our hearings as to exactly how much of this was set aside for 'rebels'. Brent Parker subsequently confirmed in evidence that it was most likely to have been 37,574 acres. The figure came from a schedule compiled early in 1927 by the Department of Lands and Survey for the Sim commission. It was based on searches of Crown grant and allotment book records and, an explanatory memorandum said, represented the amount of land included in titles that were issued.<sup>1193</sup> This amount was still only 3 per cent of the land that was taken. In the area of most concern to the claimants, immediately north of the Pūniu River, 455 acres (2.4 per cent) of Mangapiko parish and 604 acres (2.9 per cent) of Pūniu Parish parish were returned to Māori. Overall, in his study of returned lands in four parishes north of the Pūniu, Mr Innes estimated that about 80 per cent of all the land returned was awarded to 'loyal' Māori.<sup>1194</sup>

#### **6.9.6.1 Land set aside for 'rebels' in 1879**

Nothing was done to consider explicitly the rights or needs of rebels until the Confiscated Lands Act 1867, under which a portion of the land confiscated from former 'rebels' who submitted to the Queen's authority could be returned, all to be done entirely at the governor's discretion. Nothing was actually done for another 12 years. Section 2 of this Act allowed the governor to make reserves in districts confiscated under the 1863 Act and to grant this land to those who had received either no or insufficient compensation through the Compensation Court process. Section 3 authorised the governor to reserve some confiscated land to Māori who had helped to suppress the rebellion. Section 4 provided for the reservation of lands for 'surrendered rebels'.

Nine years later, the Waste Lands Administration Act 1876, at section 14, specified that the governor could proclaim any remaining confiscated land to be 'waste lands of the Crown'. That land could then be sold at a minimum price of £1 an acre. The Act also specified, at section 5, that all existing proclamations, orders-in-council, and regulations relating to confiscated lands should continue in force unless altered or repealed by other sections of the Act.

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1191. Document A22, p 479.

1192. Submission 3.4.16, p 10.

1193. Document A139 (Parker), pp 3–4.

1194. Document A30, pp 35, 145, 255.

A year later, however, the Volunteers and Others Lands Act 1877 specified at section 6:

The provisions of ‘the Confiscated Lands Act, 1867’ shall continue in operation, and shall be deemed to have been always in operation, in respect of any reserves promised to Natives or set apart for Natives under the said Act, at any time previous to the coming into operation of ‘The Waste Lands Administration Act, 1876’ but which, for want of surveys or other unavoidable causes, could not be proclaimed previous to the time last mentioned.

Most of the grants in Waikato to ‘returned rebels’ that are relevant to this inquiry were made under this Act by *Gazette* notice in October 1879.

A *Gazette* notice in October 1879 set aside individualised titles to 35,066 acres under section 4 of the Confiscated Lands Act 1867.<sup>1195</sup> Schedule A listed those hapū and iwi that had ‘been in rebellion, but had subsequently submitted to the Queen’s authority’. They included Ngāti Maniapoto, Ngāti Ngutu, and Ngāti Apakura and affiliated groups including Ngāti Kiri and Ngāti Raparapa. Schedule B described the lands reserved and their area, but not who they were returned to.<sup>1196</sup> Ngāti Apakura claimant Gordon Lennox considered it likely that some individuals came forward to make claims, and that ‘the Crown took the opportunity to label entire groups as “surrendered rebels”’. He noted his tupuna Penetana Pukewhau was not among those listed.<sup>1197</sup>

Ngāti Apakura individuals received some awards. Their counsel identified:

- ▶ one acre in Māngere awarded to Hira Kaoma (Ngāti Apakura);
- ▶ 50 acres in Whangamarino awarded to Hepurona Opa (Ngāti Raparapa); and
- ▶ interests in lots 73 and 75, Waipa parish (near Whāingarua Harbour), alongside Ngāti Moenoho, Ngāti Tamainu, Ngāti Hourua, and Ngāti Ahinga individuals.<sup>1198</sup>

Lot 75 was purchased by the Crown in 1889. Lot 73 was partitioned and by 1919 the Crown had reacquired all Apakura interests.<sup>1199</sup>

Mr Lennox said the award of land from outside the Apakura rohe ‘meant that we were in turn trampling on the mana whenua of other iwi and hapū.’<sup>1200</sup> He added:

They would have also been in a really difficult situation and having small share interests in lands that were far from where our whanau resided were probably of no use to them. Our whanau were probably just trying to deal with a really awful

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1195. Document A139, p 8.

1196. ‘Reserves made under Section 4, “Confiscated Lands Act, 1867”’, 16 October 1879, *New Zealand Gazette*, no 109, pp 1480–1482 (doc A139(b) (Parker document bank), pp 3–5); doc K22, p 31.

1197. Document K22, p 31.

1198. Submission 3.4.228, p 56.

1199. Submission 3.4.228, p 56; doc K22, p 32.

1200. Document K22, p 32

situation, trying to make a living to feed, clothe and house the whanau on the little lands we had left to us. Maybe they sold these lands to eat. I do not know.<sup>1201</sup>

### 6.9.6.2 *The Waikato Confiscated Lands Act 1880*

In 1880, 17 years after the first Settlements Act, another compensation-related Act was passed, this time specifically addressing the Waikato lands. These it defined as lands taken by the Crown from ‘tribes and persons of the Native race formerly residing on and owning, according to their usages, lands in the district or country known by the name of Waikato’. The Waikato Confiscated Lands Act 1880 set out conditions under which the governor could grant such land to Waikato ‘former rebels’, whether those who had already ‘come in’ or those who might yet want to do so. The Act required submission to the Queen (section 4). Section 6 specified that the grants were to be ‘absolutely inalienable’. But section 7 added the rider that if the grantees or their descendants ceased ‘for a consecutive period of two years . . . to use such land as their domicile’, it could be declared forfeit and revert to the Crown.

The conditions set out by the Act were a further disincentive, as was the poor quality of the land on offer. Grants were made to individuals and were therefore inadequate as a basis for communities to prosper.<sup>1202</sup> George Wilkinson, the Government’s native agent for Waikato described the available land as ‘mostly either bald fern hills or mountainous timber land.’<sup>1203</sup>

These attempts to offer some compensation to landless supporters of the Kingitanga occurred in the context of the Crown’s efforts to extend its authority into Te Rohe Pōtae (discussed in the next chapter). Cathy Marr noted the difficulties government officials faced trying to persuade Kingitanga-aligned Māori to accept land under the 1880 Act. By 1884, Wilkinson reported little progress. Primarily, he wrote, this was because Kingitanga people would not occupy any land from the Government until a settlement with Tāwhiao was made.<sup>1204</sup>

Dr O’Malley found the lack of evidence of widespread efforts by Te Rohe Pōtae iwi and hapū to secure the return of land to be unsurprising:

the response to appeals from ‘unsurrendered rebels’ hardly needed to be guessed at, while the kinds of higher level political negotiations between Crown officials and Kingitanga representatives that got under way from the late 1860s – more in the nature of diplomatic talks between rival states than the kind of supplicatory appeals to Parliament favoured in other situations – appeared the most realistic course to follow.<sup>1205</sup>

We agree, and discuss those negotiations in detail in the chapters which follow.

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1201. Document K22(f), p 3.

1202. Document A78, pp 695, 696, 697.

1203. Wilkinson, report, 11 June 1883, AJHR, 1883, G-1, p 3 (doc A78, p 695).

1204. Document A78, p 697.

1205. Document A22, p 685.

Mr Lennox identified five blocks offered to Ngāti Apakura individuals under the 1880 Act:

- ▶ Mangapiko parish, sections 326A (19 acres), 341A (18 acres), and 338 (25 acres); and
- ▶ Ngaroto parish, sections 361 (60 acres) and 37 (36 acres).

Only the last was ever occupied, and only for a short time. In Mangapiko parish, section 226A was reserved from a portion of a rifle range; sections 341A and 338 were little more than irregular, flood-prone strips along the Pūniu River bank.<sup>1206</sup>

Because these blocks were rejected, Wilkinson, enforcing the legislation to the letter, refused to consider a request for 129 acres near Kihikihi. In 1883, he reported to the Government that ‘sufficiently troublesome times have not yet come upon them to make them grateful.’<sup>1207</sup>

### 6.9.6.3 *Twentieth century petitions and claims*

By the early years of the twentieth century, the people of the lands north of the Pūniu had reached a state of desperation rather than gratitude.

In 1910, the five allotments offered to Ngāti Apakura individuals remained unoccupied. The commissioner of lands sought an investigation by the Native Land Court. Counsel told us that ‘Apakura rangatira laid claim to the lands through the mana whenua of Apakura hapū including Apakura, Te Rau, Hinetu, Rangimahora, and Tukemata’. The matter was adjourned for consideration by the chief judge of the court, but Mr Innes was unable to locate any further records within the court process. Within five years, according to evidence provided by Mr Innes, the three Mangapiko parish allotments which comprised a narrow strip along the northern bank of the Pūniu had been sold by the Crown to settlers. Mr Innes was unable to discover the later history of the two Ngaroto sections.<sup>1208</sup>

In 1912, Rihi Te Rauparaha sought the return of land at Ngāroto. She was told by the Department of Lands that the land had been granted to settlers by the Crown, that Lake Ngāroto was Crown property, and that neither she nor her whānau had any rights there.<sup>1209</sup>

In 1913, a petition from Pura Kangāhi and 23 others of Ngāti Apakura sought the return of section 361, Ngāroto parish; sections 388, 339, and 341, Pūniu parish; section 223, Rangiaowhia parish; and sections 161, 164, 165, and 168, Tuhikaramea parish. The petitioners did not own ‘a single acre’ and ‘we are young, there is not an old person amongst us’. They were Ngāti Apakura, but ‘most of our tribe are wandering we know not where.’<sup>1210</sup> The Crown’s response was simply that ‘there is no legal power to grant your request.’<sup>1211</sup>

1206. Submission 3.4.228, p 59.

1207. Wilkinson, report, 11 June 1883, AJHR, 1883, G-1, p 3 (doc A78, p 696).

1208. Submission 3.4.228, p 61; doc A30, pp 220–223; doc A30(a) (Innes document bank), vol 1, pp 183–189.

1209. Document K22(a), p 178.

1210. Pura Kangaahi and 23 others to prime minister, 3 July 1913 (doc A22(a), vol 1, p 412).

1211. Under-Secretary, Lands and Survey Department, to Pura Kangaahi and others, August 1913 (doc A22, p 614).



A petition from George Warren in 1917 stated that the sections were 'reserved for the Maoris and we have been to see this land. Now, we consider that this land is unsuitable for a kainga. This land adjoins the Puniu Stream and is unsuitable as a kainga for us.'<sup>1212</sup>

Dr O'Malley identified two earlier efforts to raise this issue with respect to sections 338, 339, and 341A in Mangapiko parish. In 1923, Raureti Te Huia petitioned the Native Affairs Committee for the return of those sections. The committee made no recommendation.<sup>1213</sup> In 1911 he had written to the Public Trustee seeking information on these sections. In 1915, he told Maui Pōmare, MP for Western Maori, that if the land had been awarded to 'landless Maoris', 'then, we are part of these landless people, and the said lands originally belonged to us before they were confiscated.'<sup>1214</sup>

In 1927, the Sim commission reported to Parliament. The commission (discussed in more detail in section 6.9.7) was charged with examining whether the extent of the confiscations of the 1860s was reasonable. In Waikato, the passage of the Waikato-Maniapoto Maori Claims Settlement Act in 1946 was the Crown's eventual response to the commission's finding that the confiscations were excessive. Rather than resolving the grievances, however, the Act prompted further petitions that highlighted the parlous state of Māori north of the Pūniu, 80 years after the Military Settlements block was confiscated. By then, as Mr Innes has shown, the small portions of land set aside for Māori in the block had been largely long since alienated.

In 1947, a petition from Karena Tamaki and 57 others of Ngāti Apakura and Ngāti Puhiawe sought the return of land around Lake Ngāroto and Mangaotama Stream for development and tuna fishing. The petitioners' principal allegation was that in 1867 the Crown set aside 4,500 acres for Ngāti Apakura and Ngāti Puhiawe, which it later repossessed. The petitioners were represented in the subsequent Maori Land Court hearing by Pei Te Hurinui, who stated that 'no other tribe in the Waikato . . . suffered so severely'. Te Hurinui argued that granting further compensation to Ngāti Apakura would set no precedent because no other tribe had suffered 'to the extent that there was total confiscation as was the case with these people.'<sup>1215</sup> The court agreed that confiscation affected Ngāti Apakura 'to a greater extent perhaps than other sections of the Waikatos', but recommended the petition be dismissed, first, because the 4,500 acres was found never to have been reserved and, secondly, because the Waikato-Maniapoto Maori Claims Settlement Act barred the relief sought.<sup>1216</sup>

Also in 1947, a petition from Raureti Te Huia and 75 others on behalf of Ngāti Paretekawa and Ngāti Ngutu requested an inquiry into several sections and

1212. Warren to Native Minister, October [1917] (doc A22, p 819).

1213. Document A22, p 818.

1214. Raureti Te Huia to Maui Pomare, 4 January 1915 (doc A22, pp 818–819).

1215. Petition 29/1947 and associated minutes (doc A29(d) (claimant counsel, documents for cross-examination), pp 13, 22); submission 3.4.228, pp 61–62.

1216. 'Report and Recommendation on Petition No 29 of 1947, of Karena Tamaki and Others', AJHR, 1949, G-6C, pp 2–5 (doc A29(d), pp 37, 38, 40); submission 3.4.228, pp 61–62.

allotments within the Mangapiko and Puniu parishes, and the Kihikihi township. They said the land had been returned to the wrong people, specifically to those belonging to hapū that had no claim to the land, and asked for the manner in which the sections had been awarded to be investigated.<sup>1217</sup> Specifically, the petition raised:

- ▶ Mangapiko parish, lot 321 (173 acres, Otawhao) and lot 322 (870 acres, Otawhao) were grievances in relation to endowment of lands for education. We address this issue in chapter 5.
- ▶ Mangapiko parish, lots 234, 323, 196, 197, 206, 208, 235, and 253 were allegedly ‘native reserve claimed by wrongful title holder’ or as Harold Maniapoto told this inquiry, returned to the wrong hapū.
- ▶ Mangapiko parish, lots 338, 339, 341A, 342, 343, 325, 316, 398, 205, 209, and 231 were allegedly ‘native reserve unclaimed by Natives’ or ‘returned to Māori but subsequently were sold by the Crown to Europeans’.
- ▶ Puniu parish, lots 432, 84, 343, 15, 100, 111, 344, 43, 44, 45, 182, and 341 were allegedly ‘native reserve claimed by wrongful title holder’ or, as Mr Maniapoto said, returned to the wrong hapū;
- ▶ Puniu parish, lots 131, 135, 136, 73, 68, 79, 80, 81, 113, 117, 119, 120, 695, 99, 151, and 69 were allegedly ‘native reserve unclaimed by Natives’ or ‘returned to Māori but subsequently were sold by the Crown to Europeans’.
- ▶ Kihikihi township lots 180, 173, and 174 (Huiturangi and Turata) were also listed.<sup>1218</sup>

These matters, too, were referred to the Maori Land Court in 1948. Again, the court ruled the Waikato-Maniapoto Maori Claims Settlement Act had settled all claims against the Crown arising from the raupatu.<sup>1219</sup>

Mr Maniapoto told us neither Ngāti Paretekawa nor the Rangiwāero section of Ngāti Ngutu ‘received any lands whatsoever from these or other reserves set aside for their “aboriginal” use as a result of the confiscation.’<sup>1220</sup> None of the land of his hapū has ever been returned, he said.<sup>1221</sup>

### 6.9.7 Did the Crown establish proper processes for investigating raupatu grievances?

The Crown has acknowledged that processes to investigate raupatu grievances were imposed without consultation.<sup>1222</sup> This section examines two processes established by the Crown: the Ngāti Kauwhata claims commission in 1881 and the Sim commission in 1927.

1217. Document A22, p 817.

1218. Document A59(b) (Mitchell document bank), pp 2814–2832; doc K35, pp 41–42; AJHR, 1950, G-6. In his report on returned lands (doc A30), Craig Innes discusses lots 196, 197, 206, 208, 253, 255, 323, 338, 339, and 341A in Mangapiko parish, and lots 15, 100, 111, 344, 43, 44, 45, 182A, and 341 in Puniu parish.

1219. Document A22, p 817.

1220. Document K35, p 43.

1221. Document K35, p 39.

1222. Statement 1.3.1, pp 44–45, 49; submission 3.1.192, p 3; submission 3.4.300, pp 1–2.

### 6.9.7.1 *The Ngāti Kauwhata claims commission*

After the raupatu, Ngāti Kauwhata struggled persistently for a proper inquiry into the nature and extent of their interests in Waikato. In 1877, Ngāti Kauwhata rangatira Tapa Te Whata petitioned Parliament alleging that they had claims to land in the Waikato confiscation district that were not heard by the Compensation Court because they did not know about its hearings. The Native Affairs Committee considered the petitioners 'are entitled to have an opportunity afforded them of bringing forward their claims'. The committee recommended that the Native Land Court 'or other competent tribunal' conduct an inquiry.<sup>1223</sup> A second petition complained that in 1868, Ngāti Kauwhata leaders had been informed of two upcoming Native Land Court hearings affecting them, one in Cambridge and the other in Bulls, to be held nearly concurrently. Native Minister J C Richmond had advised them to remain in Rangitikei and that the Cambridge hearing would be delayed. It was not.<sup>1224</sup>

The Ngati Kauwhata Claims commission of 1881 was the Crown's response to these grievances. At the outset of the commission's hearings, the claimants made clear their expectation that the matter of confiscated lands would be addressed. However, the terms of the commission referred only to the Native Land Court matter and provided no jurisdiction to inquire into the confiscations.<sup>1225</sup>

### 6.9.7.2 *The Sim commission*

In September 1925, Prime Minister Gordon Coates announced his government's intention to establish a royal commission to investigate raupatu issues throughout New Zealand. The Prime Minister ruled out consideration of the Treaty of Waitangi by the commission. In the Prime Minister's view, Māori involved in the wars had 'repudiated the Treaty, and with the Treaty the cession of sovereignty to the Crown, which was the basis of the Treaty'.<sup>1226</sup> The commission, chaired by Supreme Court Judge William Sim, was instead to undertake a 'benevolent consideration of the question whether the extent of the territorial confiscation was just and fair under the circumstances of the warfare and the actions taken by Natives and by Europeans'.<sup>1227</sup> These restrictions were carried into the terms of reference for the Sim commission, as it became known.<sup>1228</sup>

Also excluded from consideration were:

- ▶ the legality of the New Zealand Settlements Act and amendments;
- ▶ any increase in the value of the land confiscated; or
- ▶ the socio-economic impacts of raupatu.

Any redress was to be monetary, rather than provided in land.<sup>1229</sup>

1223. Bryce, report on petition, AJHR, 1877, 1-3, p 6 (doc A120, p 188).

1224. Document A120, pp 188-189.

1225. Document A120, pp 194-195; doc K1(a), pp 10-42; submission 3.4.134, pp 18-23.

1226. Coates, 28 September 1925, NZPD, vol 208, p 774 (doc A29 (Sarich), p 229).

1227. Coates, 28 September 1925, NZPD, vol 208, p 774.

1228. Document A29, p 230.

1229. Document A29, pp 230-231.

The commissioners investigated all the major confiscations over a period of eight months. Evidence on the Taranaki raupatu was heard at Waitara from 10 to 17 February 1927, and evidence on the Waikato raupatu was heard at Ngāruawāhia from 20 to 22 April the same year.

Lead counsel for the Waikato claimants, David Smith, argued for a clear distinction to be drawn between ‘the Waikato tribes’ and the ‘Ngatimaniapotos’. Waikato had not been in rebellion, he said, while Ngāti Maniapoto were ‘rebels’ and had deserved confiscation.<sup>1230</sup> Historian Jonathan Sarich described how Smith drew heavily on the account by John Gorst in *The Maori King* to assert that Ngāti Maniapoto and Rewi Maniapoto, in particular, had planned to attack Auckland. The attack, Smith claimed, was prevented by the ‘Waikato’ tribes led by Wiremu Tamihana. Smith said:

Now, I pause to remark that at this time it was the Waikato tribes who stood between the Ngatimaniapotos and the Europeans at Auckland, and saved them from an attack . . . , and the tragedy of the situation is this, that when we come to the confiscations we find that the Ngatimaniapotos lost practically no land at all whereas the Waikatos lost an enormous area of their best land.<sup>1231</sup>

Subsequent petitions by Ngāti Maniapoto pointed out that no opportunity had been provided to present evidence to the commission from a Ngāti Maniapoto perspective. Nor, according to Mr Sarich, did the Crown consult Ngāti Maniapoto when, directly following the hearings, officials took steps to establish a distinct boundary between Waikato and Ngāti Maniapoto. Mr Taylor, acting as Crown counsel before the commission, wrote to the Department of Lands and Survey on 30 May 1927 ‘with the object of establishing the position of the boundary between the Waikato and Maniapoto Tribes’. On 2 June, the commissioner of Crown lands supplied a map along with an explanation of its sources:

The Native Land Court minute books dealing with investigation of titles to certain blocks have been searched and [Native Land Court] Judge MacCormick has been interviewed and also Mr George Graham a local student of Maori History.<sup>1232</sup>

The map marked a distinct boundary between ‘Waikato’ and ‘Maniapoto’ that happened to coincide exactly with the extent of the Crown’s confiscations. The map, Mr Sarich concluded, ‘suggests that Ngati Maniapoto lands were unaffected by confiscation.’<sup>1233</sup>

When the Sim commission subsequently reported it concluded that Ngāti Maniapoto, led by Rewi, together with Ngāti Hauā and ‘Ngatimehitia’ had been the tribes ‘principally engaged in the rebellion’. The commission found that the

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1230. Document A29, pp 232–233.

1231. Smith, minutes of evidence, Raupatu Document Bank, vol 49, p18933 (doc A29, p 233 n).

1232. Commissioner of Crown lands to Taylor, 2 June 1927 (doc A29, pp 235–236).

1233. Document A29, p 236.

confiscation had allowed the 'Ngatimaniapotos to escape without any loss of territory, and made the Waikatos the chief sufferers.'<sup>1234</sup>

On the release of the Sim commission report in 1927, Ngāti Maniapoto presented two petitions to Parliament. The petitions asserted that the commission's statements regarding confiscation were incorrect and the iwi had interests in 'large areas' of land that had been confiscated in the 'Cambridge, Kihikihi, Pirongia, Ohaupo, Waikato and Ngaruawahia districts'. The petitioners, who included Hotu Taua Pakuhatu, Hone Te Anga, Mokena Patupatu, and members of the Hotu, Barton, Amohanga, Hetet, and Ngatai whānau, asked that the Government delay any decision it might make as a result of the Sim commission report until Ngāti Maniapoto had been able to present a claim. The response, from the Under-Secretary of Native Affairs, was that hearings had been held in the 'Waikato-Maniapoto District' and the investigation was complete.<sup>1235</sup>

Mr Sarich provided evidence of ongoing, but largely unsuccessful, efforts by some Ngāti Maniapoto to have a voice in negotiating a settlement with the Crown.<sup>1236</sup> Although Pei Te Hurinui was closely involved, it was in his capacity as an advisor to the Kīngitanga rather than as a representative of Ngāti Maniapoto.<sup>1237</sup>

The eventual result of the negotiations following the Sim commission's findings on the Waikato raupatu was the Waikato-Maniapoto Maori Claims Settlement Act 1946. Mr Paul Meredith and Mr Sarich provided further evidence of Ngāti Maniapoto protest at this time.

Hori Tana (George Turner) stated: 'This is a matter that affects the whole of the Waikato tribes and also the Maniapoto tribe.'<sup>1238</sup> Tohiopipiri Moerua of Te Korapatu, Te Kūiti, told the Prime Minister that Ngāti Maniapoto were unanimous in seeking an investigation of the title of the confiscated Waikato lands.<sup>1239</sup> At a hui, held in Ōtorohanga in late September 1946, representatives of 16 Ngāti Maniapoto hapū objected to the Act, and the members and name of the trust board. Wi Nikora and 243 others, 'the soldiers of World War One and Two of the Ngati Maniapoto tribe including the parents and widows,' telegraphed the governor-general: 'We feel that unless we are given an opportunity to meet the Minister in our territory that a great injustice will have been done.'<sup>1240</sup>

1234. AJHR, 1928, G-7, pp 16–17 (doc A29, pp 236–237).

1235. Hotu Taua Pakuhatu and others, petition 175/1927 (doc A29, pp 237–238); Hone Te Anga and others, petition 176/1927 (doc A29, pp 237–238); Under-Secretary of Native Affairs to chairman, Native Affairs Committee, 6 September 1927 (doc A29, p 238).

1236. Document A29, pp 238–244. In February 1938, Reihana Amohanga of Ngāti Kaputuhi asked that his hapū join negotiations. Marae Erueti and Hori Tana wrote to Prime Minister Michael Savage on 4 March 1938, worried that their representatives were not present at negotiations. On 22 February 1939, Chas Searancke Junior wrote to Native Minister Frank Langstone on behalf of Hongihongi Tapara of Te Kopua Mission Station, Te Kawa, asking about progress. In February 1940, Ruhe Rangitaawa Mohi iti asked Langstone about the return of confiscated land by Mangaohoi Stream, near Te Awamutu.

1237. Document A29, p 239.

1238. 'Notes of Meeting held at Turangawaewae Marae', 20 April 1946 (doc A2 (Meredith), p 2).

1239. Document A2, p 2.

1240. Wi Nikora to governor-general, 7 October 1946 (doc A29, p 259).

Some changes were made, probably in part in response to ongoing opposition. Pei Te Hurinui told the Native Affairs Minister that 90 per cent of the beneficiaries of the trust board that would administer the settlement were Waikato, 'but there are sections of two important Tainui tribes also concerned, namely the Ngatimaniapoto and the Ngati Raukawa – the district around the Puniu, Te Awamutu and Kihikihi area being their former tribal lands.'<sup>1241</sup> Mr Sarich concluded that the decision to call the board the Tainui Maori Trust Board was an acknowledgement of this fact. The board later described the name change as a gift from Waikato to Maniapoto: 'Ka puta te kupu a Te Puea me whakanoho ki roto i te ingoa o te Ture te ingoa o Ngati Maniapoto, hei Koha ma Waikato.'<sup>1242</sup> The name of the settlement Bill was changed from the Waikato Maori Claims Settlement to the Waikato-Maniapoto Maori Claims Settlement Bill.<sup>1243</sup>

Addressing the Bill in Parliament, the Prime Minister said it would 'remove that load of injustice from the minds of the people in the Waikato and King-Country' and 'the thoughts of the Maori people can turn to a future brighter even than their glorious past.'<sup>1244</sup>

After the Bill became law, the Native Minister sought to reassure those of Ngāti Maniapoto who remained opposed, writing: 'The section of Maniapoto people whose land was confiscated will have a representative on the Board.'<sup>1245</sup> In 1948, the regulations gazetting the representation of Tainui tribes on the trust board were amended to state, for the Pūniu region (including Mangatoatoa, Kihikihi, Te Awamutu, and Ōrākau): 'a) Ngati Paretekawa; b) Ngati Ngutu (sections of the Ngati Maniapoto tribe).'<sup>1246</sup>

In the present inquiry, Crown counsel submitted that the 1995 and 2009 Waikato raupatu settlements 'are based on the same rationale as the 1946 settlement.'<sup>1247</sup> Clearly this is incorrect. By agreeing, in this inquiry, that claimants could bring raupatu claims on the basis of Ngāti Maniapoto whakapapa, the Crown effectively acknowledged that those Ngāti Maniapoto whose lands were confiscated have received no redress from the 1995 and 2009 Waikato settlements. This is not to question the integrity of these settlements. It is simply to explain how they differ from the settlement reached in 1946.

### 6.9.8 Treaty analysis and findings

Although the Crown made relatively wide-ranging concessions on confiscation in this inquiry, several issues remained to be determined. First, we think it is necessary to address the reasons why the Crown decided to confiscate Māori land. We

1241. Pei Te Hurinui to Mason, 30 May 1946 (doc A29, p 256).

1242. Pei Te Hurinui, Poari Kai-Tiaki Maori O Tainui, Ko Te Ripoaata Whanui Whakaaturanga o nga Moni, March 1947, pp 22–23 (doc A29, p 256).

1243. Document A29, p 256.

1244. Fraser, 18 September 1946, NZPD, vol 275, p 39 (doc A29, p 258).

1245. Mason to Reihana Te Amohanga, not dated (doc A29, p 260); doc A2, p 5.

1246. 'Tainui Trust Board – Appointment of Members', 22 July 1948, *New Zealand Gazette*, no 41, p 906 (doc A29, p 271); doc A2, p 6.

1247. Submission 3.4.310(e), p 29.

have already found that the reasons given at the time by the Crown for its military actions were, in essence, pretexts for an overriding intention to destroy Māori authority and institutions. Confiscation, which annulled all customary rights to land and created a clean slate for European settlement, was considered by Governor Grey to be an indispensable part of his war policy: he could ‘devise no other plan’ to ensure the ‘entire command’ of Waikato.<sup>1248</sup> Our earlier finding that the Crown’s attack on the Kingitanga and Te Rohe Pōtae Māori breached the Treaty principles of partnership and autonomy is therefore also applicable to the subsequent acts of confiscation.

We first make findings in relation to Ngāti Maniapoto interests in Taranaki, and then turn to Waikato.

### 6.9.8.1 *Taranaki*

In Taranaki, the Crown acknowledged that its confiscation of Ngāti Maniapoto interests was an injustice and breached Treaty principles. This is appropriate, and we therefore now assess the extent of the loss and resulting prejudice.

Our analysis has shown that when war began at Waitara in 1860, Ngāti Maniapoto retained an interest over much of northern Taranaki as a consequence of the wars of the 1820s and 1830s. This interest was acknowledged by the Crown at the time and welcomed to the extent that Ngāti Maniapoto rangatira were able to mediate in disputes among hapū and reassure inhabitants of the New Plymouth settlement. We described the way that Ngāti Maniapoto negotiated the gradual return to Taranaki, according to tikanga, of the former inhabitants who had either been taken north or retreated south into exile. Before hostilities broke out, Ngāti Maniapoto rangatira had made clear to the Crown their stance that Waikāramuramu Stream at Pukearuhe formed a boundary beyond which their southern neighbours could claim no rights.

We make two findings with respect to Ngāti Maniapoto interests in Taranaki. First, the Crown knew Ngāti Maniapoto asserted a boundary at Waikāramuramu, and by drawing an arbitrary line of confiscation beginning at Parininihi running due east for 20 miles, the Crown took Ngāti Maniapoto lands. When Ngāti Maniapoto questioned the inland course and extent of the confiscation in 1881, Crown official Parris was unable to explain where, on the ground, the Crown’s boundary lay. (We discuss the inland extent of Ngāti Maniapoto interests in more detail in chapters 7 and 8.) We agree with the Ngāti Maniapoto and Ngāti Tama Cross Claims Tribunal that the concept of exclusive boundaries is unhelpful in determining rights to land in a customary Māori context. We endorse the view of that Tribunal that confiscation boundaries are ‘simplistic and bald, and bear no relation to tikanga’ and will ‘usually be wrong’. We also acknowledge that at a later period, in the 1880s, Ngāti Maniapoto rangatira asserted a boundary slightly north of Waikāramuramu, at Waipingao. That said, we prefer the pre-war assertion of Waikāramuramu to Waipingao, because the latter was made subsequent

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<sup>1248</sup> Grey to Newcastle, 29 August 1863, ‘Papers relating to Military Settlements in the Northern Island of New Zealand’, AJHR, 1863, A-8, p.1.

to actions the Crown now acknowledges to be Treaty breaches and which were clearly prejudicial to Ngāti Maniapoto. Secondly, because the Crown never properly investigated the extent to which Ngāti Maniapoto retained rights and interests in Taranaki, despite implicitly acknowledging them before war broke out, it is also appropriate to make a finding that the Crown did not uphold the Treaty guarantee of the tino rangatiratanga of Ngāti Maniapoto. This was in effect an extinguishment of tikanga that caused severe prejudice to the mana of Ngāti Maniapoto.

Although the Taranaki Tribunal found the New Zealand Settlements Acts were lawful, it was particularly critical of the shortcomings in the Crown's application of the law in northern Taranaki, because Māori there were not at war. We endorse that Tribunal's conclusion that the confiscation of northern Taranaki was probably unlawful, to the extent it is applicable to Ngāti Maniapoto rights and interests in Taranaki.

No claims were made to the Compensation Court in Taranaki by Ngāti Maniapoto. As a consequence of being classed as unsurrendered rebels we consider that the court would have excluded any claims they had made from consideration.

### **6.9.8.2 Waikato**

In Waikato, although the Crown has previously acknowledged the wrongfulness of confiscation, it addressed its apology to the Kingitanga. Evidence was needed, the Crown said, that iwi and hapū of Te Rohe Pōtae had rights in the Waikato raupatu district that were distinct from 'Waikato Tainui'.

The Crown acknowledged that neither the Waikato Raupatu Claims Settlement Act 1995 nor the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 prevented Ngāti Maniapoto from bringing raupatu claims. Many Ngāti Maniapoto-affiliated hapū have done so. The extent to which most of these claimants have been able to point to the loss of specific rights and interests has been, in the main, limited. After 150 years this is not altogether unexpected but does not in our view excuse the Crown. At the time of the invasion the Crown planned to and did in fact occupy Ngāti Maniapoto territory.

Two Ngāti Maniapoto-affiliated groups asserted strong evidence that their interests in the Waikato raupatu district were confiscated. Those groups, Ngāti Paretekawa and Ngāti Apakura, are also named in the Waikato Settlement Acts. We determined that they could still bring claims on the basis of non-Waikato affiliations, in accordance with the jurisdictional text agreed by the parties at an early stage of this inquiry (see chapter 1). These claimants, representing Ngāti Paretekawa and Ngāti Apakura, asserted rights around Kihikihi and Te Awamutu, and Rangiaowhia and Ngāroto respectively. (The Ngāti Paretekawa claimants said that they also spoke on behalf of the Rangiwāero section of Ngāti Ngutu, the latter hapū also named in the Waikato settlements, although the Crown did not specifically argue this point.) Although the Crown contested the right of these groups to bring claims, it did not contest the extent of the interests they claimed.

The Crown presented a number of factors it considered would be relevant to deciding whether the raupatu claims of Ngāti Paretekawa and Ngāti Apakura are well founded. In particular, the Crown said these four factors would apply:



- ▶ Does the claimant group/hapū have distinct non-Waikato or non-Waikato-Tainui whakapapa?
- ▶ Does the traditional area of interest of the claimant group/hapū, or part of that area, fall outside the Waikato confiscation area?
- ▶ Can the claimant group/hapū assert customary interests within the Waikato confiscation area on the basis of distinct non-Waikato or non-Waikato-Tainui whakapapa?
- ▶ Is the group functioning as such, 'on the ground' and on the basis of its non-Waikato or non-Waikato-Tainui affiliation?

In the Crown's submission, 'a negative answer to any of the first four questions must automatically result in a finding that the claimant group does not have a distinct and separate non-Waikato or non-Waikato-Tainui raupatu claim.'<sup>1249</sup>

With respect to the first three questions we consider the answer for both groups to be yes. The fourth question, we think, is misconceived. The rangatiratanga of hapū is present and maintained independently of the iwi to which they may affiliate.

We understand from the Crown's closing submissions on specific claims that its chief concern with regard to the claims of Ngāti Paretekawa and Ngāti Apakura is that it has already concluded a settlement that includes them. The implication, that these groups are somehow 'double-dipping', is not an argument we accept. The evidence is clear that although Ngāti Paretekawa have close links to Waikato, primarily through Pōtatau Te Wherowhero, the hapū is essentially of Ngāti Maniapoto. The Crown told us that the 1995 settlement was 'based on the same rationale as the 1946 settlement'. As we explained in section 6.9.7, this cannot be correct because the earlier settlement explicitly included Ngāti Paretekawa and Ngāti Ngutu as hapū of Ngāti Maniapoto. This was despite the fact that the Sim commission inquiry, which formed the basis for negotiating the 1946 settlement, blamed Ngāti Maniapoto for the war. Ngāti Paretekawa and Ngāti Ngutu may have been included, we think, because Waikato sought to ensure that their Ngāti Maniapoto whanaunga could receive a share of the redress the Crown offered.

When we assessed whether Ngāti Apakura could bring raupatu claims before us, we noted their links to Ngāti Maniapoto but also the fragmentation and scattering throughout Te Rohe Pōtae and elsewhere that they suffered as a consequence of their expulsion from Rangiaowhia by the Crown. We discussed Pei Te Hurinui's attempt in 1947 to secure further redress for Ngāti Apakura subsequent to the 1946 settlement, on the basis that no other group had suffered so much from the raupatu. We consider Ngāti Apakura have suffered from Crown actions.

We find that the Crown breached the plain meaning of the article 2 guarantee of tino rangatiratanga when it confiscated lands north of the Pūniu River where Ngāti Maniapoto and Ngāti Maniapoto-affiliated hapū had interests. Our finding encompasses but is not limited to: the lands between the Pūniu, Waipā, and

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1249. Submission 3.4.310(e), pp 30–31.

Mangapiko Rivers, claimed by Ngāti Paretekawa and Ngāti Ngutu; and the lands from Rangiaowhia to Lake Ngāroto, the ancestral homelands of Ngāti Apakura.<sup>1250</sup>

Ngāti Kauwhata and Ngāti Wehi Wehi also claimed that their interests around Rangiaowhia were confiscated by the Crown. The evidence is not sufficient to find the Ngāti Wehi Wehi claim to be well founded. Nor are we in a position to make a finding regarding Ngāti Kauwhata interests in Rangiaowhia, although we think it is probable that they retained shared interests in the Moanatuatua and Rotoorangī swamps east of Rangiaowhia. We do, however, consider the Crown's acknowledgement that it imposed processes to consider raupatu grievances without consultation to be applicable to Ngāti Kauwhata, because despite acknowledging that their grievances had not been considered, the Crown took no action to investigate when it had the opportunity.

The Crown acknowledged that 'the prejudice that raupatu created was compounded by inadequacies in the Compensation Court'.<sup>1251</sup> We do not consider this concession goes far enough. Governor Grey made a promise that 'loyal' Māori would not lose their lands. The Compensation Court was supposed to be the means by which the promise would be kept. It is clear from the evidence of Dr O'Malley that this did not happen. In fact, it could not happen because the court was not resourced to make proper inquiries and could only make awards to individuals. Crown officials bypassed the court process when they could and simply presented arrangements to the court for ratification. More often than not, it appears, Māori who applied to the court did not retain their own lands, which the Crown had already allocated to settlers, but were given small pieces of poor land in distant locations. The evidence indicates, further, that officials' priority at all times was to minimise the obligation to the Crown rather than ensure that its citizens' rights to due process were protected. We find that, by failing to ensure that Māori who did not fall within the Crown's own definition of rebellion did not lose their lands, the Crown failed in its duty of active protection and breached the article 2 guarantee of tino rangatiratanga and the principle of good governance.

The claimants argued that the award of lands to individuals, rather than to iwi or hapū, contributed to 'the breakdown of the Māori social structure'.<sup>1252</sup> The Crown has acknowledged that individualisation of tenure through Native land laws 'contributed to the undermining of tribal structures in the Rohe Pōtae' and breached Treaty principles.<sup>1253</sup> This acknowledgement of Treaty breach, in our view, must also apply to the Compensation Court process.

Those Te Rohe Pōtae Māori who were labelled as rebels were ineligible to receive anything from the court. Subsequent attempts by the Crown to offer redress to those it had labelled as rebels were conditional on accepting 'rebel' status and made with the intention of attracting support away from the Kingitanga. For these

1250. See the map provided in submission 3.1.159, p [3].

1251. Submission 3.4.300, pp 2, 23.

1252. Submission 3.4.127, p 37.

1253. Statement 1.3.1, p 53.

reasons we do not consider the offers can be understood to have been made in good faith.

The Crown's concession regarding the investigation of raupatu grievances certainly applies to its establishment of the Sim commission. The investigation proceeded on limited grounds that were not decided in consultation with Te Rohe Pōtae iwi and hapū. Nor does there seem to have been any real opportunity for Ngāti Maniapoto to present their claims. This was a further consequence of the Crown's labelling of the iwi as rebels, and we find these failures to be a breach of the Treaty guarantee of tino rangatiratanga and the principle of partnership.

## 6.10 PREJUDICE

Our analysis to this point has identified a number of very serious Treaty breaches by the Crown arising from its raupatu in Taranaki and Waikato. In particular, we have pointed to the damage to relations between the Crown and Te Rohe Pōtae Māori, loss of life, lands, and other property, and the limitations of Crown processes to investigate grievances and compensate for wrongdoing. In broad terms the Crown has rightly accepted a large degree of responsibility for the war and its effects. These effects, the Crown said, were significant and wide-ranging. Nevertheless, in our view the prejudicial effects of the raupatu go a considerable way beyond what the Crown has conceded in this inquiry. In this section of the chapter we complete our assessment of the prejudicial effects of the raupatu.

### 6.10.1 The parties' arguments

The Crown acknowledged impacts on Te Rohe Pōtae Māori that included a serious deterioration of their relationship with the Crown; injuries and the loss of innocent lives; the loss of property, including 'land and resources considered to be taonga'; and significant social and economic disruption, in part because of the need to support refugees. The Crown submitted that not all the adversities and disruption suffered by Te Rohe Pōtae Māori since the 1860s could be attributed to raupatu.<sup>1254</sup> Moreover, counsel submitted that in fact that the Crown took steps 'to address and mitigate the effects of war and raupatu on Rohe Pōtae Māori' after the war.<sup>1255</sup>

The claimants vehemently disputed these assertions and argued that the Crown's acknowledgements did not go far enough. In their view, the qualifying statements made by Crown counsel were intended to minimise the Crown's responsibility for the effects of the raupatu and took insufficient account of the impacts that were described in the kōrero of the tangata whenua. Of particular concern to the claimants were statements about the uncertainty surrounding the number of Māori casualties and the suggestion that the 'immediate' effects of war were

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1254. Submission 3.4.300, pp 21–22.

1255. Submission 3.4.300, pp 24–25.

minimal.<sup>1256</sup> Whereas the Crown suggested that casualties ranged in the ‘dozens’, claimant counsel cited Vincent O’Malley’s estimate that the numbers of lives lost by Māori communities in the Waikato war was likely to be proportionately comparable to New Zealand’s losses in the First World War.<sup>1257</sup> Counsel argued that the loss of rangatira destabilised Māori communities and undermined broader political cohesion.<sup>1258</sup> Casualties suffered during the war, they said, inhibited the social and economic capacity of their communities.<sup>1259</sup>

The Crown acknowledged there was ‘no doubt’ that Te Rohe Pōtae Māori whose territories were occupied by Crown soldiers suffered considerable economic disruption. In counsel’s submission, although a lack of evidence of the ‘state of affairs within the King Country’ before the mid-1880s made an accurate assessment of social and economic effects difficult, the economic disruption was less substantial ‘for those south of the line’.<sup>1260</sup>

Counsel for the claimants contended that the significant number of exiled whanaunga retreating into Te Rohe Pōtae compounded the social and political disruption caused by the war and put economic resources under considerable pressure. They cited evidence which suggests that the population of some areas, chiefly around Tokangamutu (modern-day Te Kūiti), increased by a factor of four.<sup>1261</sup> This influx put pressure on food and resources already depleted by the war and contributed to poor health and sanitation, leading to starvation and sickness.<sup>1262</sup> Conversely, some claimants who remain today displaced from their ancestral lands pointed to lingering tensions with their hosting whanaunga arising from resettlement after the confiscations.<sup>1263</sup> Ngāti Apakura and Ngāti Kauwhata, in particular, argued that the ‘indiscriminate’ placement of the confiscation line contributed to an erosion of tribal identity.<sup>1264</sup>

The raupatu had psychological effects that remained to the present day, the claimants said. This included the impact of labelling, whether as rebel or kupapa, and the unresolved nature of the grievances, particularly the memories of Crown atrocities and the lack of acknowledgement of these histories. The claimants’ grievances extended to cultural prejudice resulting from their dislocation from ancestral lands and destruction of wāhi tapu. Claimants noted the loss of reo, waiata, whaikōrero, and tikanga particular to displaced iwi and hapū.<sup>1265</sup> Additionally, they pointed to the loss of whakapapa and whanaunga knowledge arising from disconnection from the lands and relationships of their tūpuna.

1256. Submission 3.4.391, pp 3–10.

1257. Document A22(e), p 4.

1258. Submission 3.4.198, p 17; submission 3.4.186, p 18.

1259. Submission 3.4.108, p 36.

1260. Submission 3.4.300, p 23.

1261. Submission 3.4.108, p 38; doc A22, p 204.

1262. Submission 3.4.127, p 40; submission 3.4.130(b), pp 16–17.

1263. Submission 3.4.208, pp 19–20; doc K14 (Maniapoto), p 3.

1264. Submission 3.4.134, pp 18–19, pp 62–64; submission 3.4.147, p 73; submission 3.4.228, p 22. See also Ngāti Wehiwehi: submission 3.4.154(a), p 46.

1265. Submission 3.4.208, pp 19–20.

### 6.10.2 The main aspects of prejudice

Having reviewed the parties' positions and the matters identified in our statement of issues, we consider the key impacts for the people of Te Rohe Pōtae were as follows. Initially, the major effects were:

- ▶ the socio-economic strain caused by maintaining fighting forces in 1860–1861 and 1863–1864;
- ▶ the death and injury of combatants and non-combatants;
- ▶ the impact of disease in the aftermath of the war; and
- ▶ hosting the very large number of their whanaunga who sought refuge from the Crown.

These impacts, although clearly posing severe challenges, were relatively short-term in nature. As the next chapter demonstrates, by the end of the 1860s within the aukati proclaimed by Te Rohe Pōtae leaders the people had largely adapted to and recovered from these circumstances. Despite some ongoing social and political tensions, their communities were relatively prosperous with strong and stable leadership. However, the raupatu had undoubted long-term effects. These related to:

- ▶ dispossession of lands and property for those who lived north of the Pūniu River;
- ▶ the psychological effects of the raupatu and in particular of being labelled rebel or kupapa;
- ▶ social and cultural wellbeing, including the protection of wāhi tapu, historical memory, and the intergenerational impacts of the raupatu; and
- ▶ the impact of the raupatu on the mana of Ngāti Maniapoto.

### 6.10.3 Immediate socio-economic effects

In 1840, the coalition between Waikato and Ngāti Maniapoto described in chapter 2 had created one of the strongest political and military forces in New Zealand. For the two decades after the Crown brought the Treaty of Waitangi to Te Rohe Pōtae, the people of the district enjoyed a period of thriving stability that was enhanced by access to the new agricultural and economic opportunities provided by European newcomers. The region around Ōtāwhao, Kihikihi, and Rangiaowhia lay at the heart of this prosperity. European observers regularly singled out this district to praise the developments that were taking place.

In his report on the mid-nineteenth century commercial economy in Te Rohe Pōtae, Andrew Francis concluded that, although agricultural production declined from the late 1850s until the late 1860s, 'the extent to which the war is to blame is open to interpretation'. Dr Francis identified other factors, principally falling trans-Tasman commodity prices and a decline in soil quality due to overcropping, as leading to a decline in economic production from the late 1850s.<sup>1266</sup> We accept these points, but we note that quantitative evidence of declining production primarily concerns the export of wheat to Auckland.<sup>1267</sup> Te Rohe Pōtae

1266. Document A26, pp 94–95.

1267. See, for example, doc A26, pp 83–85.

communities were clearly still well able to provide for themselves, as shown by the substantial stores of food the British discovered when they occupied Kihikihi and Rangiaowhia in February 1864 (sections 6.7.5.5 and 6.7.9.1).

The Crown has acknowledged that Te Rohe Pōtae Māori were prejudicially affected with regard to the 'substantial resources [they] expended' to support their war effort. Crown counsel nevertheless suggested that the immediate effect of the outbreak of war, both in Taranaki and in Waikato 'was minimal'.<sup>1268</sup> These statements are difficult to reconcile.

With regard to Taranaki, the Crown endorsed James Belich's view that as much as half of the core Kingitanga fighting force went to Taranaki and that the rest may have remained behind simply 'because greater numbers could not be maintained' there.<sup>1269</sup> It is clear to us that the scale of Te Rohe Pōtae Māori engagement in the Taranaki campaign would have forced a substantial mobilisation of the population to support the war effort, not to mention careful synchronisation with the requirements of the harvest cycle. In addition, as described earlier (section 6.4.3) many men returned from Taranaki with severe injuries and permanent disabilities.

From the time of the Taranaki war until the Waikato invasion began in July 1863, both sides were clearly preparing themselves for military conflict, as the Crown has acknowledged.<sup>1270</sup> Both John Gorst and John Morgan, who were based at Ōtāwhao, considered that the deteriorating political situation contributed to a decline in economic wellbeing.<sup>1271</sup> Neither man was a disinterested observer, but we do not think that is sufficient to discount their viewpoints.

As war grew closer and Europeans left the district, economic relationships that had built up over decades were impaired. There are complexities to this overall picture: Mōkau Māori were able to expand their trading activities from 1860 to 1863, although this did not last. And it seems that trade never halted altogether out of Kāwhia.<sup>1272</sup>

As the Crown acknowledged, it was the Waikato war that had 'a much greater impact' on the people of Te Rohe Pōtae. Once Crown troops crossed the Mangatāwhiri to invade Waikato, Te Rohe Pōtae iwi and hapū were closely involved in the Kingitanga defence effort from the beginning (section 6.7.2) and this would have deprived them of a large proportion of their labour force. In addition, warriors from other districts needed to be housed and fed. There is evidence that this was difficult during the winter months of 1863. Isaac Shepherd, clerk and interpreter to the Taupō Resident magistrate, reported that a large group of Tūwharetoa warriors were forced to return from Waikato in October 1863 because they were 'mate kai' (starving) since food was so scarce.<sup>1273</sup> While the evidence of stockpiled food, noted above, indicates that Te Rohe Pōtae Māori were able to

1268. Submission 3.4.300, pp 15, 22.

1269. Submission 3.4.300, pp 7, 15, 22.

1270. Submission 3.4.300, pp 3–6; see also, for example, doc A28, pp 141–142.

1271. Gorst, *The Maori King*, p 13 (doc A22, p 90); Morgan to CMS, 1 July 1862 (doc A22, p 186).

1272. Document A23, pp 459–460; doc A28, pp 143–144; doc A22, p 224.

1273. Shepherd, letter, 6 October 1863 (doc A54, pp 120–121).

relieve these pressures during the summer of 1863–1864, the economic strain must nevertheless have been significant.

The military occupation of the lands of some iwi and hapū of Te Rohe Pōtae (addressed in sections 6.7 and 6.9) clearly had a particularly severe impact on those groups. There were additional socio-economic impacts. The loss of stockpiled food and access to resources, destruction of property, and financial ruin and termination of livelihoods for Te Rohe Pōtae people who had interests north of the Pūniu were prejudicial effects of an unjust war. Dr O'Malley noted: 'Tribes which in the 1840s and 1850s had striven to raise the capital necessary for heavy investments in flour mills, agricultural equipment, horses, and cattle and so on, saw this almost literally taken from them overnight.'<sup>1274</sup>

Ngāti Apakura had made a significant commercial investment in Onehunga. This too was lost as a result of the war.<sup>1275</sup> The settlement at Te Rore, which had grown, the claimants argued, due to its strategic position on trade routes, was ruined by the war.<sup>1276</sup> We have made an assessment of the extent to which land was taken (section 6.9.2), and we have noted that these were among the most productive agricultural lands in New Zealand at that time. To this we add that the confiscation put an effective end to opportunities for recovery on those lands after the war. It is important to state, too, that these impacts all occurred as a consequence of the Crown's decision to continue the war beyond Ngāruawāhia despite efforts by Kingitanga leaders to negotiate peace (section 6.7.3.3).

#### **6.10.4 Death and injury of combatants and non-combatants**

The prejudice resulting from the deaths of non-combatants, women, and children as a consequence of the Crown's acts of war has already been discussed (section 6.7). The long-term effects of those actions will be assessed later. Here, the focus is on the overall casualties suffered by Te Rohe Pōtae Māori.

It is not possible, now, to do more than estimate the number of Māori who were killed and wounded as a result of the wars in Taranaki and Waikato. The claimants stated that at least 500 Te Rohe Pōtae Māori were killed or wounded in the Waikato war.<sup>1277</sup> The Crown referred to Belich's estimate that some 500 Māori were killed or wounded as a result of the Waikato war. After acknowledging Dr O'Malley's conclusion that the total may have been much higher (around 800), counsel stated: 'The only conclusion that can be reached on the available evidence is that some dozens of Rohe Pōtae Māori were probably killed and wounded.'<sup>1278</sup>

Dr O'Malley based his higher estimate on James Cowan's work in the early twentieth century: Cowan estimated about 400 Māori were killed. Dr O'Malley's own analysis indicated that 'the casualty figures for the number killed are likely to have been closer to Cowan's estimates than to the ballpark figure provided by

1274. Document A22, pp 186–187.

1275. Submission 3.4.228, pp 62–69.

1276. Document s50(e), paras 40–47; doc s50(c), paras 38–43.

1277. Submission 3.4.127, p 40.

1278. Submission 3.4.300, pp 22–23.

Belich'. Combined with an assessment that the ratio of Māori killed and wounded was roughly one-to-one, O'Malley calculated 'total casualty figures of around 800 on the Maori side.'<sup>1279</sup>

This number does not include those who had been killed and wounded in the first Taranaki war in 1860–1861. Belich estimated that there were about 200 casualties among Māori who fought in that war.

Our assessment of casualties at Ōrākau (section 6.7.10(4)(b)) aligned with that of Dr O'Malley, although he may have understated the number who were wounded. For this reason, and also because the Crown does not appear to have undertaken its own analysis, we conclude that an estimate of 1,000 Maori killed or wounded in both conflicts is appropriate. By no means all were Te Rohe Pōtae Māori. Many iwi and hapū sent men in support of the Kingitanga, and not only from Waikato and Taranaki. Taking into account that the exodus of Waikato Māori into Te Rohe Pōtae after the war seems to have roughly doubled the population there (see section 6.10.5), it is reasonable to conclude that the number of casualties was in the hundreds rather than 'some dozens' as the Crown suggested.

What is clear is that the rate of casualties was extremely high and had a devastating impact on the iwi, hapū, and whānau of the Te Rohe Pōtae district. Much claimant evidence supports this conclusion, but a few examples will suffice.

Giving evidence for Ngāti Wehi Wehi, Patricia Jacobs stated that 'of those young tupuna who left the southern lands to actively participate in the defence of their ancestral land, not one of them returned.'<sup>1280</sup>

In his record of the events at Ōrākau, Hitiri Te Paerata stated that: 'my father, brothers, and uncle all died.'<sup>1281</sup>

Evidence supplied by tangata whenua reveals that the casualties suffered in successive battles fractured families, hapū, and iwi.

Multiple witnesses testified to the huge toll that the heavy losses sustained at Waiari took.<sup>1282</sup> Frank Thorne told that Tribunal that Waiari 'is an important event. As it saw a large loss of Māori lives.'<sup>1283</sup>

Mr Thorne also specified that a number of key leaders were lost 'during a time of change when leadership was most needed.'<sup>1284</sup> The loss of rangatira no doubt hampered the ability of hapū and iwi to regroup while war was still being carried out. At the same time, it temporarily disrupted the political capabilities of Kingitanga supporters, which the Crown subsequently exploited as it sought to undermine the political cohesion of the Kingitanga through confiscation.

The rising death toll drew away even more of the labour force. The clerk of the Taupō resident magistrate, Isaac Shepherd reported that Rewi sent a letter to

1279. Document A22, pp 183–184.

1280. Document K9, p 6.

1281. Hitiri Te Paerata, *Description of the Battle of Orakau*, pp 5–6 (doc A22, p 163).

1282. Document K10, p 3; doc K32, p 22.

1283. Document K32, p 22.

1284. Document K32, p 6.



Taupō Māori in November 1863 requesting reinforcements to compensate for the heavy losses the Kingitanga sustained at Rangiriri.<sup>1285</sup>

The further casualties occurring in each successive battle had a substantial effect on the ability of communities to sustain agricultural production.

The killing of many of their tūpuna, including women and children, effectively caused a large-scale, albeit relatively temporary, weakening of the political, social, and economic structures which sustained Kingitanga hapū and iwi. These would be magnified and worsened by the disruption that Te Rohe Pōtae Māori would suffer in the aftermath of raupatu.

### 6.10.5 Immediate impacts of hosting refugees

In 1864, many supporters of the Kingitanga whose lands had been taken by the Crown sought refuge on Ngāti Maniapoto lands within Te Rohe Pōtae. This was not a new role for Ngāti Maniapoto. Among the refugees fleeing Crown occupation of their ancestral lands was Tāwhiao, the second Māori king. Claimants spoke of this in terms of his 'return' to Te Nehenehenui. Tāwhiao was born at Ōrongokoekoē in the 1820s, where his parents were given refuge by Ngāti Maniapoto hapū Ngāti Matakore after the fall of Mātakitaki pā at the hands of Ngā Puhī invaders (see chapter 2).<sup>1286</sup> However, the scale of the inflow after the Waikato war of the 1860s was potentially overwhelming. Marie Paul told the Tribunal that Waikato hapū Ngāti Pou, Ngāti Mahuta, Ngāti Naho, Ngāti Tipā, Ngāti Te Wehi, Ngāti Reko, Te Patupo, and Ngāti Hine accompanied Tāwhiao.<sup>1287</sup> Based, in part, on his analysis of census data, Dr O'Malley estimated that an existing population within Te Rohe Pōtae of about 2,000 was likely to have doubled after 1864 (see also chapter 7). The effects were not felt evenly, as many of the newcomers accompanied Tāwhiao, who first settled at Tokangamutu. There, Dr O'Malley estimated that 'there may have been as many as three refugees for every permanent resident'.<sup>1288</sup>

The parties agreed that the arrival of refugees in such numbers created major difficulties for the people of Te Rohe Pōtae. The Crown acknowledged that 'a large number of individuals relocated to the inquiry district from the Waikato following the wars, placing pressure on the resources of the Rohe Pōtae Māori who were required to support them'.<sup>1289</sup> The pressure would have been felt especially strongly by Ngāti Rōrā, whose rohe encompassed Tokangamutu. Their counsel described the refugee situation as 'a significant burden on Ngāti Rōrā and Ngāti Maniapoto generally'.<sup>1290</sup> Counsel for Ngāti Rereahu emphasised that within the refugee settlements, people were 'detached from their traditional food sources and traditional economic bases' and poverty, disease, and overcrowding were to be expected.<sup>1291</sup>

1285. Document A54, pp 123–124; Wai 1200 ROI, doc A71(e) (Stirling document bank), p 1483).

1286. Transcript 4.1.7, p 49 (Tom Roa, hearing week 1, Te Tokanganui-a-noho marae, 5 November 2012); transcript 4.1.14, p 63 (Jock Roa, hearing week 9, Parawera marae, 9 December 2013).

1287. Transcript 4.1.14, p 1291 (Marie Paul, hearing week 9, Parawera marae, 13 December 2013).

1288. Document A22, p 204.

1289. Submission 3.4.300, p 15.

1290. Submission 3.4.279, p 13.

1291. Submission 2.4.240, p 8.

Dr O'Malley offered an assessment that we think captured the risk and fragility of the circumstances: 'One can barely begin to imagine the problems and stresses that would create, even with a modern infrastructure. Indeed, massive systemic failure would be a possible and even probable outcome of such an influx of people.'<sup>1292</sup>

Much of what is known about initial conditions within Te Rohe Pōtae comes from newspaper reports. But although the evidence is patchy it is consistent. The winter of 1864 must have been especially difficult, as food stores intended to support the defence effort at Pāterangi had been lost to the British invaders. The *New Zealand Herald* reported in June: 'Rewi and his compatriots in their stronghold at Hangatiki are, by all accounts, getting desperately 'hard up'. Their supplies are nearly exhausted, and they have no secret hoards of potatoes or corn upon which they can fall back in their need.'<sup>1293</sup>

Conditions may have been equally dire for the following two winters. North of our inquiry district, but still within the aukati, the *Herald* reported that Ngāti Hauā were 'literally starving' and at Patetere there was, according to Cathy Marr, 'no food, many were sick and dying and they did not know if they could last until their next harvest.' As the winter of 1866 began, the *Herald* reported that Whāingaroa Māori had resorted to importing food.<sup>1294</sup>

In our assessment, the scale and suddenness of the population shift must have created enormous stresses. While the impact on communities varied according to the distribution of refugees across the region, it appears that, for several years and particularly during the winters, the capacity to feed and house a population that had doubled in size simply could not be sustained.

It does not seem likely, however, that refugee numbers were the only cause of poverty or starvation. The confiscation of highly developed and productive agricultural land north of the Pūniu River would have exacerbated problems, as would the number of war casualties, and, more generally, the utter disruption of war.

Cathy Marr concluded:

It seems likely that, as with communities left outside the new external boundary, Maori communities within the territory would have suffered significant hardship, food shortages and increased vulnerability to diseases associated with insufficient food and poor living conditions.<sup>1295</sup>

What is important to emphasise in the present context is that the hardship and suffering was all directly attributable to the Crown's acts of raupatu.

1292. Document A22, p 204.

1293. *New Zealand Herald*, 25 June 1864 (doc A22, p 190).

1294. Document A78, pp 188–189.

1295. Document A78, p 186.

### 6.10.6 The impact of disease

Claimants alleged that after the Waikato war, the poor diet and insanitary and crowded living conditions within Te Rohe Pōtae made the population ‘vulnerable to poor health and disease’. They said the Crown breached its duty of active protection when it ‘failed to respond appropriately’.<sup>1296</sup>

Crown counsel submitted that in the aftermath of war the Crown did in fact take steps to counteract the negative effects of the conflict. In 1866, Govenor Grey made efforts to send medicine to Kingitanga leaders at Hangatiki. At Kāwhia he helped Hori Te Waru, a Ngāti Apakura rangatira who had lost his lands and possessions at Rangiaowhia, by providing him with ‘the articles necessary to re-establish himself in life’.<sup>1297</sup> The Crown also appointed a doctor to ‘provide medical relief in the Raglan district’.<sup>1298</sup>

It is clear that, for the first few years after the war, disease took a severe albeit relatively short-term toll on the health of the people of the inquiry district.

Epidemic sickness struck Te Ara o Ngā Roimata, the Ngāti Apakura diaspora, as they travelled south-east from Rangiaowhia to seek refuge with Ngāti Tūwharetoa. Tame Tūwhangai described an unknown illness referred to as karawaka that killed his tūpuna:

If nothing else could get any worse for them as they had settled in, an epidemic swept through those unfortunate refugees, a disease called ‘Karawaka’ decimated many of their numbers, including my great grand-aunt Rina Haututu who succumbed to this disease . . .<sup>1299</sup>

Paranapa Otimi said that Te Wētini, one of a Ngāti Tūwharetoa scouting party, went ahead to warn that ‘he aitua mate’, an unknown sickness, travelled with the refugees. More than 100 refugees were assessed, Mr Otimi said, and Waihi and Tokaanu at the southern end of Lake Taupō were set aside in isolation to care for them. Six died within a week, he said. Some of the refugees remained in the district for more than 40 years, Mr Otimi said, with many unable to move due to ‘lingering illness’. Between 70 and 80 refugees lie buried in the rohe of Ngāti Tūwharetoa.<sup>1300</sup>

The *New Zealand Herald* reported outbreaks of ‘low fever’ at Kāwhia, in the winter of 1865, and at both Kāwhia and Whāingaroa during the first half of 1866. At Whāingaroa, estimates of mortality ranged from 127 to 300. Among those who died as a result was Ngāti Māhanga rangatira Te Awaitaia. Dr O’Malley said the fever was likely a symptom of typhoid.<sup>1301</sup>

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1296. Submission 3.4.127, p 40.

1297. Grey to Cardwell, 3 May 1866 (doc A22, p 194 (submission 3.4.300, p 24)).

1298. Submission 3.4.300, p 24; doc A22, p 192.

1299. Tame Tūwhangai to NK Smith, September 2012 (doc A97, pp 243–244).

1300. Document R23, pp 3–5.

1301. Document A22, pp 191–193; doc A94, pp 227–228; doc A78, pp 188–189.

Evidence of widespread disease inland within Te Rohe Pōtae is less clear. During the winter of 1864, a British military report cited 'reliable' information that sickness was 'rife' among Māori south of the Pūniu River frontier. In 1866, members of Tāwhiao's family were reported to be among those at Hangatiki suffering from fever.<sup>1302</sup> However, Marr wrote that in that year:

Kingitanga people visiting Kawhia and Raglan were claiming that the relatively more severe outbreaks outside the aukati and among 'friendly' Maori communities, was evidence of the folly of abandoning the King and cooperating with settlers and their government.<sup>1303</sup>

Earlier, we discussed allegations that Māori prisoners were deliberately infected with smallpox. We concluded that the evidence did not support this claim, but that the conditions in which the prisoners were kept made it certain that some returned home carrying disease (section 6.7.3.5).

The responses provided by the Crown, mentioned above, do not in our view demonstrate anything like a thoroughgoing response to the hardships created by war. The selectivity shown towards the beneficiaries of the Crown's concern suggests that political motives lay behind Grey's actions rather than a genuine desire to ameliorate the sufferings of Te Rohe Pōtae Māori. The available evidence indicates that at Whāingaroa Dr Harsant was simply continuing in the roles of resident magistrate and colonial surgeon to which he had been appointed in 1854. The quality of the assistance he was able to offer is questionable. In 1860, it was said that Harsant 'could not speak a word of Maori, and was perfectly ignorant of Native customs, habits, and laws.'<sup>1304</sup>

Nevertheless, the extent to which the Crown was practically able to provide assistance to the peoples of Te Rohe Pōtae after 1864 was extremely limited. This was so even though the formal aukati was not immediately proclaimed (see chapter 7). It is not appropriate in these circumstances to make a finding of Treaty breach.

The question also arises as to the extent to which the ill-health and disease evident in the district ought to be considered a prejudicial effect of the raupatu. Clearly it applies to those whose war wounds were permanent, but not all ill-health in the district at this time can be ascribed to the war. Nor does it seem to be true that Māori within the aukati necessarily suffered more than those outside. Nevertheless, in our view the evidence supports a finding that one effect of the raupatu in Waikato was widespread and severe outbreaks of disease among Māori between 1864 and 1867. The Crown appears to support this conclusion in

1302. Document A22, pp191, 194; doc A78, p191.

1303. Document A78, p191.

1304. Document A94, p290; doc A23, p245; 'Minutes of evidence', AJHR, 1860, F3, p8 (doc A23, p265).

its statement that officials provided medical relief in order to ‘address and mitigate the effect of the raupatu.’<sup>1305</sup>

### 6.10.7 Long-term impacts of hosting refugees

By the end of the 1860s, Te Rohe Pōtae Māori leaders had established the aukati that would protect their communities and the exercise of their authority until the mid-1880s. The difficulties thrown up in the immediate aftermath of the war were met and in the main overcome (see chapter 7). In saying this, we do not underestimate the seriousness of the challenges Te Rohe Pōtae Māori faced during those first years. Nor does it in any way reduce the seriousness of the prejudice we have found arising from the Crown’s actions. Nevertheless, the economic challenges thrown up by the scale of the refugee population, while serious, do not seem to have become entrenched. Dr Francis concluded that, while some areas may have remained impoverished and economically isolated, overall the economy of Te Rohe Pōtae and the health of its residents were generally able to make a recovery.<sup>1306</sup> Even as early as 1868, agricultural production may have increased to the point of surplus. Opportunities for trade were again being pursued. Some observers regarded Māori living within the aukati as being healthier and better off than Māori who remained outside.<sup>1307</sup>

The claimants said the number of long-term refugees living within the aukati did, however, have an impact on Te Rohe Pōtae Māori.

Ngāti Rōrā were particularly affected by the arrival of Tāwhiao and the Waikato hapū at Tokangamutu. Some claimant evidence indicated that tensions between Ngāti Maniapoto and Tāwhiao did develop over time. Dr Wharehuia Hēmara suggested that there was a perception among Ngāti Maniapoto that the Crown thought their land ought to be included in negotiations with the Kīngitanga:

the Crown had blamed Ngāti Maniapoto for the raupatu in Waikato and [the Crown] did suggest that seeing we had been to blame that we should give up land and our rangatiratanga to Waikato and that Tāwhiao should be the prominent rangatira of our region.<sup>1308</sup>

Dr Hēmara continued that these fears bubbled ‘on the surface’ and prompted a request for Tāwhiao to leave Te Kūiti (which he did in 1881).<sup>1309</sup> Mihirawhiti Searancke’s family kōrero corroborated the existence of political tension between the King and his hosts, recalling that ‘it was told to me when I was young that that was the reason why Tāwhiao went to Kāwhia, because Taonui actually suggested

1305. Submission 3.4.300, p 24.

1306. Document A26, pp 97–98.

1307. Document A78, pp 193–195; doc A26, p 100.

1308. Transcript 4.1.21, p 379 (Wharehuia Hēmara, hearing week 12, Oparure marae, 6 May 2014).

1309. Transcript 4.1.21, p 449 (Wharehuia Hēmara, hearing week 12, Oparure marae, 6 May 2014).

he actually do that.<sup>1310</sup> These are matters that are addressed in more detail in the chapters that follow.

According to Mike Wī: ‘Ngāti Maniapoto harboured many displaced iwi refugees of bordering tribes following the impact actions of colonial forces.’ Another who gained refuge within Te Nehenehenui was Te Kooti Rikirangi, who built and gifted the whareniui Te Tokanga Nui-a-noho for the people of Ngāti Maniapoto. Mr Wī said Ngāti Rōrā are the kaitiaki of this house.<sup>1311</sup>

Counsel stated that, although Ngāti Rōrā resided far from the zones of war and confiscation,

you can’t confine the impacts of war and raupatu [to] lives lost and the actual lands confiscated. The impact of war, wherever it is and whenever it’s occurred is much more widespread than that. For example, the placement of refugees on Ngāti Rōrā lands and the housing of them is an important part of the Ngāti Rōrā history.<sup>1312</sup>

Te Ra Wright described two Ngāti Apakura marae that still stand south of Te Kūiti. These are Tanehopuwai and Mangarama, situated on land gifted by Taonui which became the Pukenui 1B7C block.

Nā ō tātou tupuna anō a Taonui mā i whakanoho ki reira, ko te ingoa hapū i kona ko Ngāti Tūpatō.

It was our ancestors, was Taonui and others who located them there, and their hapū name there was Ngāti Tūpatō.<sup>1313</sup>

Land was also provided for refugees elsewhere within Te Rohe Pōtae. Jenny Charman and Hazel Wander told the Tribunal that land was given to Ngāti Apakura refugees at Kahotea marae (near Ōtorohanga).<sup>1314</sup> Jock Roa told of his understanding that, after Ōrākau, Ngāti Maniapoto gave land at Rangitoto to Ngāti Tūwharetoa to acknowledge their assistance.<sup>1315</sup> The Ngāti Ngawaero claimants stated that their tūpuna provided land and resources to host refugees, and also gave land for Tāwhiao.<sup>1316</sup>

There is some evidence that the effects of displacement have had long-lasting impacts on relationships and land ownership. James Taitoko said:

1310. Transcript 4.1.6, pp 256–257 (Mihirawhiti Searancke, Ngā Kōrero Tuku Iho hui, Te Tokanganui a noho marae, 11 June 2010).

1311. Transcript 4.1.21, p 293 (Mike Wī, hearing week 12, Oparure marae, 5 May 2014).

1312. Transcript 4.1.21, p 272 (counsel for Ngāti Rora, hearing week 12, Oparure marae, 5 May 2014).

1313. Transcript 4.1.10, pp 29–30 (Te Ra Wright, hearing week 4, Mangakotukutuku campus, 8 April 2013).

1314. Document K17, p 7; doc K37, pp 4–5.

1315. Transcript 4.1.6, p 87 (Jock Roa, Ngā Kōrero Tuku Iho hui, Te Tokanganui-ā-Noho marae, 9 June 2010).

1316. Submission 3.4.250, p 5.

A lot of us are not where we should be. We've had to vacate our areas to make room for others that are coming in. And a case in point is out towards Kāwhia there; a block called Hauturu West the marae is called Te Māhoe. It was one of those refugee blocks and it was well manned. I'm one of the trustees there and we've had to count up the hapū in amongst our owners. So far we have 180 hapū, they're not all Maniapoto, in fact most of them aren't. So this is another thing that's happening as well as us trying to look after ourselves, we're looking after our Tainui whanaunga, our Tūwharetoa whanaunga and so on.<sup>1317</sup>

Although the gifting of land by Ngāti Maniapoto to their landless whanaunga may be said to have reduced their own land entitlements, it is also apparent that these are matters of some complexity and that we lack sufficient evidence to draw any firm conclusions as to the part Crown actions may have played in the outcomes. In any case, provision for those seeking shelter from the Crown's soldiers would always have been a matter of tikanga, of mutual obligation and relationships.

### 6.10.8 The impact of dispossession

Raupatu caused displacement on a vast scale. In this inquiry we heard claims that Maniapoto-affiliated peoples including Ngāti Paretekawa, Ngāti Apakura, Ngāti Ngutu, Ngāti Whaea, Ngāti Ngāwaero, Ngāti Unu, and Ngāti Kahu were forced from their homes north of the Pūniu.<sup>1318</sup> Here we provide an assessment of the particular prejudices suffered by these groups, who lost their lands and then suffered the trials of being refugees.

#### 6.10.8.1 Ngāti Paretekawa

Harold Maniapoto described Ngāti Paretekawa as 'a destitute, homeless people'. The hapū have maintained a presence over their ancestral territories on the north bank of the Pūniu River, in the manner of a two-acre block his parents were able to buy from whanaunga. But in Mr Maniapoto's view they remained 'nothing more than refugees in their own lands' and they have been unable to register the land as a reserve for Ngāti Paretekawa.<sup>1319</sup>

Mr Maniapoto described the overall impact of deprivations that occurred as a consequence of displacement:

Paretekawa and Maniapoto suffered extreme prejudice and hardship as a result of the unjust confiscation of all its primary customary lands north of the Aukati, causing devastation and widespread suffering, disease, and deprivation to them and their peoples. For Ngāti Paretekawa, the loss of life at Orakau was aggravated by this widespread dispossession of their tribal lands.

1317. Transcript 4.1.6, p 73 (James Taitoko, Ngā Kōrero Tuku Iho hui, Te Tokanganui-ā-Noho marae, 9 June 2010).

1318. Transcript 4.1.7, p 282 (Harold Maniapoto, hearing week 1, Te Tokanganui-a-noho marae, 6 November 2012).

1319. Document K35, p 40.

Maniapoto hapū from north of the Puniu River (the confiscation boundary) were forced to live and survive in the pockets of other people's generosity for over seven generations, spanning almost 150 years, and even to this day are still bereft of all their prized ancestral lands, resources, treasures and traditions.<sup>1320</sup>

Thomas Maniapoto said the effects are still evident:

Our people became refugees on other people's lands. We went wherever we could. Even our most generous relatives found it difficult to house us on their own meagre, and ever dwindling, landbase. In later generations they were asking us 'why don't you go back to where you came from?' We knew they were right but we had nowhere to go to. This is not a nice feeling to have with your relations.<sup>1321</sup>

What these statements demonstrate, in our view, is the probability that the prejudice caused by the raupatu has been compounded by the later impacts arising from subsequent acts and omissions of the Crown.

#### 6.10.8.2 *Ngāti Apakura*

Tom Roa told the Tribunal that, in 1864, Ngāti Apakura was 'an iwi of substance' but the raupatu caused the social and economic wellbeing of the people to be 'rent asunder'.<sup>1322</sup> Testifying to the widespread dispersal of Ngāti Apakura from Kāwhia to Taupō, Dr Roa said:

Nā i te tūrakitanga o Rangiaowhia e te Pākehā, ka pānaia ai te iwi nei, ko ētehi ka noho ki waenga i ngā whanaunga, o Hikairo ki Kāwhia, ko ētehi ki roto o Maniapoto ki Kahotea, ki Tāne-hopu-wai hoki, ā, ko ētehi ki Tokaanu ki roto o Ngāti Tūwharetoa.

When Rangiaowhia was sacked by the Pākehā, Apakura was ejected, some stayed with Hikairo at Kāwhia and others stayed at Kahotea with Maniapoto and Tāne-hopu-wai and some at Tokaanu at Ngāti Tūwharetoa.<sup>1323</sup>

Since that time, they have been regarded as a hapū both of Waikato and of Ngāti Maniapoto. The importance of maintaining a distinct Ngāti Apakura identity in the face of dispossession and dispersal was a particular concern of the claimants. Counsel submitted that, as a result of the war, 'the many strands of Apakura split to seek refuge, permanently severing parts of the iwi from each other and their whenua'.<sup>1324</sup>

Earlier we described the outbreak of mortal illness that afflicted the group of Ngāti Apakura who crossed the Rangitoto mountains to Taupō-nui-a-tia. After spending some years among Ngāti Tūwharetoa, Mr Tūwhangai said, the threat

1320. Document K35, pp 37–38.

1321. Document K15, pp 18–19.

1322. Document K38 (Roa), pp 7–8.

1323. Transcript 4.1.6, p 242 (Tom Roa, Ngā Kōrero Tuku Iho hui, Te Tokanganui-a-noho marae, 10 June 2010).

1324. Submission 3.4.228, pp 13–14, 50; doc K22, p 7.



of war posed by the Crown's pursuit of Te Kooti led his tūpuna to move again, this time into the Tūhua district.<sup>1325</sup> Mr Tūwhangai was emphatic: 'Do not mistake these as misfortunes . . . [w]ar spawns disease and spews out its own form of misery'.<sup>1326</sup>

Some of Ngāti Apakura went west and found refuge with Ngāti Hikairo and Ngāti Maniapoto relatives on Pirongia maunga and around the shores of Kāwhia Harbour at Mangaora and Awaroa. Gordon Lennox said his great-great-grandfather Penetana Pukewhau lived at Whatiwhatihoe for a time after the war.<sup>1327</sup>

Others went to Maungatautari, and still others travelled to Piopio and Mōkau.<sup>1328</sup> Jenny Charman expressed the view that the Crown 'has yet to appreciate the way in which Ngāti Apakura was dismembered and redefined by the confiscation, including by having the confiscation boundary on the Puniu river'.<sup>1329</sup>

The unsuccessful efforts by Ngāti Apakura to obtain grants of land after the raupatu have been discussed already (section 6.9.6.3). In 1948, Pei Te Hurinui told the Maori Land Court:

In the case of Ngatiapakura and the Ngatipuhiawe, who owned the most fertile land in the Waikato . . . I could not help feeling that these people must feel pangs of remorse and sorrow for their ancestral land to think that they do not, at this day, have even a small reserve that they could call their own.<sup>1330</sup>

There can be no doubt that for Ngāti Apakura the prejudice suffered through raupatu has been especially severe. In our view, their position deserves particular attention from the Crown. Our recommendation that the Crown recognise and affirm the tino rangatiratanga of Te Rohe Pōtae Māori includes Ngāti Apakura.

### **6.10.8.3 Ngāti Kahu, Ngāti Unu, and Ngāti Huiao**

Confiscation for some hapū was a double-edged sword. Communities such as Ngāti Kahu, Ngāti Unu, Ngāti Te Kanawa, Ngāti Taumata, Ngāti Ngawaero, and Ngāti Huiao were divided, with some retaining land within the aukati and others left outside.<sup>1331</sup> Counsel for Ngāti Kahu and Ngāti Unu stated that the lands that they did not lose to the blade of confiscation 'became the sanctuary for those who were left landless and who were forced by arms from their tribal territories in the Waipa and Waikato districts'.<sup>1332</sup>

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<sup>1325</sup> Document K19, pp 4–7; transcript 4.1.10, pp 62–70 (Tame Tūwhangai, hearing week 4, Mangakotukutuku campus, 8 April 2013).

<sup>1326</sup> Document K19, p 6.

<sup>1327</sup> Document K22, pp 2, 18, 40; transcript 4.1.10, pp 91–139 (Gordon Lennox, hearing week 4, Mangakotukutuku campus, 8 April 2013).

<sup>1328</sup> Document K17 (Charman); doc K37; transcript 4.1.10, pp 42–60 (Jenny Charman, hearing week 4, Mangakotukutuku campus, 8 April 2013), pp 74–80 (Hazel Coromandel-Wander, hearing week 4, Mangakotukutuku campus, 8 April 2013).

<sup>1329</sup> Document K17, p 7 (submission 3.4.228, p 106).

<sup>1330</sup> Petition 29/1947 and associated minutes (doc A29(d), p 22).

<sup>1331</sup> Submission 3.4.250, p 4.

<sup>1332</sup> Submission 3.4.251, p 11.

These claimants also argued that subsequent Crown purchases of their remaining lands compounded the prejudice caused by the confiscation of lands north of the Pūniu River. Counsel submitted that the ‘state of vulnerability’ caused by the amount of land confiscated exacerbated the prejudice ‘caused by every subsequent alienation’.<sup>1333</sup> We agree that the extent to which land bases were diminished by confiscation needs to be taken into account when considering the prejudice arising through later alienations by other means.

### **6.10.9 Labelling: Loyal, friendly, kūpapa, rebel**

The Crown’s invasion of Waikato forced Te Rohe Pōtae Māori to make what were frequently invidious choices: whether to fight, which side to join, and whether to try to prevent or minimise conflict. These decisions played out within iwi, hapū, and whānau and were a cause of severe and long-term internal tensions. Those who aligned themselves with the British did not necessarily fight; some aided the invaders as guides, gathered information, provided food, shelter, and transport, and passed messages. Some acted voluntarily, others acted with greater or lesser degrees of reluctance. Their reasons varied from genuine trust in the Crown to disagreement with Kīngitanga strategy, if not necessarily its aims, and simple survival. For ‘half-caste’ families, the splintering seems to have been especially acute.

Shane Te Ruki spoke of his tupuna Tuapōkai, whose family was divided by war:

The government came with their guns and they attacked with their guns, and so Te Poupatete and Tuapōkai thought of a strategy to protect the people, and one said to the other, ‘Tuapōkai, you go onto the Pākehā side’ – their father was a Pākehā. And so Tuapōkai went to the Pākehā side to assist the soldiers. But Tāmāti joined the war parties of Rewi and the other war leaders. They did that because they said to each other, ‘If you live, I live.’ I weep for Tuapōkai because he was called a kūpapa. No, no, and that was an outcome of the gun, separating, dividing families.

After Ōrākau the survivors fled to the places that have already been referred to by previous speakers, and then the soldiers said to Tuapōkai, ‘Guide us, guide us to where the people are.’ The guns of the soldiers were now pointed at his family, to Ngāti Unu, his kin of Ngāti Unu, and so Tuapōkai guided the Pākehā soldiers into the lands . . . so that the soldiers could kill the survivors, the refugees.<sup>1334</sup>

The decisions that whānau made as to which side to take in the war had lasting impacts. Meto Hopa spoke of his tupuna Ngātūerua Erueti, who led General Cameron’s troops around the fortifications at Pāterangi to Rangiaowhia and was consequently blamed for the deaths that occurred there:

Our whānau continue to carry mamae about Ngātūerua Erueti and Rangiaowhia. We don’t believe Ngātūerua Erueti ever intended that his own whānau would be hurt,

1333. Submission 3.4.250, p 6.

1334. Transcript 4.1.1 p 204 (Shane Te Ruki, Ngā Kōrero Tuku Iho hui, Te Kotahitanga Marae, 2 March 2010 (doc A97, p 235)).

but he had been unable to control the horrors that the Crown forces did. He took the burden of responsibility for his actions.<sup>1335</sup>

Mr Hopa related that Ngātūerua Erueti's actions and inability to warn 'his Ngāti Apakura, Ngāti Rāhui and Ngāti Puhiaue whānau of the impending raid' caused discord between his Ngāti Hikairo and Ngāti Apakura whanaunga.<sup>1336</sup> Mr Hopa said that Erueti's descendents have since taken steps to heal the discord with Ngāti Apakura and 'the burden that he and his whānau held in relation to Rangiaowhia'. Whānau kōrero holds that Erueti persuaded his Ngāti Hikairo whanaunga to award Ngāti Apakura the Mangaora block at Kāwhia in 1889.<sup>1337</sup> To this day, Erueti's whānau dispute the term kūpapa being applied to their tupuna.<sup>1338</sup>

Shane Te Ruki also spoke of the 'stigma and stain' attached to the label kūpapa, but declared: 'If there are any descendants of Tuapōkai in this house I acknowledge you and your chiefly ancestor because he did something to save the people.'<sup>1339</sup>

'Friendly' and 'rebel' were regarded as important criteria by Crown officials, because they were supposed to determine eligibility for the compensation regime set up by the Crown after the confiscations. However, although these labels did have some relevance in that context, our analysis earlier (section 6.9.6) pointed to the conclusion that the greater prejudice lay simply in a systemic failure of process.

An important conclusion that has run throughout this chapter is that application of the term 'rebel' has caused significant and lasting prejudice to Te Rohe Pōtae Māori (including Ngāti Kauwhata), and especially to Ngāti Maniapoto. The label has hindered recognition from the Crown of the prejudice suffered and frustrated their ability to gain redress.

At the outset of this chapter, we quoted the historian Michael King's characterisation of Ngāti Maniapoto as a bellicose iwi that lost nothing in the Crown's raupatu. We described how in 1995, when Parliament passed legislation to finally acknowledge and resolve the raupatu claims of Waikato, the Minister in Charge of Treaty of Waitangi Negotiations, Doug Graham, moved the third reading of the Bill by quoting at length from the 'highly respected historian' Michael King. He made the following statement: 'Tribes who had remained loyal to the Government lost land along with those who had not. The real rebels, Ngāti Maniapoto, lost nothing.'<sup>1340</sup>

The Minister then went on to say:

1335. Document K12, p 7.

1336. Document K12, p 4.

1337. Document K12, p 6.

1338. Transcript 4.1.10, p 648 (Meto Hopa, hearing week 4, Mangakotukutuku campus, 10 April 2013).

1339. Transcript 4.1.1, pp 204–205 (Shane Te Ruki, Ngā Kōrero Tuku Iho hui, Te Kotahitanga Marae, 2 March 2010 (doc A97, pp 235–236).

1340. Doug Graham, 19 October 1995, NZPD, vol 551, p 9922. The Minister was quoting Michael King, *Te Puaea* (Auckland: Hodder & Stoughton, 1977), p 26.

But, as others have found throughout history, it is not possible to crush those who have right on their side. Sooner or later justice will prevail. For Waikato that time has now come. No longer are they regarded as rebels. Fair restitution has been provided. The suffering is now at an end.<sup>1341</sup>

That time has not yet come for Ngāti Maniapoto and the hapū that affiliate to it. In this inquiry, the Crown stated that the rationale of the 1995 and 2010 legislation to settle the raupatu claims of Waikato was to include those who affiliate to the *Tainui* waka.<sup>1342</sup> If that was the intent, it would say so. It does not. Harold Maniapoto explained to the Tribunal that initial negotiations prior to 1995 did include all Tainui – Waikato, Maniapoto, and Raukawa – but the latter two iwi were subsequently excluded.<sup>1343</sup> The Crown did not dispute his account.

The statements made to Parliament in 1995 by the then Minister make it clear that Ngāti Maniapoto were not included and have not received redress from the Waikato raupatu settlement. The strong implication must be that this did not occur because the Crown continued to regard it as appropriate to apply the label of ‘rebels’ to the iwi.

During hearing week four in Te Awamutu, Mr Maniapoto explained how he became involved in the Ngāti Maniapoto raupatu claim:

I'll take us back to '95, in a period when Bob Mahuta was negotiating for Waikato. I mentioned this yesterday about going down to Wellington on the Tainui Express and hearing this opening submission for the reading of the Waikato Settlement Bill, and I was all of forty-something years then, green as. Went down on this ride thing, it was going to be an exciting thing, and they sat me down in the gallery above between these two koroua. One was Hauraki and I don't know who the other one was, and they read this passage out in the house, and it said, 'It was through the fear that Maniapoto (and they're referring to Manga I understand) would attack Auckland that the war started.'

And this koroua turned to me and he said to me, 'Boy, don't you forget that. One day you'll have to right it.'<sup>1344</sup>

It is disappointing to say the least that the Crown considered it was appropriate in this inquiry to repeat unfounded allegations relating to the supposed plan to attack Auckland. Our analysis in this chapter has repeatedly confirmed that the Crown was wrong to label Ngāti Maniapoto as rebels and that the prejudicial effects have been serious and long-lasting.

1341. Doug Graham, 19 October 1995, NZPD, vol 551, p 9922.

1342. Submission 3.4.310(e), p 29.

1343. Transcript 4.1.10, p 680–681 (Harold Maniapoto, hearing week 4, Mangakotukutuku campus, 10 April 2013).

1344. Transcript 4.1.10, p 690 (Harold Maniapoto, hearing week 4, Mangakotukutuku campus, 10 April 2013).

### 6.10.10 Remembering

The Taranaki Tribunal provided a telling description of the long-term psychological impact of raupatu:

The atrocities of the war, real or imagined, linger in people's minds. The legacy of fear and racial hatred was manifest in acts of retribution against Maori for many years to come. On the Maori side, memories of the war have lasted longer because they were, and remain, excluded from their forebears' lands.<sup>1345</sup>

The trauma of the Waikato war was captured by the waiata composed by Rangiamoa of Ngāti Apakura, *E Pā tō Hau* (see over page). According to traditional kōrero, it was written to mourn the dead and the forced eviction of the survivors, and has constituted an enduring reminder to Ngāti Apakura of the pain of raupatu.<sup>1346</sup>

It is said that Rangiamoa wrote *E Pā tō Hau* for her cousin, the rangatira Te Wano, who fell ill with grief after Ngāti Apakura were driven away from Rangiaowhia. Te Wano asked his people to climb Titiraupenga maunga for a final sight of their homelands. He died and was buried there. In reference to this Jenny Charman stated: 'I'm here on behalf of Te Wano Turi Manu and I'm sure that there are other people who will talk about that lament of our tūpuna. I see it in my mind as someone that is up there on the mountain of Titiraupenga, looking back to his homeland . . .'<sup>1347</sup>

The refugee experience entailed not only physical pain as a result of the conflict but also mental and spiritual suffering from the loss of their lands, leaders, and communities: a sickness of the body and the spirit. The latter has endured in song and memory.

In addition to the loss of land, the traditions of Ngāti Apakura maintained that their tūpuna who died at Rangiaowhia were not simply casualties of war but victims of kōhuru or 'foul murder'.<sup>1348</sup> Claims regarding the deaths of non-combatants at Rangiaowhia were addressed in section 6.7.7. Attesting to their long-lasting psychological impact, Gordon Lennox elaborated that 'this is what has been passed down through my whanau and sustains much of our anger about these events.'<sup>1349</sup>

Memories of raupatu were also sustained by the passing down of names. Hazel Coromandel-Wander recounted the story of her tupuna, christened Wikitoria, who as a child fled into the swamp surrounding Rangiaowhia when the soldiers attacked. She then

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1345. Waitangi Tribunal, *The Taranaki Report*, p 105.

1346. Document A97, p 238.

1347. Transcript 4.1.1, p 24 (Jenny Charman, Ngā Kōrero Tuku Iho hui, Te Kotahitanga Marae, 1 March 2010) (doc A97, p 242).

1348. Document K22, p 28; claim 1.2.97, p 6.

1349. Document K22, p 28.

**He Tangi mo Te Wano**

*na Rangiamoa, Ngāti Apakura*  
 E pa to hau he wini raro,  
 He homai aroha,  
 Kia tangi atu au i konei;  
 He aroha ki te Iwi,  
 Ka momotu ki tawhiti ki Paerau  
 Ko wai e kite atu,  
 Kei whea aku hoa i mua ra,  
 I te tonuitanga?  
 Ka haramai tenei ka tauwehe  
 Ka raungaiti au.  
 E ua e te ua e taheke  
 Koe i runga ra;  
 Ko au ki raro nei riringi ai  
 Te ua i aku kamo.  
 Moe mai, e Wano, i Tirau,  
 Te pae ki te whenua  
 I te wa tutata ki te kainga  
 Koua hurihia.  
 Tenei matou kei runga kei te  
 Toka ki Taupo,  
 Ka paea ki te one ki Waihi,  
 Ki taku matua nui.  
 Ki te whare koiwi ki Tongariro,  
 E moea iho nei.  
 Hoki mai e roto ki te puia  
 Nui, ki Tokaanu.  
 Ki te wai tuku kiri o te Iwi  
 E aroha nei au, i.

**A Lament for Te Wano**

*by Rangiamoa, Ngāti Apakura*  
 Gently blows the wind from the north  
 Bringing loving memories  
 Which causes me here to weep;  
 'Tis sorrow for the tribe,  
 Departed afar off to Paerau.  
 Who is it can see,  
 Where are my friends of yesteryear,  
 Who all dwelt together?  
 Comes now this parting  
 And I am quite bereft.  
 Come then, O rain, pour down,  
 Steadily from above;  
 Whilst I here below pour forth  
 A deluge from mine eyes.  
 Sleep on, O Wano, on Tirau,  
 The barrier to the land,  
 Stretching forth to that home  
 Which is now forsaken.  
 Here we now are cast upon  
 The rocky shores of Taupo,  
 Stranded upon the sands at Waihi,  
 Where dwelt my noble sire,  
 Now placed in the charnel-house on  
 Tongariro.  
 Like unto the abode wherein we sleep.  
 Return, O my spirit, to the thermal  
 pool  
 Of renown, at Tokaanu,  
 To the healing-waters of the tribe  
 For whom I mourn.<sup>1</sup>

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1. Document A97, pp238–240.

sought refuge with Apakura relatives from Ngaati Rangimahora, Marotaua, Raparapa and Hikairo who lived at Totorewa in the Otorohanga area. It was those Apakura kaumatua and kuia that changed her name to Te Mamae in memory of what she had witnessed at Rangiaowhia.<sup>1350</sup>

John Roa recounted the deaths of his tūpuna Poneke and his son Niketi at Ōrākau and said that Rewi Maniapoto gave Niketi's son the name Te Muraahi. This served to commemorate and honour their loss by recognising their services to and protection of the interests of Ngāti Maniapoto and the Kingitanga.<sup>1351</sup> Passing down this name from generation to generation reminded the whānau 'of the price they and we paid so that the economic and social prosperity of the settlers in this district and region would continue to grow. We still pay that price today.'<sup>1352</sup>

Te Ra Wright emphasised to the Tribunal the importance of gaining acknowledgement from the Crown of the impact of the raupatu. This was an important prerequisite to healing the pain that was still acutely felt:

Even today we turn constantly to see what is coming up behind us because really we can't see clearly in front of us because we are coping with this [issue] today, and it is those things really that are set up for us to attend to. How then [will] we be able to progress without any hindrance?<sup>1353</sup>

Kāwhia Te Murāhi described the ideological and cultural significance of the burning of the wharehui Hui Te Rangiora in 1864, claiming the whare was destroyed 'deliberately and with malice' in a way that interrupted Ngāti Paretekawa's ability to preserve and transmit their spiritual traditions.<sup>1354</sup> The claimants argued that the Crown was aware of its significance and that its destruction constituted a form of psychological warfare.<sup>1355</sup> We concluded earlier (section 6.7.9) that the destruction of Hui Te Rangiora symbolised the Crown's intent to eradicate Māori autonomy and to humiliate and denigrate Rewi Maniapoto in particular.

The Ngāti Paretekawa claimants have asked that the Crown support the rebuilding of Hui Te Rangiora as a means to restore, in part, the mana lost when it was destroyed.<sup>1356</sup> This falls within the scope of our recommendation, set out at the beginning of this report, that the Crown recognise and affirm the claimants' rights to tino rangatiratanga within their rohe. The Crown should act to support such

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1350. Marama, personal communication, 1960 (doc K37, p 3).

1351. Document K7, pp 6–7.

1352. Document K7, p 8.

1353. Transcript 4.1.2, p 215 (Te Ra Wright, Ngā Kōrero Tuku Iho hui, Waipapa marae, 30 March 2010) (doc A97, p 238).

1354. Document K29, pp 11–12.

1355. Document K15, pp 9–10.

1356. Document P15(d), p 36; doc K29, p 14.

a project and the details should be determined during negotiations between the parties.

### 6.10.11 Forgetting

Evidence presented at hearings and at Ngā Kōrero Tuko Iho hui made it plain to the Tribunal that, for many Te Rohe Pōtae Māori, loss of knowledge has been a further important aspect of the prejudice resulting from the raupatu. The loss of knowledge about former landholdings among those whose tūpuna possessed land north of the Pūniu has already been mentioned (see section 6.9.2). Loss of knowledge has also had a social and cultural impact. John Roa spoke of the impact that the deaths of his tūpuna Poneke and his son Niketi at Ōrākau continued to have on his hapū:

Had Poneke and Niketi survived, our whānau and hapū would have been stronger, more stable and certainly a lot more numerous. The leadership and father influence on our great grandfather would without doubt have been positive and enduring. Their stories and their teachings would have been able to be filtered down to us and helped us navigate our way through the many challenges we have had to endure. Unfortunately this was not the case. There was a definite and legitimate sense of grievance by the killing of Poneke and Niketi and the subsequent loss of mana.<sup>1357</sup>

Dana Maniapoto attested to the impact of raupatu for Ngāti Paretekawa over five generations:

We have no tūpuna land, marae, wharepuni, reo or tikanga. We are losing our whakapapa, history, waiata and whaikorero. We are generational refugees and our relationships with other whānau suffer. We are profoundly invisible in our tūpuna land. We have no economic base and our cross cultural relationships suffer. Our children are increasingly disconnected from our Paretekawa heritage because we are disconnected from our tūpuna land.<sup>1358</sup>

Hari Rapata, of Ngāti Paretekawa and Ngāti Ingoa, said ‘we as a whanau would commonly be known as, “the landless, marae and tikanga-less, te reo-less Maori of Cambridge”’. Mr Rapata attributed high rates of poverty, poor education, ill health, unemployment, and gang affiliation to this loss of culture:

I believe you have witnessed cases argued with the very same reference to the devastating effects of loss of land and culture which, poignantly, resulted in the loss of identity, the loss of understanding and knowledge of who we as a people were and potentially are.<sup>1359</sup>

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1357. Document κ7, p 6.

1358. Document κ14, p 4.

1359. Document κ13, pp 2, 4.



Edward Penetito said that dislocation from ancestral lands in the Waikato and ‘lack of a turangawaewae’ had damaged the spiritual wellbeing of Ngāti Kauwhata, who were once renowned for the expertise of their tohunga.<sup>1360</sup>

Rawiri Bidois thought that in some cases, forgetfulness was willed and deliberate:

One of the biggest mamae we have is just not knowing what happened and why. It seems that our parents tried to shield us from the hurt that they had suffered by just not telling us about it and keeping our focus on looking ahead, grabbing what was needed to survive and prosper in the new world.

As a result, he said, ‘not knowing what has happened and why our people are in the predicament that they are in is a grievance in itself’.<sup>1361</sup>

An important second dimension to the loss of knowledge arising from the raupatu was identified by the claimants. It is a truism that history is written by the victors, and this is especially true of the physical record that exists in memorials, graves, and urupā. Before our hearing in Te Awamutu we were taken to visit the sites of conflict in the area, and it was clear that graves of and memorials to Europeans were more prominent in the landscape.

At Waiari, a stone monument to six British soldiers was surrounded by a pipe-rail fence, while the Māori dead lay in an unmarked grave close by.<sup>1362</sup>

At Ōrākau, there was no sign of the mass graves where the Māori who were killed there lie buried.

John Roa described the distress the erasure of Māori from war memorials continued to cause:

Distress and grief is visited upon us on an annual basis when we make the pilgrimage to Ōrākau and stand on a narrow piece of dirt upon which can barely fit 20 people. We try to reconcile our loss in front of a cold and ugly grey monument which does not even bear our tupuna names. There is no culturally appropriate memorial to them, and for all intents and purposes they did not even exist as far as the history of New Zealand is concerned.<sup>1363</sup>

Several claimants were concerned that little knowledge existed about the Waikato war within local Māori or Pākehā communities. Tiki Koroheke said:

I took history at Wesley College because it was a requirement for the academic classes. We were presented with the colonial interpretation of the history of New Zealand. Skirting around the Treaty and the Māori Wars, as they were called then. . . .

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1360. Document K2 (Penetito), pp 16–17.

1361. Document P26, pp 5, 6.

1362. Submission 3.4.208, pp 8, 10.

1363. Document K7, p 7.

My tupuna were part of all these important events yet through my school years I didn't even know who Rewi Maniapoto or his parents were. I did not know the relationship of the Maniapoto iwi to Waikato. I did not hear about Rewi Maniapoto or Orakau and I definitely did not know about the confiscations.

Only in 1993, when our Kite family went to Rangiaowhia to find one of my great-great-grandmothers's resting place, did I find out that the settlement existed or about the battle there. I saw the plaque with its story and I was shocked. It was so close to home. I was a teacher and I didn't know, and 52 years old at that!<sup>1364</sup>

Harry Kereopa similarly felt that his school curriculum lacked Māori history, protagonists, or perspective:

I don't remember studying us [Maori]. No, no, no, we were thrown all this English history. We did nothing on Maori. I never heard anything about the wars fought in Te Rohe Potae. I heard nothing about the New Zealand Wars. I never learnt about the Battle of Orakau. I never learnt about Rewi or the Treaty of Waitangi. Not a blasted thing.<sup>1365</sup>

Some, like Jock Roa, were taught about the Waikato war at school. But the experience of Mr Roa was that Māori were portrayed as rebels and labelled as aggressors:

We are revisited with hurt and despair every time we read the history of the War in the Waikato as written by the Crown, its many agencies and independent authors where our people are so readily labeled with the derogatory terms of rebels, kingites and savages. Our young people are forced to read and accept these stories as truth of who their ancestors were and by default, who they, invariably must be. We must get history right.<sup>1366</sup>

This experience is unfortunately consistent with the damage identified earlier (section 6.6.5.1) as having been caused by the mythical accounts promulgated by the Crown in its attempts to justify the Waikato raupatu.

Hearings for this inquiry concided with the 150th anniversary of the events at Rangiaowhia and Ōrākau. Although it was clear to us that Māori were still all too often invisible in the history of the wars, both in regard to the physical landscape and in national awareness, we note that the Crown was involved in the commemorations of those events. That was a positive development. We think there is still significant scope for the Crown to engage with the claimants to address this issue.

In this inquiry Ngāti Apakura sought 'a recommendation that the events of the Waikato Wars form part of the compulsory high school curriculum as a

1364. Document L11 (Koroheke), p 9.

1365. Document L14 (Kereopa), p 46.

1366. Document K7, pp 7–8.

long-term remedy to address the lack of knowledge of these events in the Pākeha community.<sup>1367</sup> At the time of the hearings, the claimants said they were preparing resources to support improved education about the events of the raupatu.<sup>1368</sup> Serious engagement by the Crown with these issues would, in our view, be consistent with the recommendation we made at the beginning of this report and would go a considerable way to addressing the prejudice described by the claimants in this inquiry. The details should be considered in negotiations between the parties.

### 6.10.12 Kore whenua kore mana

In defending the Kingitanga, Taohua Robert Te Huia stated that his tupuna Rewi Maniapoto 'defended his mana and that of others who he saw as significant to the aspirations of our people'.<sup>1369</sup> Mr Te Huia said the two things that mattered most to Rewi were his people and their lands: 'The loss of either is a loss of mana.'<sup>1370</sup>

Counsel for the Ngāti Paretekawa (Wai 440) claimants argued that Te Rohe Pōtae Māori, and in particular Ngāti Maniapoto, were 'a bastion of Māori resistance' and 'staunch mainstays . . . of Māori independence and autonomy'. For this, they 'were punished by the Crown who on one hand brought war, atrocity and disease to the region while taking the peoples' land and mana with the other'.<sup>1371</sup> The raupatu was a means through which the Crown deliberately aimed to extinguish the mana of Kīngitanga iwi and hapū.<sup>1372</sup>

Speaking on behalf of Ngāti Paretekawa ki Napinapi and the descendants of Rewi Maniapoto, counsel argued that the 'very blandness' of the Crown's concessions regarding the injustices that Ngāti Maniapoto suffered

should not be permitted to throw a cloak of concealment over what really occurred, the grossness of the Treaty breaches, and (at least equally importantly) the grossness of the breaches of the law and fundamental legal principle, the gross injury of denying a people their Mana Motuhake.<sup>1373</sup>

Shane Te Ruki emphasised the links between the Crown's pursuit of its unjust war, the confiscation of land, and the damage to mana:

te mana Māori motuhake, te mana o te tapu, te mana o te ihi has been undermined at all levels. At all levels: with a gun [during] negotiations; discussion with a gun at your head. Behind every action was the gun.<sup>1374</sup>

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1367. Submission 3.4.228, p 72.

1368. Submission 3.4.228, p 72.

1369. Document H23, para 22.

1370. Document H23, para 31.

1371. Submission 3.4.198, p 8.

1372. Submission 3.4.198, p 24.

1373. Submission 3.4.189, p 61.

1374. Transcript 4.1.1, p 206 (Shane Te Ruki, Ngā Kōrero Tuku Iho hui, Te Kotahitanga Marae, 2 March 2010).

For Ngāti Apakura, the loss of their lands paralleled the loss of their mana. Te Ra Wright stated:

I kōrero mai ngā tūpuna mehemea he mana tāu, he whenua anō hoki tāu. Kore whenua, kore mana. Ko ērā ake ngā mea e whaitia nei.

The ancestors spoke and said, 'If you have mana, you have land. If you have no land, you have no mana.' Those are the things which we pursue.<sup>1375</sup>

Tom Roa also addressed this point when speaking of Rangiaowhia: 'From that assault, the tragedies of war and their effects on the children, old men and women; along with the loss of their physical resources, Ngāti Apakura's mana was no more.'<sup>1376</sup>

Summarising the effects of the loss of mana, counsel for Ngāti Apakura stated that the loss of land, along with Ngāti Apakura's subsequent 'diaspora caused by the war and raupatu . . . undermined the ability for Apakura to collectively govern or act as an effective political entity.'<sup>1377</sup> Counsel continued that the 'continued failure to recognise Apakura as a distinct and separate group of whom significant grievances have not been addressed, would perpetuate the losses that have already been suffered.'<sup>1378</sup>

At the first Kōrero Tuku Iho hui during the inquiry, Morehu Macdonald said:

So things like 'apologies,' I think they may sound a bit 'cliché' if that's the right word . . . but I think that's what is needed to be done to restore that mana to the people [so that] the memory of our tūpuna can be corrected and that our own tamariki when they're learning and reading this about what their tūpuna went through, and it wasn't that long ago, that they understand the truth, and I know that's what we're about here.<sup>1379</sup>

The claimants remain unified and unanimous on this issue. The '[d]enigration and degradation' of mana at the hands of the Crown lies at the heart of their raupatu claims and the redress that they seek.<sup>1380</sup>

In his discussion of customary law, Sir Edward Taihakerei Durie wrote that wrongful killings, the appropriation and destruction of possessions and property, and the desecration of wāhi tapu effectively added up to 'a theft of mana that had

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1375. Transcript 4.1.1, p 21 (Te Ra Wright, Ngā Kōrero Tuku Iho hui, Te Kotahitanga Marae, 1 March 2010).

1376. Document K38(a), p 7.

1377. Submission 3.4.228, p 28.

1378. Submission 3.4.228, pp 38–39.

1379. Transcript 4.1.1, p 57 (Morehu MacDonald, Ngā Kōrero Tuku Iho hui, Te Kotahitanga Marae, 1 March 2010).

1380. Submission 3.4.134, p 50.

to be required.<sup>1381</sup> In our view, this is an appropriate description of the prejudice the Crown's raupatu has caused to the claimants in this inquiry. Compounding this prejudice, the disparagement of Rewi Maniapoto and the characterisation of Ngāti Maniapoto as rebels, even in relatively recent political discourse as described earlier, has caused serious damage to their tino rangatiratanga. Our recommendation that the Crown take steps to recognise and affirm the tino rangatiratanga of Te Rohe Pōtae Māori is intended to remove the burden of this prejudice. The details are for the parties to discuss during negotiations.

It is past time for the Crown to make amends.

### 6.11 SUMMARY OF FINDINGS

Our key findings in this chapter have been:

- ▶ We found that the Kīngitanga was entirely consistent with the new legal and institutional arrangements necessitated by the Treaty. The Kīngitanga, as a movement and an institution, did not reject the Crown's authority nor was the authority, on which it was established and which it sought to exercise, incompatible with the authority of the Crown. Furthermore the Crown made no attempt to either engage with the Kīngitanga as a Treaty partner nor incorporate it into the machinery of the State, which would have recognised and given effect to Māori autonomy in a way that was Treaty-compliant.
- ▶ In our view, Ngāti Maniapoto and other Kīngitanga tribes had little practical option but to join the war in Taranaki in 1860. They did not perceive Taranaki as outside their proper sphere of interests and action. After careful consideration they concluded that the Governor's actions at Waitara presented a serious threat. Tikanga and their tino rangatiratanga under article 2 justified them in coming to the defence of their kin. While we accept that the Crown did not attack Ngāti Maniapoto (and affiliated Te Rohe Pōtae groups) directly, we found that the Crown breached the Treaty guarantee of tino rangatiratanga and the principles of partnership and autonomy when it treated them as rebels.
- ▶ We found that from 1861 to 1863 the Crown did not exhaust all reasonable means to resolve issues with Māori peacefully in accordance with its responsibilities as a Treaty partner. To have reached a compromise with Kīngitanga chiefs, and thereby reconciled the authority of Māori (tino rangatiratanga or mana motuhake) with the authority of the Crown (kāwanatanga), would have been consistent with the Treaty partnership and the principle of autonomy. Governor Grey knew what he could and should do, but he made no effort to carry out the mandate he was given from the British Government to find an accommodation with the Kīngitanga and avoid war. New institutions were introduced to control Māori rather than to protect and provide

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<sup>1381</sup> ET Durie, *Custom Law* (Wellington: Victoria University of Wellington Treaty of Waitangi Research Unit, 2013), p 43.

for tino rangatiratanga. Options such as setting aside districts under section 71 of the Constitution Act were not pursued. In failing to negotiate with the Kingitanga to avoid war the Crown failed in its duty of active protection and breached the Treaty principles of partnership and autonomy. These breaches had very serious consequences.

- ▶ We found that the Crown attacked the Kingitanga and Te Rohe Pōtae Māori in breach of the Treaty principles of partnership and autonomy. Despite the Crown's concession that its invasion of the Waikato was an injustice, it nevertheless attributed some of the responsibility for the war to Māori. It alleged that a credible threat of an attack on Auckland existed, and continued its long-standing habit of singling out Rewi Maniapoto for blame. On both counts the allegations are unfounded. In trying to attribute blame for the war to anything other than its desire to crush the Kingitanga and to conquer, occupy, and confiscate land for settlement, the Crown came dangerously close to trying to legitimise its unjust war.
- ▶ While the Treaty does not displace the Crown's power to use coercive force in an emergency, in this case we agree with the Taranaki Tribunal that the emergency was caused by the Crown. In our view, the gravity of a Treaty breach which causes the loss of life is significant and the death of every Māori person killed during the Crown's unjust war – combatant and non-combatant – was an injustice. We accept that some events, though prejudicial and painful to Māori, were among the ordinary consequences of war and are covered by the scope of the Crown's concessions. The massacre of non-combatants at Rangiaowhia and Ōrākau, however, violated the British standards of the time for the conduct of war. The actions of Crown forces in this respect were egregious and constituted breaches of the principle of partnership and the article 3 guarantee of citizenship rights. No effort was made to investigate or punish those involved. The Crown forces' conduct of war also breached Treaty principles in the excessive and disproportionate destruction and plundering of property which served no military purpose, including burning a great taonga, Hui Te Rangiora.
- ▶ The Governor and Ministers conducted aspects of the war in a disproportionate or egregious manner. The inhumane conditions in which prisoners taken at Rangiriri were held without trial breached the duty of active protection and the article 3 guarantee of citizenship rights. Although Māori leaders repeatedly tried to negotiate and end the fighting, the Governor and Ministers further breached the Treaty and compounded the prejudice of the invasion by unnecessarily prolonging an unjust war.
- ▶ In Treaty terms, our view is that the Kingitanga embodied and protected the tino rangatiratanga of many tribes. An attack on the Kingitanga was an attack on those tribes. Ngāti Tūwharetoa were entitled to defend the Kingitanga against the Crown's unjust attack. The Crown's concession of Treaty breach applies to them in our view.
- ▶ Confiscation was an essential part of the Crown's plan to destroy Māori authority and institutions. By extinguishing all customary rights to land and

planning for large-scale European settlement on confiscated land, the Crown breached the article 2 guarantee of tino rangatiratanga and the Treaty principles of partnership and autonomy.

- ▶ Ngāti Maniapoto interests in Taranaki in 1860 are difficult to determine. Once the iwi were labelled as rebels, the Crown made no effort to investigate the extent of their interests. When war began at Waitara, the Crown knew Ngāti Maniapoto asserted rights south to Waikāramuramu and that they retained an interest over much of northern Taranaki. The Crown's confiscations and its unfair labelling of Ngāti Maniapoto as rebels breached the article 2 guarantee of tino rangatiratanga, the Treaty principles of partnership and autonomy, and the duty of active protection. Ngāti Maniapoto lost rights in Taranaki as a result and so suffered serious prejudice.
- ▶ We found that the Crown breached the article 2 guarantee of tino rangatiratanga, the Treaty principles of partnership and autonomy, and the duty of active protection when it confiscated land north of the Pūniu where Ngāti Maniapoto and Ngāti Maniapoto-affiliated hapū had interests. This finding includes but is not limited to: the lands between the Pūniu, Waipā, and Mangapiko Rivers, claimed by Ngāti Paretekawa and Ngāti Ngutu; and Ngāti Apakura's ancestral lands from Rangiaowhia to Lake Ngāroto.
- ▶ The Crown failed to uphold its promise that those who did not take part in the war would retain their lands. The Compensation Court was poorly resourced and extremely limited in the compensation it could award. Many agreements were made outside the Court by Crown officers. Inadequacies in the way the Crown established and implemented the Compensation Court not only compounded the prejudice caused by confiscation but breached the principle of good governance and the article 3 guarantee of citizenship rights.
- ▶ Te Rohe Pōtae iwi and hapū suffered further prejudice:
  - The threat of war and then the strain of maintaining a fighting force damaged their economy.
  - Many combatants and non-combatants lost their lives or suffered injury.
  - Ill-health and trauma in the immediate aftermath of war was followed by the strain of hosting and providing for a large refugee population.
  - In the long term, the raupatu caused lasting psychological damage, particularly through being labelled as rebel or kupapa.
  - Ngāti Maniapoto suffered severe damage to their mana as a result of the confiscations and ongoing labelling as rebels.





## PART II



## CHAPTER 7

### KA TŪ TE AUKATI: THE FORMATION AND ENFORCEMENT OF THE AUKATI

Ko te riri kia mutu . . . ka whitingia te whenua e te ra i runga i ta ratou korero, ka uaina e te ua, a ka tino kaha amuri ake nei te mahana me te maramatanga o te ra.

Anger shall cease. The sun shines over the land with what they have discussed, the rain washes away, and afterwards the sun shall be much more warmer and brighter.

—Rewi Maniapoto<sup>1</sup>

#### 7.1 INTRODUCTION

The peoples of Te Rohe Pōtae emerged from the Taranaki and Waikato wars with their ancestral lands largely intact. The way in which the Crown had asserted its authority during the wars, however, signalled that they could not guarantee this situation would continue.

Te Rohe Pōtae Māori were above all concerned to protect their remaining lands, and to ensure the ongoing exercise of their authority – that is, their mana, and their tino rangatiratanga. To do this, after the war they reassessed and redefined the territory over which the Kīngitanga held sway. This territory was soon defined by the aukati: a border area on the edges of Kīngitanga territories that was patrolled and protected against all unsanctioned incursions, and symbolised by the taiaha, Mahuta. Within this aukati, Te Rohe Pōtae Māori could offer refuge to King Tāwhiao and some 2,000 of his Waikato people, as well as others who sought sanctuary within Kīngitanga-controlled territory.

Te Rohe Pōtae Māori succeeded in protecting and upholding the exercise of their traditional authority well into the 1880s. During this period, the Crown chose to tolerate the continued operation of the Kīngitanga. Māori came to know the territory that was retained as Te Rohe Pōtae. Pākehā associated the district with King Tāwhiao and called it the King or King's Country.

Neither the Kīngitanga nor the Crown sought a return to war, and an uneasy stalemate existed throughout the period that the aukati was enforced. Nevertheless, discussions towards some form of resolution began in earnest from the late 1860s.

In this inquiry, we heard from numerous claimants about the period of the aukati. This chapter draws on their evidence, given at the Ngā Kōrero Tuku Iho

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1. *Te Waka Maori*, 18 November 1869, p1; doc A110 (Meredith), p 615.

hui and in hearings. Cathy Marr's report on political engagement between 1864 and 1886 is a major source. We also use the traditional history report prepared by Ngāti Maniapoto researchers, as well as research reports prepared by Paul Thomas, Donald Loveridge, Andrew Francis, and the co-authored report by Philip Cleaver and Jonathan Sarich.<sup>2</sup>

### 7.1.1 The purpose of this chapter

In the wake of the Waikato war, and the enforcement of the aukati, the Crown redefined its relationship to the Kīngitanga, and Te Rohe Pōtae Māori. Many of the same questions that confronted the Crown before the war remained: whether it would be willing to recognise the Kīngitanga, and on what terms. However, the war and the confiscations had created new circumstances. Waikato now lived in exile within the aukati, their lands having been confiscated. The return of the confiscated land became a prominent matter for the Kīngitanga in any prospective settlement with the Crown. These were the issues that featured most prominently in the discussions with Kīngitanga representatives from the 1870s and are the subject of analysis in this chapter.

The negotiations between the Crown and the Kīngitanga that commenced in 1875 stopped and started. Native Minister Donald McLean was instrumental in developing the Crown's policy towards the Kīngitanga and led initial negotiations on behalf of the Crown. Following McLean's illness and resignation, Premier Sir George Grey and Native Minister John Sheehan renewed negotiations. In 1879, Māori and Pākehā alike anticipated a settlement of some sort, but negotiations collapsed at a hui held in May that year at Te Kōpua, near Alexandra.

By the end of the 1870s, the colonial state had rapidly expanded and the settler population had boomed to over half a million.<sup>3</sup> Te Rohe Pōtae soon came to be further encroached upon at its edges by land purchasing and the activities of the Native Land Court. The Crown considered that 'opening' the King Country would remove the principal barrier to the successful settlement of the North Island; it wanted especially to complete construction of the North Island Main Trunk Railway through Te Rohe Pōtae.<sup>4</sup> Despite a reduced land base, damaged economic infrastructure, and the heavy burden of a resident refugee population, Te Rohe Pōtae was still governed by Māori as something akin to a separate state.

The Crown renewed discussions with Tāwhiao and the Kīngitanga in the early 1880s. In 1881, Tāwhiao met Major William Mair at Alexandra, where Tāwhiao and his people lay their guns down at Mair's feet. Wahanui Huatare, the Ngāti

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2. Marr, 'Te Rohe Potae Political Engagement 1864–1886' (document A78); Ngāti Maniapoto researchers, 'Ngāti Maniapoto Mana Motuhake: Report for Ngāti Maniapoto Claimants and the Waitangi Tribunal' (document A110); Thomas, 'The Crown and Maori in Mokau 1840–1911' (document A28); Loveridge, 'The Crown and the Opening of the King Country, 1882–1885' (document A41); Francis, 'The Rohe Potae Commercial Economy in the Mid-Nineteenth Century, c1830–1886' (document A26); Cleaver and Sarich, 'Turongo: The North Island Main Trunk Railway and the Rohe Potae, 1870–2008' (document A20).

3. Document A20 (Cleaver and Sarich), pp 33–34.

4. Document A20, pp 28–42.

Maniapoto rangatira who led his iwi's dealings with the Crown, spelt out the implication of this symbolic gesture, saying "This means peace."<sup>5</sup> But there was still no settlement. In November 1882, Native Minister John Bryce made a final attempt to negotiate a settlement with Tāwhiao at Whatiwhatihoe. But Bryce was unsuccessful and ultimately turned to negotiate with Wahanui and the leadership of Te Rohe Pōtae. He would not negotiate with Tāwhiao again.

These matters were important for the claimants, who argued that significant opportunities remained for the Crown to recognise the Kīngitanga, which it failed to do, and viewed the pressure placed on them by the Crown during this period as constituting breaches of the Treaty. The Crown saw matters differently, submitting that each phase of the negotiations was conducted in good faith and did not set out to divide the Kīngitanga.

### 7.1.2 How this chapter is structured

This chapter begins in section 7.2 by identifying the issues for determination. The chapter then addresses these issues by looking at the Crown's actions towards Te Rohe Pōtae Māori in this period, and assessing those actions against the principles of the Treaty of Waitangi. Section 7.3 examines the way in which the aukati was enforced after the Waikato war and the Crown's initial response to it. In section 7.4 we look at the period of negotiations that occurred from 1875 to 1882. The chapter ends in section 7.5 with a summary of findings.

## 7.2 ISSUES

The principal issues in this chapter concern the way in which Te Rohe Pōtae Māori, through the Kīngitanga, protected their remaining territories against further incursions through the assertion of the aukati; and how the Crown attempted to bring about a resolution with the Kīngitanga in the period up to 1882, from which time Tāwhiao no longer featured actively in the negotiations. These issues were the focus of submissions by parties in this inquiry.

### 7.2.1 What other Tribunals have said

The Central North Island Tribunal found that – in the period leading up to the negotiations that began in 1883 – there were multiple opportunities for the Crown to have provided Māori with meaningful measures of self-government. This included setting aside Māori districts under section 71 of the New Zealand Constitution Act 1852. Other options included providing for Māori in the machinery of central and provincial government, providing for rūnanga or komiti in the machinery of the state, or finding some means for recognising the authority of the Kīngitanga. The failure to do so constituted a breach of Treaty principles.<sup>6</sup> These findings extended to the Tribunal's consideration of the period after the New Zealand wars, when the

5. *New Zealand Herald*, 18 July 1881, p 3; doc A110 (Meredith), p 617; doc A78 (Marr), p 539.

6. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 1, pp 241–242.

Crown failed to take measures to provide for Māori self-government, such as the system envisaged in Native Minister Donald McLean's Native Councils Bills.<sup>7</sup>

### 7.2.2 Crown concessions

The Crown made no concessions in respect of its actions concerning the period when the aukati was in place.

### 7.2.3 Claimant and Crown arguments

The Tribunal received more than 20 claims in this inquiry containing grievances related to the aukati.<sup>8</sup> While the parties agreed that Te Rohe Pōtae was effectively controlled by Māori between 1866 and 1883, they differed over aspects of the Crown's engagement with the Kīngitanga in this period.

#### 7.2.3.1 *The assertion of the aukati and the Crown's response*

For the claimants, the Kīngitanga's enforcement of the aukati after the Waikato war was not an attempt to remain isolated from the rest of the colony; it was designed to maintain and enforce tino rangatiratanga.<sup>9</sup> The claimants considered that, while the Crown assumed it had sovereignty within the aukati, it was unable to exercise that sovereignty throughout the period that the aukati was in place. Indeed, the claimants submitted that the aukati was not 'a mere boundary'; rather, 'it defined an independent district.'<sup>10</sup> The Crown at first respected the aukati, which led to a long series of engagements.<sup>11</sup> But the claimants also submitted that the Crown had no intention of sharing any real political control, despite the opportunity to do so that was presented under section 71 of the 1852 Constitution Act.<sup>12</sup>

The Crown acknowledged that, after the Waikato war, Te Rohe Pōtae was regarded as an area within which it was unable to exercise authority 'for the time being' without invoking 'civil unrest', and so sought to establish an accommodation with the Kīngitanga.<sup>13</sup> The Crown preferred to establish 'New Zealand founded institutions' rather than establishing Te Rohe Pōtae as a 'Native District' under section 71.<sup>14</sup> Crown counsel submitted that the Crown refused to contemplate formally recognising the Kīngitanga in 1868 on account of the Kīngitanga facing 'so many challenges [that] it could not exert an authority that could be recognised over the territory'.<sup>15</sup>

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7. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 312.

8. Wai 440 (submission 3.4.198); Wai 443 (submission 3.4.158); Wai 551, Wai 948 (submission 3.4.250); Wai 784 (submission 3.4.147); Wai 846 (submission 3.4.251); Wai 972 (submission 3.4.134); Wai 1099, Wai 1100, Wai 1132, Wai 1133, Wai 1136, Wai 1137, Wai 1138, Wai 1139, Wai 1798 (submission 3.4.189); Wai 48, Wai 81, Wai 146 (submission 3.4.211); Wai 575 (submission 3.4.281); Wai 1197, Wai 1388 (submission 3.4.209).

9. Submission 3.4.128(b), pp 2–3; submission 3.4.129(a), p 1.

10. Submission 3.4.129, pp 5–6.

11. Submission 3.4.128(b), p 3; submission 3.4.129(a), p 10.

12. Submission 3.4.128(b), p 6.

13. Submission 3.4.301, p 2; submission 3.4.299, pp 37–38.

14. Submission 3.4.301, p 19.

15. Submission 3.4.301, p 20; submission 3.4.299, p 10.

### 7.2.3.2 *Negotiations 1875–82*

The claimants maintained that the Crown did not make sufficient efforts to arrive at a resolution with the Kīngitanga following the commencement of negotiations in 1875, and instead attempted to create a divide between Ngāti Maniapoto and the Kīngitanga. They particularly emphasised the efforts made by Bryce to drive a ‘wedge’ between them. Despite these attempts, however, Ngāti Maniapoto remained supportive of Tāwhiao and the Kīngitanga, as indicated by their ongoing protection of them.<sup>16</sup> Counsel for Ngāti Tūwharetoa also emphasised the Crown’s ‘divide and rule’ approach and submitted that the Crown missed a significant opportunity in 1882 to recognise the Kīngitanga and provide for the tino rangatira-tanga of Te Rohe Pōtae Māori.<sup>17</sup>

The Crown submitted that its wide-ranging negotiations with Māori leaders during this period did not constitute ‘a “divide and rule” policy’.<sup>18</sup> The Crown acknowledged that it perceived the Kīngitanga as a challenge to the Queen’s sovereignty,<sup>19</sup> but sought to recognise the authority of Ngāti Maniapoto and Kīngitanga leaders as ‘influential chiefs’.<sup>20</sup> As such, the Crown made a number of proposals that would have brought about an acceptable transformation, none of which was accepted or implemented. The proposals made by Bryce to the Kīngitanga were made in good faith and in keeping with the Crown’s intentions of exercising its authority in Te Rohe Pōtae.<sup>21</sup>

### 7.2.4 *Issues for discussion*

Having reviewed the Tribunal Statement of Issues for this inquiry and briefly summarised the parties’ arguments, we now identify the issues for us to determine.<sup>22</sup> There are significant issues to address relating to the Crown’s engagement with the Kīngitanga following the Waikato war, and the engagements that led to the end of negotiations between the Crown and Tāwhiao at the end of 1882.

The following questions are addressed:

- ▶ Was it legitimate for Te Rohe Pōtae Māori, through the Kīngitanga, to enforce the aukati and did the Crown respond to it appropriately?
- ▶ How did the Crown engage with Te Rohe Pōtae Māori, through the Kīngitanga, during negotiations from 1875 to 1882, and did the Crown place undue pressure on them?
- ▶ Did the Crown take reasonable steps to recognise and provide for Te Rohe Pōtae Māori self-government, whether by formalising or establishing institutions or by using existing mechanisms (such as section 71 of the Constitution Act 1852)?

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16. Submission 3.4.128(b), pp 6–7.

17. Submission 3.4.281, pp 12, 26.

18. Submission 3.4.301, p 9.

19. Submission 3.4.301, p 23.

20. Submission 3.4.301, pp 23–24.

21. Submission 3.4.301, p 16.

22. Statement 1.4.3, pp 27–28.

### 7.3 THE FORMATION OF THE AUKATI AND THE CROWN'S RESPONSE: 1866–74

Previous chapters of this report have explained how the hapū and iwi of what came to be known as Te Rohe Pōtae governed themselves *mai rā anō* (from times past), and in doing so exercised *tino rangatiratanga* over their own land, people, and affairs. The establishment of Crown institutions and authority throughout New Zealand in the years immediately after 1840 did little to change that situation in Te Rohe Pōtae. However, as explained in chapter 6, hapū and iwi across the North Island began to organise in response to these institutions to protect their lands. At the forefront of this movement was the Kīngitanga, to which Te Rohe Pōtae Māori made firm commitments. The Kīngitanga became a vehicle for co-ordinating the *tino rangatiratanga* of many hapū and iwi, which took on even greater relevance in the face of Crown aggression.

The claimants considered that Te Rohe Pōtae communities had maintained their political independence ‘for centuries.’<sup>23</sup> After the wars, those communities retained total ‘control of what remained of their territory’ – this would only change if the Crown ‘forced entry, or terms could be negotiated.’<sup>24</sup> They emphasised, however, that the aukati they established over their remaining lands was not an isolationist policy. Rather, it was a *rangatiratanga* policy, designed to maintain and enforce the rights and authority they held.<sup>25</sup> In his evidence, Harold Maniapoto described this as the ‘desire to maintain self-autonomy and self-governance.’<sup>26</sup>

In this section, the manner in which the Kīngitanga reorganised itself after the Waikato war is addressed, including how the various iwi of Te Rohe Pōtae came to host their Waikato kin, and how they came to enforce an aukati over their lands. The Crown’s initial response to the aukati up to 1874 is also examined.

#### 7.3.1 The Kīngitanga in the wake of the wars

In the wake of war and confiscation, the Kīngitanga sought ways to continue to assert and protect its authority, including protecting the lands that remained in the traditional ownership of Te Rohe Pōtae Māori. This was no easy task. Te Rohe Pōtae Māori continued to govern themselves in much the same way as they had prior to 1864, but they were now seriously challenged by the consequences of the war. Notably, they were challenged by the obligation to accommodate the thousands of refugees led by King Tāwhiao and other chiefs and who were now resident within the territory. Te Rohe Pōtae Māori leaders continued to seek the maintenance and protection of their authority through the unifying principles of the Kīngitanga, while also balancing the complex inter-relationships between hapū and iwi and their overlapping interests.

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23. Submission 3.4.128, p 4.

24. Submission 3.4.130, p 4.

25. Submission 3.4.128(b), pp 2–3.

26. Document H17 (Maniapoto), p 14.



### 7.3.1.1 *Political relationships between hapū and iwi*

The maintenance of relationships between hapū and iwi of Te Rohe Pōtae and the Kīngitanga remained important as much after the raupatu as before it. Those hapū and iwi continued to align themselves under the mana of King Tāwhiao (previously known as Matutaera<sup>27</sup>), who led the movement from 1860 until his death in 1894. Tāwhiao was an important pan-tribal leader, to whom several tribal groups expressly pledged their lands. We heard evidence of this, for example, in respect of Ngāti Mahuta with lands at Taharoa and Te Maika, and Ngāti Rereahu with lands at Pureora.<sup>28</sup>

As seen in chapter 2, the alliances between the hapū and iwi of Te Rohe Pōtae and other hapū and iwi of the Kīngitanga can be traced back to the eighteenth century and earlier, with the political and military coalitions between Ngāti Maniapoto and Waikato (among others) achieving prominence at the battles of Hingakākā and Mātakitaki. Those alliances underlined the historical depth behind Te Rohe Pōtae support – decades later – for the first Māori King Te Wherowhero and the Kīngitanga. They remained influential as Te Rohe Pōtae Māori joined the wars – first in Taranaki and then in Waikato – and facilitated political developments during the period of the aukati.

As before the wars, the pledge of land by hapū and iwi to the King still allowed those groups to retain and exercise their mana at a local level. To that extent, the Kīngitanga did not replace the mana of those hapū and iwi, but rather acted as a vehicle through which their tino rangatiratanga could be represented and protected. Ms Marr suggested that the pledges of land to the King also had a strong tapu and suggested that this was well understood, even by Pākehā at the time.<sup>29</sup> For instance, Charles Davis (or Hare Rewiti), who was one of the first Pākehā permitted to enter the aukati, noted in 1868: ‘The aukatis are to remain as heretofore, strictly guarded and kept tapu.’<sup>30</sup>

In the wake of the confiscations, the centre of Kīngitanga affairs relocated with Tāwhiao to Tokangamutu (modern-day Te Kūiti). There, Tāwhiao and his advisers looked to regather the Kīngitanga alliance as they sought to build their strength and capacity for the post-war period.<sup>31</sup> Tāwhiao’s leadership was not just confined to political matters. Kīngitanga members looked to Tāwhiao for spiritual guidance, and he is remembered as a great visionary with a strong ethic of peace.<sup>32</sup>

The existing order, organised around the local leadership of rangatira, whose decision-making occurred among their people and within their communities,

27. As discussed in chapter 6, he was given the name Tāwhiao by the Pai Marire profit Te Ua.

28. For Taharoa (Ngāti Mahuta), see transcript 4.1.9, p 34 (Rāhui Papa, hearing week 3, Maketu marae, 4 March 2013); for Te Maika (Ngāti Mahuta), see transcript 4.1.9, pp 1255, 1257–1258 (Alan Rubay, hearing week 3, Maketu marae, 8 March 2013), p 1273 (Edith Dockery, hearing week 3, Maketu marae, 8 March 2013); for Pureora (Ngāti Rereahu), see transcript 4.1.11, pp [38], [57] (Piripi Crown, hearing week 5, Te Ihingarangi marae, 6 May 2013).

29. Document A78, pp 51, 92, 184, 769, 780.

30. *Daily Southern Cross*, 25 January 1868, p 5; doc A110, p 608; doc A78, pp 134–135, 141.

31. Document A78, p 164.

32. Document A78, pp 164, 180.

remained fundamental. Te Rohe Pōtae Māori leaders maintained their responsibilities to hapū and iwi at local levels, while co-ordinating activities with the central Kīngitanga leadership, made up of Tāwhiao and his advisers.<sup>33</sup> The Kīngitanga leadership took the role of making territory-wide decisions that simultaneously incorporated and transcended local leadership and political organisation.<sup>34</sup>

The Kīngitanga maintained support and developed policies through large kaupapa-driven hui, which involved a congressional approach to making decisions that needed broad-based support across the district. The most prominent was the annual 'Maehe', held every March (or late summer) at Tāwhiao's headquarters (first at Tokangamutu, then later at Whatiwhatihoe).<sup>35</sup> The Maehe were substantial logistical exercises, requiring the preparation of copious amounts of food for the hundreds who would gather. One of the defining features of the Maehe was Tāwhiao's 'proclamation', which summarised the Kīngitanga's policies – reminding those gathered of what had previously been agreed and pointing to how they would be applied in the coming year.<sup>36</sup>

Tāwhiao was supported in exercising the Kīngitanga leadership by a range of trusted advisors, drawn from the constituent hapū and iwi who had aligned to its cause. Wahanui Huatare (see sidebar) and Rewi Maniapoto were two of the most prominent leaders among Ngāti Maniapoto who were also regarded as the King's advisors. Others included Tākerei Te Rau, Tuhi, Te Ngakau, Te Wheoro, and Tāmami Ngāpora. Ngāpora and Wahanui were both often referred to as Tāwhiao's 'Prime Minister'. Tāwhiao's council of chiefs and religious advisors was sometimes referred to as the Tekaumarua (council of 12).<sup>37</sup>

The maintenance of the Kīngitanga alliance came to the fore in the enforcement of the aukati. Through this period, the Kīngitanga faced increasing challenges, especially when Crown activities began to push at the borders of Te Rohe Pōtae from the late 1870s. Rewi Maniapoto took on a prominent role in working with the Crown on issues of importance to local communities. Ms Marr suggested that his actions, along with those of other Kīngitanga leaders, were primarily designed to protect the core lands of the Kīngitanga territory and were largely protective in nature. She argued: 'While the Kīngitanga chiefs would not participate in the Native Land Court for most of the 1870s and would not allow it to operate within their external boundary, they did show a willingness to resolve matters peacefully by cooperating with officials and the government to ensure its activities did not

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33. Document A78, pp 164–165.

34. Document A78, pp 164–165.

35. Document A78, p 165.

36. Document A78, pp 167–168.

37. Document A78, pp 164–165.

provoke violence.<sup>38</sup> Throughout the negotiations that began in 1875, Rewi adopted a role of representing the interests of those communities with customary rights in Te Rohe Pōtae lands, which he perceived were being threatened by Crown actions. This meant that he occasionally represented these interests separately from Tāwhiao. In 1877, Rewi met with the premier, Daniel Pollen, and suggested that the Native Land Court could be used to define land outside his territory, but said that he would await any final agreement with Tāwhiao before taking any action (see section 7.4.1.4). This was the beginning of ongoing attempts to secure the external boundary of the Kīngitanga territory.

In the view of Ngāti Maniapoto researcher Paul Meredith:

Rewi was a nationalist and he and other Ngāti Maniapoto believed that a pan-tribal movement, unifying the Māori people under one sovereign equal to the Queen of England, could bring an end to intertribal conflict, keep Māori land in Māori hands and provide a separate governing body for Māori.<sup>39</sup>

Mr Meredith also drew attention to comments made by Rewi's nephew, Raureti Te Huia, who described the two principal ture or laws of the Kīngitanga as follows: 'Kaati ra te patu a te Maori ki tetehi Maori . . . kaati hoki te hoko o te whenua a te Maori ki te Pakeha. [Cease the killing by Māori of other Māori . . . stop the selling of Māori land to Europeans.]'<sup>40</sup>

Except when he was speaking metaphorically, Rewi did not directly address matters about how the authority of the Kīngitanga could be recognised by the Crown: this was left to Tāwhiao. To this extent, Rewi's actions were defensive, and focused on defining the territory in which Kīngitanga authority could be exercised and on broadly indicating how Māori could conduct the determination of their land interests under their authority and control. But he recognised that for the Kīngitanga to represent and protect the interests of its constituent communities, it would need to ensure that those communities could control matters of importance to them at a local level. Increasingly, in the late 1870s and early 1880s, Rewi faced the challenge of representing and protecting the interests of Māori in areas such as Mōkau, where chiefs faced growing challenges in developing a viable local economy while facing external pressures from those who wanted to utilise their land. These developments, and their implications for the Kīngitanga alliance, are discussed in section 7.4.

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38. Document A78, p 217.

39. Document A110, pp 603–604.

40. *Raureti Te Huia – He Kōrero*, Ngā Taonga Sound & Vision audio recording reference 40615; doc A110, p 604.

### Wahanui Reihana Te Huatare (Late 1820s–97)

Wahanui, sometimes called Reihana Wahanui or Reihana Whakahohoe, was the son of Te Ngohi-te-arau (also known as Te Huatare) of Ngāti Maniapoto and Tarati of Ngāti Waiora from Mōkau.<sup>1</sup> He was born in the late 1820s, and grew up at Whataroa, Oparure, and Ōtorohanga. At an early age, Wahanui was sent to be educated at the Wesleyan Native Institution in Three Kings, Auckland, before returning to his tūrangawaewae in the upper Waima valley. John Kaati said of Wahanui: ‘This man, when his elders realised and saw his actions and his works, he was still a child, but they saw that he was already very mature and so they taught him, they trained him and they took him to the places where houses of learning occurred, the houses of learning of his people.’<sup>2</sup> John Henry told us that Wahanui’s brother, Te Wiwini, was a tohunga, but the ‘old people wanted Wahanui to be a priest.’ Wahanui was ‘famous for quoting the Scriptures in his whaikōrero’. He was a rangatira of great physical presence, acute intellect, and significant oratorical skill.<sup>3</sup>

The knowledge of Te Ao Pākehā gleaned from his time away proved valuable in subsequent years as he rose to prominence in Ngāti Maniapoto amidst mounting tensions with the Crown. John Henry said that ‘when the raruraru between the Crown and the Kīngitanga began, he left the priesthood and returned home’. Wahanui fought in a number of battles against Crown forces following the invasion of the Waikato in 1863. He was injured at the battle of Hairini in the immediate aftermath of the Crown’s destruction of Rangiaowhia, but recovered to take part in the battle of Ōrākau in March and April 1864 (see chapter 6).

Following the war and subsequent confiscations, Wahanui became a prominent leader of Ngāti Maniapoto and the Kīngitanga, serving as a close personal advisor to the King after the retreat into Te Rohe Pōtae. Although some reports suggested he was partly responsible for the killings at Pukearuhe in 1869 (discussed in section 7.3.3.4), he was not present at the attack, which in any case went against his beliefs. He expressed regret over the events, but claimed responsibility on behalf of the wider iwi for what appeared to be a breach of the Kīngitanga’s peace policy, which he was instrumental in enforcing.

1. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 329–347; Tui Adams, Ngahinaturae Te Uira, and Ann Parsonson, “Behold, A Kite Flies Towards You”: The Kīngitanga and the “Opening” of the King Country’, in *New Zealand Journal of History*, vol 31, no 1 (2009), pp 111–116; doc A93 (Loveridge), p 77; doc C7 (Kaati); Manuka Henare, ‘Wahanui Huatare’, in *1870–1900*, vol 2 of *The Dictionary of New Zealand Biography*, ed Claudia Orange (Wellington: Bridget Williams Books and the Department of Internal Affairs, 1993), pp 559–561.

2. Transcript 4.1.2, p 158 (John Kaati, Ngā Kōrero Tuku Iho hui, Waipapa Marae, 30 March 2010).

3. Transcript 4.1.13, p 384 (John Hone Arama Tata Henry, hearing week 8, Te Kotahitanga marae, 5 November 2013).

Wahanui played a leading role in the discussions between the Kīngitanga and the Crown, beginning at Te Pahiko in November 1869. In 1881, Wahanui spoke on Tāwhiao's behalf when the King travelled to Pirongia/Alexandra to lay down his arms and make formal peace with the Crown. He played a similar role at a hui between Native Minister John Bryce and the Kīngitanga in November 1882. Following this hui, the Crown no longer conducted negotiations with Tāwhiao. Instead, Wahanui engaged in discussions directly with the Crown. These events are examined in detail in chapter 8.

It was during this period that Wahanui sought to persuade the Crown to recognise a defined territory – Te Rohe Pōtae – over which he and his people could continue to exercise their tino rangatiranga. Exactly how this could be achieved was set out in a petition to Parliament in June 1883. Negotiations with the Crown continued, and in November 1884, Wahanui appeared before the House of Representatives to obtain the necessary legislative measures to provide for his people's authority, which he described as 'mana whakahaere'. At Kihikihi in February 1885, he participated in discussions with Native Minister John Ballance which led to their agreement to consent to the construction of the railway through the territory. In April 1885, he turned the first sod with Premier Robert Stout.

In entering into these arrangements, Wahanui hoped that the worst effects of colonisation would not repeat themselves for Ngāti Maniapoto. This did not prove to be the case, however, and by 1900 close to 690,000 acres of land had passed from Māori to Crown ownership. But he strove to protect the land of Ngāti Maniapoto as it passed through the Native Land Court in the late 1880s, and as, from 1892, the Crown began to purchase large areas of Te Rohe Pōtae land. Wahanui's role in these events is covered in chapters 10 and 11.

Wahanui passed away on 5 December 1897, leaving a new generation of Ngāti Maniapoto to seek a better relationship with the Crown. He is remembered by his descendants for his unrelenting effort to promote the mana of Ngāti Maniapoto. John Henry told us that 'Wahanui was more than just a spokesman for Tāwhiao and the Kīngitanga. I believe that he was a visionary for his people. I believe that Wahanui's vision was to protect Maniapoto.'<sup>4</sup>

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4. Document 016, p 6 (Henry).

### **7.3.1.2 Social, cultural, and economic life of communities**

In addition to sustaining their political relationships, Te Rohe Pōtae Māori continued to look toward building their social, cultural, and economic lives. They did so while supporting a population that ballooned with a post-war influx estimated at more than 2,000 exiles, many of whom accompanied Tāwhiao when he relocated to Tokangamutu (modern-day Te Kūiti). They also sheltered Te Kooti and

his followers (see sidebar in section 7.3.3.5). Vincent O'Malley estimated that the ratio of exiles to permanent residents of Te Rohe Pōtae was roughly one to one, but that around Tokangamutu the ratio may have been as high as three to one.<sup>41</sup> In the years immediately succeeding the confiscations, both the exiles and their whanaunga who had offered them places of refuge were susceptible to overcrowding, lack of food, and disease.<sup>42</sup>

As Ms Marr explained, the incorporation of the refugees into Te Rohe Pōtae created challenges:

The economic and social dislocation and the need to provide for extra refugees following the wars was a major challenge. It is likely there was some demoralisation and difficulty providing not only for local communities but for large numbers of refugees as well. There were considerable challenges with incorporating dispossessed chiefs and communities into existing systems of governance and the dispossessed naturally gave priority to having their lands returned and restored in ways that might conflict with overall Kingitanga peace policies.<sup>43</sup>

These conflicts were remarked upon by Pākehā commentators and notably by Government officials. Governor Grey stated in 1866 that there was tension, rivalry, and bitterness between Ngāti Maniapoto and their Waikato refugees, due, he claimed, to the fact that Ngāti Maniapoto had escaped land confiscations. William Searancke, the Waikato resident magistrate, made similar claims in 1869.<sup>44</sup>

What were often not recognised by Pākehā observers were the relationships between the displaced and their hosts; they were often close kin as well as political refugees. They were treated as kin, and lent their expertise and labour to economic enterprises and rebuilding.<sup>45</sup> Tame Tūwhangai said: 'Everyone within the Te Rohe Pōtae had duties to perform and it was no different with this small band or section of Ngāti Apakura, the men would have to patrol on horseback the aukati line in the south-eastern area of the Te Rohe Pōtae as their families were provided for and protected by the local hapū.'<sup>46</sup>

Still, much remains unknown about the relationship between refugees and hosts in Te Rohe Pōtae. As noted, the exact number of refugees is unknown. Nor is it known how iwi and hapū affiliation may have affected the count of existing estimates. There is little evidence regarding how or where refugees lived within the aukati, although there is some evidence of land being gifted (see chapter 6, section 6.10.6). The Tribunal was told that the refugee situation caused some logistical and political problems. Frank Thorne said that the 'massive influx of refugees sharing the same space and food resources . . . quickly put a strain on relationships and

41. Document A22, p 204 (O'Malley).

42. Document A22, p 196.

43. Document A78, p 207.

44. Document A78, p 152.

45. Document A78, p 193.

46. Document A97 (Borell and Joseph), p 244.

resources.<sup>47</sup> Though the refugee diaspora reached many parts of Te Rohe Pōtae, as shown by the Ngāti Apakura example raised by Tame Tūwhangai, most refugees from the raupatu, initially at least, lived in and around Tokangamutu. This became a cause of tension between the refugees and Ngāti Maniapoto, particularly Ngāti Rōrā. Though Tāwhiao had whakapapa links to Maniapoto, he and his followers were still technically guests. ‘Tāwhiao [was] an important rangatira’, Dr Wharehuia Hēmara said, ‘[but] he didn’t have any ownership over the land.’<sup>48</sup> Mindful of the obligations his lengthy presence had placed on his hosts, Tāwhiao moved to Whatiwhatihoe in 1881, where he and his people were gifted land by Ngāti Hikairo (see section 7.4.3.3). However, the difficulties presented by the refugee situation appear never to have caused a serious rupture in the political arrangements that underpinned the aukati. The endurance of the aukati over two decades makes it evident that, although relationships were tested, they proved strong enough to weather these problems.

As set out in chapter 6, the raupatu had a severe immediate impact on agriculture and trade, and the inundation of refugees contributed to this disruption. In 1871, for example, Mōkau was reportedly poverty-stricken and economically isolated, largely because the flow of trade had completely dried up following the attack on Pukearuhe (see section 7.3.3.4). Trade did later resume and in subsequent years Mōkau-produced tobacco could be acquired in New Plymouth and Wellington.<sup>49</sup> But Mōkau Māori would never recapture the coastal shipping trade that had been such a strength of their pre-war economic activity.

However, Te Rohe Pōtae communities seem to have largely regained their vigour by the 1870s. Agricultural production appears to have recovered.<sup>50</sup> Communities returned to producing the agricultural goods that had been well established before the war – oats, wheat, potatoes, and pigs among them. They also introduced new crops, such as hops, which were planted at Te Kūiti in 1872 and later near Mōkau. William Cumming, who owned a brewery in Hamilton, said he purchased good-quality hops from Māori within Te Rohe Pōtae.<sup>51</sup> Reports throughout the 1870s commented similarly on the quality and quantity of crops – canoes laden with produce arriving in Alexandra from Te Kūiti to trade, potatoes grown at Aotea, grain crops from Kāwhia. This productivity was achieved amid difficult circumstances: the 1875 kūmara crop was described as ‘indifferent’,<sup>52</sup> in 1876 grain prices decreased, and food shortages leading to sickness and death were reported in both years.<sup>53</sup>

47. Transcript 4.1.12, pp 48–49 (Frank Thorne, hearing week 7, Waipapa marae, 7 October 2013).

48. Transcript 4.1.21, p 453 (Wharehuia Hēmara, hearing week 12, Oparure marae, 6 May 2014).

49. Document A26 (Francis), pp 100–102; *Taranaki Herald*, 22 October 1873, p 2; doc A28 (Thomas), p 180.

50. Document A26, pp 97–98, doc A78, pp 193–195.

51. Document A26, p 102.

52. Robert S Bush, Government Interpreter, Raglan, to Native Minister, 5 May 1875 (doc A26, p 103).

53. Document A26, pp 105, 109.

Despite such setbacks, these and other communal agricultural activities sustained the peoples of Te Rohe Pōtae during the period of the aukati, producing enough to both satisfy daily needs and divert surpluses into Kingitanga hui or markets outside the aukati. These results were achieved by an independent people. Their labour was efficient and organised. They could apply their incomes to the purchase of modern farming implements and expanding production.<sup>54</sup>

### 7.3.2 The aukati and the territory it contained

The aukati was a protected area that defined an independent territory comprising the districts of most hapū and iwi who adhered to the Kingitanga. The district became widely known among Pākehā as the ‘King Country’ or ‘King’s Country’, and it remained wholly under Māori authority until the mid-1880s. The aukati controlled, restricted and, if necessary, prohibited the passage of people and goods into this territory. Throughout, the Kingitanga and Te Rohe Pōtae Māori held the line against the introduction of Crown policies and institutions. In doing so, the aukati became an enduring symbol of the district that it defined.

Traditionally, aukati were a mechanism for formal control over access to territory. Aukati referred to both a puru (stoppage), placed at strategic points to regulate or prevent passage, and a border area that defined the territory through which passage was being regulated. Māori adapted aukati to the new circumstances and tensions that arose from colonial settlement, using them strategically throughout the wars of the 1860s.<sup>55</sup> Aukati could be deployed flexibly, with the outer boundaries subject to change depending on the circumstances. The aukati as implemented and administered by the Kingitanga and Te Rohe Pōtae never followed a specific tribal or traditional boundary. Rather, it shifted over time in response to the pressures of the surrounding colonial State and internal support from constituent iwi and hapū. In that sense, the border area that came to define the territory under the authority of the Kingitanga was not one aukati, but a series of aukati that were enforced and enforceable at a local level, and were changeable depending on the circumstances.

In the 1850s, in the broadest sense, the territory under Kingitanga authority largely comprised lands that constituent iwi and hapū pledged to the King and the kaupapa of pupuri whenua – holding (not selling) the land. Those areas were defined in traditional ways, through the use of named maunga and pou. By the early 1860s, key maunga marked zones of support for the Kingitanga as far south as Tararua. Support extended into Taranaki and Whanganui, as well as eastern districts beyond Taupō towards Rotorua, the Bay of Plenty, and Hawkes Bay, and north-east to the Hauraki district.<sup>56</sup>

As war drew nearer, the Kingitanga set the Mangatāwhiri Stream, south of Auckland, as the boundary that the Crown’s roads and troops were forbidden to

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54. Document A26, pp 97–114; doc A78, pp 192–205.

55. Document A78, p 60.

56. Document A119, plate 3.



cross. The Government's decision to send forces over the Mangatāwhiri was widely understood as a declaration of war (see chapter 6).<sup>57</sup>

Following the war, the aukati that came to characterise the protection of the territories remaining in Māori ownership was established and enforced. Vincent O'Malley considered that while the Pūniu River was understood to be the boundary of the land taken possession by the British from the time of the battle of Ōrākau, a formal aukati does not appear to have been put in place until mid-1866.<sup>58</sup> The border area that came to constitute the aukati was at its western and northern regions more sharply defined by natural barriers in the landscape, particularly the western coastline and its harbours, and the Pūniu River, which sharply demarcated the territory the Crown had confiscated from Māori. Further to the east and south, the aukati existed in Ms Marr's terms 'more like zones'. The outer zones allowed some flexibility for trading purposes and were susceptible to change as communities responded to settler encroachment, particularly the activities of the Native Land Court.<sup>59</sup>

### 7.3.2.1 *The 'inner' aukati and beyond*

By the late 1860s, the aukati had taken full shape as a border area that protected the residual territory pledged to the Kīngitanga. This was the area against which no person – whether a private individual or government official – could lay any claim to any land interests and which the Kīngitanga was confident it could successfully defend.

In her evidence, Ms Marr emphasised the boundary locations which characterised the 'inner aukati': the innermost line of defence that was established at the end of the Waikato war, which differed from the full extent of the Kīngitanga territory stretching much further to the north, east and south.<sup>60</sup> The inner aukati included a series of defences at Wharepapa, Ōrahiri near Ōtorohanga, and Hangatiki. In 1866, recounting a meeting with Wiremu Tamihana, Grey described a series of pou which marked Hangatiki and the surrounding district as the territory within which Rewi and his 'followers' intended to remain in a 'state of complete isolation'. According to Grey, Rewi had said he would 'never again look upon an [*sic*] European face'.<sup>61</sup> In fact, 'complete isolation' overstated how the aukati would operate in practice: Rewi would not only meet with Europeans, but from 1869 he also began to engage the Crown on establishing formal peace (see section 7.3.4.2). In the meantime, though, visits to Hangatiki – whether by Māori or European – could only occur with the requisite permissions of Te Rohe Pōtae leaders. This would be the case for some 20 years yet.

In the south, similar stoppages operated at Mōkau, where an aukati was reportedly declared in March 1867<sup>62</sup>, and Maraekowhai, near Taumarunui, which was

57. Document A78(d), p 2.

58. Document A22, p 210.

59. Document A78, pp 27, 86.

60. Document A78, pp 63–94.

61. Grey to Cardwell, 3 May 1866, AJHR, 1866, A-1, pp 94–96; doc A78, p 69.

62. *Nelson Examiner and New Zealand Chronicle*, 14 March 1867 p 8; doc A78, p 85.

under the authority of the rangatira Topine Te Mamaku.<sup>63</sup> The defence at Hangatiki included Rewi's pā, Paratui. This was the pā to which Rewi retired after Ōrākau, as did Tāwhiao and more than 2,200 of his Waikato people.<sup>64</sup> Later, about 1875, Tāwhiao established a new base closer to the border at Hikurangi, on the southern shoulder of Mount Pirongia.<sup>65</sup>

Some parts of the border area were sharply defined by war and confiscation. Following the Waikato war, the Kingitanga established new northern defensive lines along the Pūniu River, which (as reluctantly accepted by the Government) then formed the basis for the confiscation line.<sup>66</sup> Confiscation in Taranaki marked a similar line, although the exact extent of the confiscation in that area did not become apparent until 1881 (see section 7.4.3.2). In the meantime, the redoubt at Pukearuhe became the acknowledged extent of the Crown's territory, with the Waipingao Stream seen as the approximate boundary line. Mōkau – approximately 20 kilometres north of what became the confiscation boundary – was where Māori in the southern area carried out the practical defence of the aukati.

It was initially unclear whether similar stoppages would be made at Kāwhia, or whether that place would become an area of Crown control. In 1865, warnings came from Kingitanga adherents against some Ngāti Hikairo who appeared to be set for a Native Land Court hearing. Shortly thereafter, the Kingitanga expelled a portion of Ngāti Hikairo from Kāwhia, who relocated to Mōtakotako on the northern shores of Aotea Harbour.<sup>67</sup> By 1868, the general local understanding was that the aukati in that area ran from the Pūniu across Pirongia.<sup>68</sup> In the early to mid-1870s, however, Ngāti Hikairo were welcomed back to Kāwhia; their rangatira, Hone Te One, went on to play an important mediating role between core Kingitanga communities and other Waikato groups to the north.<sup>69</sup>

There were other aukati too, such as those established along the major river valleys – the Rangitikei, Manawatū, and Whanganui – that formed natural entry points to the wider territory under Kingitanga authority. In the eastern areas, where the frontier boundaries remained 'more like zones', Kingitanga communities grappled with what could be realistically enforced in the face of closer proximity to Pākehā settlements.<sup>70</sup>

### **7.3.2.2 Adjustments in the aukati to the 1880s**

Most of the adjustments in the aukati occurred in lands from the north-east to the south, where territories under Kingitanga authority intersected with those hapū and iwi who had not committed to its cause, and where the engagement with Crown institutions and settler interests became increasingly prominent.

63. Document A78, p 86.

64. Document A110, p 605.

65. Document A78, p 164; doc A110, p 605.

66. Document A78, pp 63–64.

67. Document A98, pp 268–269.

68. Document A78, p 68.

69. Document A98, pp 269–271; doc A78, pp 166–167, 210–211.

70. Document A78(b), pp 3–4.

One area that was a lasting source of tension was Maungatautari, which lay to the east of the Waikato confiscation district and north of the inner aukati as it came to be demarcated at the Pūniu River. Settler encroachment was particularly noticeable around Maungatautari, where the exact division of land under the authority of the King and land under the authority of the Crown remained contested. The Kingitanga considered that Maungatautari should remain under Kingitanga authority. By contrast, settlers considered that the land held strategic importance, because it was located between Auckland and other Pākehā settlements in eastern districts of the North Island. There were suggestions that Cambridge could be linked by road to Maungatautari, opening up the good quality lands there for settlers to run stock. From the settler perspective, Crown control of land in the area could cut off routes between Kingitanga communities in the east and those in the west.<sup>71</sup>

Further pressure on Māori in the area mounted as the Native Land Court began investigating titles to Maungatautari lands in 1868, in the Pahue and Pukekura blocks (which lay just outside the inquiry district, but within the territories under Kingitanga influence).<sup>72</sup> At the same time, some of the local hapū arranged various leases and sales with Pākehā settlers. The native land laws allowed any Māori to bring claims, meaning that principal owners could be forced into court by those with relatively minor interests.<sup>73</sup> As will be discussed in chapter 10, Māori often came to regard the court's decisions as unjust and as based on flawed understanding of the relevant history or tikanga. From 1867, the law made no provision for hapū to be named on the title; instead, titles were awarded to named individuals, rendering the land vulnerable to sale.

The Maungatautari, Pahue, and Pukekura investigations spurred internal tensions among Kingitanga Māori as various groups competed to assert their land rights, while some also had to balance defending their interests with the enforcement of Kingitanga policies against engagement with Crown institutions. The outcome of the court's hearing in Maungatautari in turn influenced existing concerns among Kingitanga leaders about the Native Land Court and further shaped the Kingitanga's policies against the court and associated institutions.<sup>74</sup> These concerns came to the forefront during Rewi's engagements with the Crown in the late 1870s and early 1880s (see section 7.4).

Similar patterns emerged in other Kingitanga districts in the north and east. In the upper Thames district long-standing Kingitanga communities, such as that led by the chief Te Hira, grappled with an influx of settlers and gold miners, followed in 1871 by the government telegraph. Thames Māori tolerated these incursions, recognising by then that it was unrealistic to continue the aukati in their area.<sup>75</sup>

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71. Document A78, p 71.

72. Document A85, p 16 (Belgrave and Young).

73. Native Lands Act 1865, s 21; Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 2, pp 778–779.

74. Document A78, pp 71–72.

75. Document A78, pp 74–75, 239–240.

In the Patetere region (to the east of Maungatautari, and north-east of the inquiry district), stress on the aukati was largely the result of residual tensions following the war at Tauranga, and runholders claiming leases that butted up against the edge of territory under Kīngitanga authority.<sup>76</sup> This was also the case in the lands extending from Patetere to the north and east of Taupō, which attracted speculators, runholders, and government officials who understood the strategic importance of the area in opening up transport routes to and through the interior.<sup>77</sup> Gold prospecting was also an issue in the Taupō area. In 1867 and 1868, the Native Land Court conducted title investigations that included blocks that stretched westwards towards the Waikatō River, provoking strong opposition from several communities, including those led by the rangatira Hitiri Te Paerata, who had affiliations to a range of iwi, including Ngāti Raukawa, Ngāti Maniapoto, and Ngāti Tūwharetoa.<sup>78</sup>

Along the Whanganui River, the situation was complicated by variable support for the Kīngitanga, and these complications were only exacerbated by a return to armed conflict in Taranaki in the late 1860s (see section 7.3.3.4). Controlling entry into Te Rohe Pōtae from the south was a critical function of the communities of upper Whanganui, and by the late 1860s it was generally understood that Pipiriki marked the boundary between Government and Kīngitanga authority. Thus, in the initial post-war period, Whanganui support for the Kīngitanga meant the aukati extended considerably further south than what was later outlined in the 1883 petition submitted to Parliament by the ‘four tribes’, who included Whanganui (see chapter 8, section 8.4.5). In that petition, the boundary was drawn back closer to Taumarunui and the Kīngitanga strongholds of Tūhua and Maraekowhai.<sup>79</sup> According to Ms Marr, this expanded view of Te Rohe Pōtae was reflected in the kōrero tuku iho of Sir Archie Taiaroa and others, who held to the explanations of their elders that Te Rohe Pōtae ‘stretched further south than was set out even in 1883.’<sup>80</sup>

Nevertheless, as the 1870s advanced, the aukati became increasingly difficult to uphold – especially in the eastern and southern areas where territories were susceptible to land alienation, particularly under the Fox–Vogel Government’s policies for expanded settlement, including the construction of public works (see section 7.4).<sup>81</sup> During this period the aukati retrenched, eventually falling back to the territory over which Te Rohe Pōtae leaders and Crown representatives would negotiate in the mid-1880s.

The adjustability of the aukati boundary did not mean that supporting communities cut their ties with the Kīngitanga, as government officials tended to

76. Document A78, pp 76–77.

77. Document A78, pp 78, 80, 93.

78. Document A78, pp 78–85.

79. Document A78, pp 85–91.

80. Document A78, p 88; transcript 4.1.4, pp 106 (Douglas Bell, Ngā Kōrero Tuku Iho Hui, Ngāpūwaiwaha marae, 26 April 2010), pp 231–239, 261–266 (John Wi, Sir Archie Taiaroa, Ngā Kōrero Tuku Iho Hui, Ngāpūwaiwaha marae, 27 April 2010).

81. Document A78, pp 229–230.

suggest.<sup>82</sup> Even as late as 1879, chiefs of Ngāti Hako first warned and later fired upon a government survey party at Te Aroha, on the Hauraki Plains.<sup>83</sup> The incident demonstrates that Kingitanga supporters attempted to maintain the aukati in their own areas even after they were effectively cut off from the core Kingitanga territories and aukati.

The support of some communities remained unequivocal, just as many of those who had not joined the Kingitanga before or during the war remained aloof. Some opted to cooperate with the Government and its institutions, viewing that approach as best suited to their circumstances; others felt they could agree to certain developments – the construction of telegraph lines, for instance – while adhering to core Kingitanga codes, such as refusing to participate in Native Land Court processes.<sup>84</sup>

Nonetheless, it did become increasingly impractical to enforce the aukati in some areas, particularly those furthest from the core Te Rohe Pōtae lands. In those areas, allegiance to the Kingitanga was tested as Pākehā settlement expanded. On the ground, the aukati retreated in the east from the Patetere and Taupō areas, and in the north-east from Hauraki. North of Kāwhia, the boundary settled in at the Raukumara sandhills on the south side of Aotea Harbour. This meant that the few Pākehā already established at and trading from Kāwhia township were included in territory bounded by the aukati.<sup>85</sup>

By the early 1880s, the territory remaining in Kingitanga control had become more closely associated with the area now known as Te Rohe Pōtae. Rewi Maniapoto indicated the extent of this territory first in 1877 when, in meeting Crown representatives, he drew an oval on the table. In 1882, Rewi reiterated his sense of this territory during a hui where he took a stick and drew a circle on the ground.<sup>86</sup> In doing so, Rewi reflected his increasing concern that the land in which his people held customary interests was under threat, and that this land needed to be more clearly defined by a hard boundary line (see sections 7.4.1.4, 7.4.2.3, and 7.4.2.5). Morehu McDonald described the intentions behind these actions this way: ‘the leading rangatira of the day, including Rewi, sought to put a boundary around the Rohe Pōtae to keep the Native Land Court out. The intention was to maintain chiefly authority within.’<sup>87</sup>

By this time, Kingitanga communities protected behind the aukati predominantly affiliated to five iwi groupings: Ngāti Maniapoto, Ngāti Raukawa, Ngāti Tūwharetoa, the people of the northern Whanganui region, and Waikato people who had taken refuge in the district following the Waikato wars. Ngāti Hikairo were formally outside this collective, but continued to play a mediating role at Kāwhia Harbour. However, many Kingitanga communities found themselves and their interests divided between lands inside and outside the aukati.

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82. Document A78, pp 241–242.

83. Document A78, p 116.

84. Document A78, pp 116, 215.

85. *New Zealand Herald*, 11 September 1865, p 4; doc A78, pp 67–68.

86. Document A78, p 137.

87. Document K23, p 30 (McDonald).

Many names came to be used in association with the aukati and the district it encompassed, including the ‘porotaka’ or ‘porowhita’, meaning ‘ring boundary’, and, most enduringly, Te Rohe Pōtae.<sup>88</sup> The name Te Rohe Pōtae for the district reflects long-standing oral traditions, versions of which were related to us during the Kōrero Tuku Iho hui (see sidebar). The common thread to these traditions is that the King, usually Tāwhiao, placed his pōtae – his hat – upon a map to show the governor the separate territory remaining under his authority. The brim of the King’s pōtae indicated the aukati covering his territory: Te Rohe Pōtae. Other traditions convey the idea that it was Wahanui who defined the territory in this way.<sup>89</sup>

Ms Marr considered it important to distinguish between the terms ‘King Territory’ and ‘Te Rohe Pōtae’. According to Ms Marr, the former refers to the original lands pledged to the King by supportive hapū and iwi from the late 1850s.<sup>90</sup> The latter, Ms Marr argued, was not used until the ‘external boundary’ of the land remaining in the possession of customary owners of the district was set out in the petition of the ‘four tribes’ in June 1883.<sup>91</sup> While that may be the case, it is also clear that Kīngitanga oral traditions use the pōtae as a metaphor for their rohe and the mana of their king within it.<sup>92</sup> At the Ngā Kōrero Tuku Iho hui, claimants offered varying narratives of the naming of Te Rohe Pōtae which likely refer to both the creation of the Kīngitanga territory and the negotiations associated with the 1883 petition. For the purposes of this chapter, therefore, the name ‘Te Rohe Pōtae’ has been used to describe the area that contained the customary land that Māori within the aukati sought to defend against further incursion, either through the Kīngitanga and the enforcement of the aukati or, subsequently, as the four tribes who sought to define and protect their external boundary.

### **Kōrero Tuku Iho Explaining Establishment and Naming of Te Rohe Pōtae**

We were presented with numerous traditions relating to the naming of Te Rohe Pōtae, some of which emphasised Tāwhiao’s role and the creation of the territory associated with the Kīngitanga, while others were more associated with Wahanui and negotiations with the Crown in the 1880s.

Much of the kōrero attributed the naming of Te Rohe Pōtae to Tāwhiao. George Searancke recalled the kōrero of his wife’s uncle, Bob Emery. During the peace talks following the Waikato wars, ‘Grey was supposed to have said to Tāwhiao, “that is your country. Maybe we should cut the country in half and I have the other half.” At this point it was alluded that Tāwhiao asked for Grey’s hat and he put it down on

88. Document A78, p 16.

89. Document A78, pp 42–46.

90. Document A78, p 24.

91. Document A78, p 47.

92. Document A78, p 44.

the map.<sup>1</sup> Sir Archie Taiaroa relayed to the Tribunal that it was not Grey's hat placed upon the map, but Tāwhiao's,<sup>2</sup> Kevin Amohia also believed the hat to be Tāwhiao's.<sup>3</sup> Paul Ropata told the Tribunal that 'the aukati . . . arose because of Tāwhiao's actions in placing his hat upon the map'.<sup>4</sup>

Similarly, claimants offered varied accounts over what occurred once the hat was placed upon the map. Continuing his kōrero, George Searancke told the Tribunal that, after laying Grey's hat, Tāwhiao then asked for Grey's sword and made to cut the hat in half. 'Grey said, "If you do that you will ruin my hat". Tāwhiao said, "Well if you cut the country if you do what you are talking about you'll ruin my country."<sup>5</sup> John Kaati offered a similar narrative but rather than asking for Grey's sword, Tāwhiao had an axe.<sup>6</sup> Paul Ropata offered a less dramatic sequence of events in which Tāwhiao undertook 'drawing a circle around the rim of his hat. And it was meant to be a dividing line between Māori and Pākehā. It was also the land, the Rōhe Pōtae.<sup>7</sup>

Referring to what Ms Marr argued was the external boundary outlined in the June 1883 petition, Piripi Crown told the Tribunal that it was Wahanui who placed the hat. 'He said to Governor Gore Browne: "Give me your hat", and this hat belonged to Governor Gore Brown. It was not the King; it was not Wahanui's, but Governor Gore Brown's'.<sup>8</sup> Wahanui 'took off his hatchet and was brandishing it as if to strike and halve the Governor's hat. Gore-Brown said to Wahanui: "Hang on, just a minute. What are you doing? Wahanui said: "You want to chop our land in half, but you are fearful lest we chop your hat in half."<sup>9</sup> John Henry similarly told us, 'My grandfather used to say that the 'potae' in Te Rohe Pōtae was Wahanui's hat. He used to tell us kids that korero all the time'.<sup>10</sup>

1. Transcript 4.1.6, p 51 (George Searancke, Ngā Kōrero Tuku Iho hui, Te Tokanganui-ā-Noho Marae, 9 June 2010).

2. Transcript 4.1.4, p 261 (Sir Archie Taiaroa, Ngā Kōrero Tuku Iho hui, Ngāpūwaiwaha Marae, 27 April 2010).

3. Transcript 4.1.4, p 9 (Kevin Amohia, Ngā Kōrero Tuku Iho hui, Ngāpūwaiwaha Marae, 26 April 2010).

4. Transcript 4.1.6, p 321 (Paul Ropata, Ngā Kōrero Tuku Iho hui, Tokanganui-ā-Noho Marae, 11 June 2010).

5. Transcript 4.1.6, p 51 (George Searancke, Ngā Kōrero Tuku Iho hui, Tokanganui-ā-Noho Marae, 9 June 2010).

6. Transcript 4.1.6, p 137 (John Kaati, Ngā Kōrero Tuku Iho hui, Tokanganui-ā-Noho Marae, 9 June 2010).

7. Transcript 4.1.6, p 321 (Paul Ropata Ngā Kōrero Tuku Iho hui, Tokanganui-ā-Noho Marae, 11 June 2010).

8. Transcript 4.1.6, p 353 (Piripi Crown, Ngā Kōrero Tuku Iho hui, Tokanganui-ā-Noho Marae, 11 June 2010).

9. Transcript 4.1.6, p 353 (Piripi Crown, Ngā Kōrero Tuku Iho hui, Tokanganui-ā-Noho Marae, 11 June 2010).

10. Document 016, p 6.

Ms Marr suggested, as does John Kaati, that a number of versions of the story are said to be correct, and that both Tāwhiao and Wahanui are considered to have used a pōtae as a metaphor for the territory.<sup>11</sup> Tohe Rauputu's kōrero was that, following the placing of the hat, Tāwhiao announced, 'Governor Grey, you stay in your lands beyond the aukati. I have mana on this side of the Pūniu, you have mana on that side of the Pūniu.'<sup>12</sup> Sir Archie Taiaroa said that the significance of Te Rohe Pōtae went beyond its functionality as their tribal lands. 'Te Rohe that we have been referring to, it doesn't just refer to the rohe. The king placed his hat on the map and that was an indication of his mana and to lead us. So in that, that legacy has been trampled on and where is the Rohe Pōtae that we speak of today?'<sup>13</sup>

These traditions illustrate how, irrespective of when exactly Te Rohe Pōtae was named as such, the placing of the hat upon the map is an important metaphor for the mana of the Kīngitanga and the constituent hapū and iwi it represented, as well as their particular mana i te whenua – authority over the defined territory that came to be known as Te Rohe Pōtae.

11. Document A78, p44; transcript 4.1.6, p137 (John Kaati, Ngā Kōrero Tuku Iho hui, Tokanganui-ā-Noho Marae, 9 June 2010).

12. Transcript 4.1.5, p168 (Tohe Raupatu, Ngā Kōrero Tuku Iho hui, Maniaroa Marae, 18 May 2010).

13. Transcript 4.1.4, pp261–262 (Sir Archie Taiaroa, Ngā Kōrero Tuku Iho hui, Ngāpūwaiwaha Marae, 27 April 2010).

### 7.3.3 The aukati in operation

From 1864, the constituent hapū and iwi of the Kīngitanga collaborated to enforce the aukati, employing a sophisticated warning system at both local and regional levels. The development and successful implementation of the aukati demonstrated the extent and success of Te Rohe Pōtae self-government within the district.

Through the aukati, Te Rohe Pōtae Māori prevented individuals from entering without express permission, something the Crown effectively acknowledged by warning the public against travelling beyond the aukati. The aukati was not impassable, however. Some people did cross into Te Rohe Pōtae, including Crown officials on occasion. Nor did Te Rohe Pōtae Māori confine themselves to their lands inside the aukati. They resumed trading after the war. Though Te Rohe Pōtae trade never again reached the levels enjoyed prior to the Taranaki and Waikato wars, their goods did once again reach markets across the aukati, in and around Auckland, for example. Furthermore, numerous Māori from outside of the rohe sought refuge there in the aftermath of war, and in doing so complied with the rules of the Kīngitanga expressed through its self-government.<sup>93</sup>

93. Document A26, pp98, 102–103, 108–111, 113, 116–117.



### 7.3.3.1 *Markers and patrols*

While the outer area of the aukati altered according to the political climate and allowed some flexibility for trading purposes, the inner aukati was more fiercely protected by Kīngitanga communities. It was understood by both Pākehā and Māori from outside the territory that to enter the aukati without permission could result in death. The *New Zealand Herald* described in 1866 that ‘a line was drawn from coast to coast, over which neither European nor “friendly native” would be allowed to cross that boundary on pain of being shot.’<sup>94</sup> However, even in the early years of the aukati, Te Rohe Pōtae Māori generally ensured that the border-crossers were given multiple warnings (see section 7.3.3.6). And, as noted above, properly authorised passage was allowed.

The aukati was enforced at a local level by iwi and hapū, and their respective rangatira. This arrangement allowed the communities to exercise their authority over their land base with patrols, and to conduct stoppages at well-known natural entry points to the region.<sup>95</sup> At times, these communities were supported in this work by manuhiri who had sought refuge in their territories.<sup>96</sup> The authority of local communities was in turn supported and reinforced by a wider Kīngitanga-based policy. This combination of a district-wide policy and local enforcement allowed flexibility as to how the aukati was implemented.

Tom Roa relayed Reti Roa and Henare Tauaitirangi’s description of this process at the Kōrero Tuku Iho hui:

hāereere ai e rātou te aukati mai i Te Pūniu ki Whatiwhatihoe, mai i Whatiwhatihoe i Te Pūniu, ko ētehi wāhi, mā ētehi atu whānau, tukuna ai e āna pāpā, ngā whanaunga me ā rātou taonga hokohoko, kia haere ki Arekahānara ki Te Awamutu, ki whea rā, engari, kāore te Pākehā me ngā kūpapa, i whakaae kia uru mai ki roto i Te Rohe Pōtae. me ngā kūpapa, i whakaae kia uru mai ki roto i Te Rohe Pōtae.

they would walk the line from Pūniu to Whatiwhatihoe, from Whatiwhatihoe to the Pūniu, back and forth and other families would guard parts of the line and they would permit some people to go to Alexandra, to Te Awamutu and to other places [to trade], but Pākehā and kūpapa were not allowed to come into Te Rohe Pōtae.<sup>97</sup>

### 7.3.3.2 *Selective enforcement*

While the aukati defined a zone of Māori authority, it was not necessarily meant to preclude contact or cooperation between peoples. It was never the case that ‘no European may cross on pain of death.’<sup>98</sup> It could be restricted and controlled more carefully in times of tension and relaxed accordingly during more peaceful

94. *New Zealand Herald*, 29 May 1866, p 6; doc A78, p 69.

95. Document A78, p 60.

96. See, for example, doc A97, p 244 (Borell and Joseph).

97. Transcript 4.1.6, p 247 (Tom Roa, Ngā Kōrero Tuku Iho hui, Tokanganui-ā-Noho marae, 10 June 2010); doc A110, pp 608–609.

98. As the Hill map annotations assert. See doc A78, p 93; doc A119, plate 5.

periods.<sup>99</sup> Some Pākehā entered Te Rohe Pōtae with permission, under the protection provided by chiefly authority. Just as significantly, the aukati mostly operated as a one-way barrier. Te Rohe Pōtae Māori travelled and traded reasonably freely beyond the border.

Trade was not the only motivation for trans-aukati exchange. In 1868, the northern border appeared particularly relaxed as friends and relatives on both sides enjoyed unrestricted social exchanges, although mindful that peace with European settlers was a priority.<sup>100</sup> Messages too passed across the aukati line, including those carried by specially appointed Kingitanga messengers.<sup>101</sup> The fact that the aukati was ‘no barrier to trade’, as Andrew Francis puts it, is a key reason why persistent characterisations of Te Rohe Pōtae as sealed off in ‘sullen isolation’ or ‘sulky seclusion’ are inaccurate.<sup>102</sup>

Ms Marr has demonstrated that enforcement of the aukati was selective. Māori sought to restrict the entry of particularly undesirable people such as ‘land speculators’, surveyors, and gold prospectors, as well as harmful activities such as gambling and alcohol.<sup>103</sup> As the claimant Patricia Turu explained, ‘kāore ngā kaumātua o tērā wā i whakaae kia tai mai ki roto i te Rohe Pōtae (The elders of that time did not agree for alcohol to be brought into Te Rohe Pōtae)’.<sup>104</sup> However, as described by both Ms Marr and Mr Meredith, trade between Te Rohe Pōtae Māori and Pākehā continued over the boundary throughout the period 1864 to 1883. In 1875, the *Daily Southern Cross* reported that Māori at Te Kōpua and Te Kūiti were selling oats and wheat as well as purchasing large quantities of other provisions.<sup>105</sup> And, at least as early as 1868, hapū from Mōkau had resumed driving their pigs and cattle to market, passing the Pukearuhe redoubt as the soldiers looked on, constrained by orders to avoid violence unless attacked.<sup>106</sup>

Some Pākehā were also allowed to visit inside the aukati with permission. ‘Known Pakehā’, such as Charles Davis and Josiah Firth, visited the territory from as early as 1868, but did so only with permission, guides, and assurances they would follow the rules and go no further than their permission allowed.<sup>107</sup> In the south, Wetere was well-known among Mōkau Māori, who continued to include Pākehā in their community and affairs. The brick-maker John Shore maintained close ties with Wetere and others from his residence in New Plymouth. After deserting from Pukearuhe in 1865, David Cockburn (or Rewi Coburn) went on to

99. Document A78, p 138.

100. Document A78, p 97.

101. Document A78, p 175.

102. Document A26, p 102; doc A78, pp 126–128.

103. Document A78(d), pp 3–4.

104. Transcript 4.1.6, p 207 (Patricia Turu, Ngā Kōrero Tuku Iho hui, Tokanganui-ā-Noho marae, 10 June 2010).

105. *Daily Southern Cross*, 8 July 1875, p 6; doc A110, p 611; doc A78, pp 91–93.

106. ‘White Cliffs’, *Taranaki Herald*, 1 February 1868, p 3; Editorial, *Taranaki Herald*, 7 March 1868, p 2; doc A28, p 159.

107. Document A78, pp 134–135.

father 25 children with ‘several wives’, according to Wiki Henskes. His descendants remain prominent in the Mōkau area today.<sup>108</sup>

In 1868, the aukati was relaxed as ‘friendly’ and non-Kīngitanga Māori joined Kīngitanga supporters from both inside and outside the aukati at a hui reportedly attended by some 3,000 people. Reports at the time suggested attendees travelled from as far as Te Urewera, the East Cape, Wairarapa, Ōtaki, Tauranga, and Thames.<sup>109</sup>

In 1869, the resident magistrate of Waikato, William Searancke, was one of only two Pākehā (the other being Louis Hetet, who had settled near Tokangamutu in the 1840s, marrying the daughter of Taonui Hikaka<sup>110</sup>) permitted to attend the Maehe at Hangatiki, on the authority of Rewi Maniapoto.<sup>111</sup> Even more non-Kīngitanga Māori were present than in 1868. This pattern of relaxing the aukati to allow attendance at the Maehe and other hui continued into the early 1880s. Searancke also noted the orderly nature of the hui, and, to his consternation, he discovered that access to some chiefs was restricted.<sup>112</sup> Importantly, visitors to Te Rohe Pōtae understood that once in the region, they were under the protection of chiefs and the Kīngitanga as the ‘Queen’s writ’ did not extend into the territory.<sup>113</sup>

Over time it seems the aukati was progressively relaxed to allow a range of citizens, Māori and Pākehā, to attend various Kīngitanga hui. For instance, by the 1870s government officials began to be permitted to attend most of the Maehe (see section 7.3.1.1), when resources could be amassed and the weather was comparatively settled. But Pākehā were prohibited from several earlier hui, such as a large gathering in 1866 for which Tāwhiao issued invitations. There was some nervousness among Pākehā that such hui would encourage Te Rohe Pōtae iwi to rise up in arms again.<sup>114</sup>

### 7.3.3.3 King Tāwhiao’s peace policy

Tāwhiao addressed Pākehā concerns about Kīngitanga intentions by issuing successive proclamations of peace at the annual Maehe during the late 1860s. Ms Marr said that Tāwhiao issued the first proclamation in 1866, which was then repeated in 1867 and 1868. The 1867 proclamation was seen as important in urging Kīngitanga adherents to focus on economic rebuilding while remaining peaceful; the 1868 version repeated the call for peace while also asking people to refrain from any dealings in land.<sup>115</sup> Governor Bowen, in a letter to Tāwhiao, summarised the reports he had received of this proclamation:

108. Transcript 4.1.5, p122 (Wiki Henskes, Ngā Kōrero Tuku Iho hui, Maniaroa marae, 17 May 2010); doc A28, p157.

109. Document A78, pp165–166.

110. Document S19, p9 (Te Kanawa).

111. Document A110, pp610–611; doc A78, p166.

112. Document A78, p167.

113. Document A41, p10 (Loveridge).

114. Document A78, pp165–166.

115. Document A78, p168.

1. The sword has been sheathed.
2. The leasing of land is to be at an end.
3. The selling of land is to cease.
4. The digging for gold is to cease.<sup>116</sup>

That same year, Rewi Maniapoto reportedly clarified that the Kīngitanga's policy was one of 'armed peace' – that is, active defence of the aukati.<sup>117</sup> Rewi announced this policy in response to the recent hostilities that had erupted in Taranaki, and widespread fears that the Kīngitanga would return to war (see section 7.3.3.4). However, the policy of 'armed peace' meant that the Kīngitanga would not initiate any form of conflict outside of Te Rohe Pōtae. It would only take up arms if threatened by external forces.

Peace, or at least the absence of war, was one of the enduring themes of the aukati and a goal Te Rohe Pōtae Māori shared with the Crown. Neither party wanted to return to arms: the sword was to be sheathed, as Tāwhiao told those who gathered in 1868. The selling and leasing of lands was to cease also, and the King's territory was closed to gold prospecting, surveying, and road-making.<sup>118</sup> To that extent, the Kīngitanga's peace policy was closely tied with its broader goal: to maintain Māori authority within the remaining territories. Over time, the Kīngitanga's policies expanded to include how these matters could be achieved through an amicable settlement with the Crown.

In 1869, Rewi and Wahanui became key proponents of the peace policy when they met with the Minister of Native Affairs, Donald McLean, at Pahiko. It was here that Rewi introduced the metaphor of the 'tree of peace' – a symbol of peaceful partnership, growth, and nurturing – which would be revisited multiple times over the next decade (see section 7.3.4.2). Rewi was also interested in conducting formal ceremonies of peace-making with and among other Māori communities. In 1870 and 1871, he was involved in discussions with Ngāti Tama over their return to Poutama lands and called a hui to symbolically recognise this development (though it is unclear if the hui eventuated).<sup>119</sup> Also in 1871, a hui was convened at Taumarānui, part of a series of meetings among hapū and iwi of the Whanganui River. Rewi was among the Kīngitanga leaders who participated in the hui.<sup>120</sup> Later, in 1875, he travelled with a party of 40 to the Bay of Plenty, remaining for several weeks. As Ms Marr explained it, this was a 'major . . . initiative' by a senior leader from the Kīngitanga. The focus was not directly on political issues, but on 'renewing friendships and kin links, seeking reconciliation and visiting places of importance with Maori of the area.'<sup>121</sup> Then, in 1878, Rewi organised a large-scale hui at Waitara with then-Premier Sir George Grey, in which he sought to conduct a ceremonial act of reconciliation at the place where conflict was seen to have begun.

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116. Governor Bowen to Tawhiao, 8 January 1869, AJHR 1869, A-1, p 60; doc A78, p 168.

117. Document A78, p 96.

118. Document A78, p 168.

119. Document A78, p 211.

120. Document A78, p 213.

121. Document A78, pp 359–360.

In doing so, he emphasised those elements of the past (such as the confiscation of land at Taranaki) that still needed to be addressed in order for full reconciliation to occur (see section 7.4.2.3).

Tāwhiao initiated similar acts of formal peace-making throughout the 1870s and early 1880s, when he visited Māori and Pākehā communities outside of the aukati as signs of reconciliation and goodwill, emphasising the end of hostilities and the Kingitanga policies of maintaining peace, love, and law (see section 7.4.3.3). Such acts were designed to instill confidence in the idea that recognition of the Kingitanga's authority was not a cause for concern.

These policies augmented the peace-time approach to life in Te Rohe Pōtae. But adhering to peace, particularly a peace in which arms would be carried, was not without its challenges, no matter how clearly the Kingitanga had articulated its policies.

#### **7.3.3.4 Challenges to peace: Taranaki and Mōkau**

In June 1868, war broke out between colonial troops and Taranaki chief Titokowaru, south of the aukati, and lasted till late 1869.<sup>122</sup> Although the Kingitanga leaders undoubtedly paid close attention to the developments in that war, which included a series of victories for Titokowaru, they remained focused on the maintenance of peace. However, the situation thoroughly tested the policy of refusing to allow Kingitanga forces to be drawn into any conflicts outside the aukati. Ms Marr suggested individuals and groups may well have gone to Taranaki 'of their own accord', particularly if they were kin. Unlike the Taranaki war of the early 1860s, however, Te Rohe Pōtae Māori communities did not send military support, no matter how much they might have sympathised with Titokowaru. To do so would have been to violate Tāwhiao's proclamation in 1868 that they should leave Titokowaru to pursue the course he had chosen.<sup>123</sup>

Having debated their options, Kingitanga leaders had to encourage their communities to stay the course, no matter how tempting it may have been to join in a stand against confiscation that many would have viewed as justified. At the same time, those very leaders and communities wanted to maintain diplomatic relations with Titokowaru, and in this they seem to have been successful.<sup>124</sup> Finally, they were also concerned to assure the Crown, which was anxious that the Kingitanga might once again take up arms, that war was not on the Kingitanga agenda.

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122. At the beginning of 1867, Titokowaru had begun a peaceful campaign of protest against the Taranaki confiscation. He resisted the confiscation, without resorting to violence. However, tensions between him and colonial authorities reached a tipping point, leading to the outbreak of war in June 1868. See James Belich, *I Shall Not Die*; *Titokowaru's War New Zealand 1868-9* (Wellington: Allen & Unwin/Port Nicholson Press, 1989); James Belich, 'Riwha Titokowaru', in *1769-1869*, vol 1 of *The Dictionary of New Zealand Biography*, ed WH Oliver (Wellington: Allen & Unwin and the Department of Internal Affairs, 1990), pp 541-545.

123. Document A78, p96.

124. According to Ms Marr, it appeared that Kingitanga leaders maintained 'close political contact' with Titokowaru. And, later, Titokowaru 'refused to join Te Kooti, partly on the request of King Tawhiao': doc A78, p 101.

Though resolute in their decision to maintain peace, the Kingitanga could not prevent a group of Ngāti Maniapoto from the Mōkau area from attacking the redoubt at Pukearuhe, which had been established in 1865 at the end of the Taranaki war. On 13 February 1869, the Mōkau rangatira Wetere Te Rerenga and a contingent of 15 or so men attacked the redoubt. Between them they killed eight people: two military settlers, John Milne and Edward Richards, Lieutenant Bamber Gascoigne, his wife Annie, and their three young children; and the Reverend John Whiteley. Their belongings were plundered. The Gascoigne family was 'placed in a whare' and 'lightly covered with earth'. The redoubt was set on fire. The taua returned to Mōkau.<sup>125</sup>

The attack on Pukearuhe shocked and angered the Pākehā community and generated much consternation among Kingitanga leaders. Three large Kingitanga contingents, each numbering about 200, had been despatched to intercept Wetere but did not reach him in time to prevent the attack.<sup>126</sup> Rewi had led one of these contingents, and he and other senior Kingitanga chiefs regretted and condemned the incident. As a Kingitanga leader with close ties to Mōkau, and someone who had also been educated by Wesleyan missionaries, Wahanui accepted responsibility for Whiteley's death. He reiterated the Kingitanga's peace policy: 'Here let it end, for the death of Whiteley is more than the death of many men.'<sup>127</sup>

Despite these assurances, many feared the attack signalled the Kingitanga was about to commence a general uprising against the Crown. Settlers took flight to the south and troops raced to Pukearuhe. Conversely, Te Rohe Pōtae Māori feared the Crown would retaliate and invade their territory. Kingitanga forces prepared, including by stationing more than 400 at Mōkau, an act wrongly rumoured to mean they planned to push towards New Plymouth.<sup>128</sup>

What were the possible reasons for the attack? Pukearuhe sat on the plateau above the famed Parininihi. It had been a key strategic location for Māori, and therefore contested historically. It was important to the hapū of Mōkau as a defence for Ngāti Maniapoto in the south.

Prior to the Waikato war, Wetere Te Rerenga and his father Tākerei Waitara were best known for their cooperative approach to Pākehā and the government. Initially, Tākerei and other Mōkau rangatira were reluctant to commit to the Kingitanga cause and opposed joining in the conflict at Taranaki. However, following Tākerei's death and the escalation of conflict, many Māori at Mōkau offered active support, including support for the Kingitanga (see chapter 6, section 6.4.2).

By 1865, the Crown had come to take up the position at Pukearuhe as the northernmost point of its defence of the Taranaki region, even though it formally enacted the confiscation to the north of the redoubt, running from Parininihi in a straight line 20 miles inland. For the Crown, the redoubt at Pukearuhe was a

125. Document A28, p162.

126. Searancke to Pollen, 4 March 1869, AJHR, 1869, A-10, p12; doc A28, p166.

127. William Morley, *The History of Methodism in New Zealand* (Wellington: McKee, 1900), p168; doc A110, p613.

128. Document A78, pp100-101; doc A28, p170.

position from which to monitor and control transport, communication, and movement both north and south.

However, practical problems had stemmed from the confiscations being so ill-defined on the ground. In the years immediately following the wars, the Crown neither surveyed nor obviously staked their ownership of the confiscated territory as far north as Parininihi. Locally, this situation created confusion around exactly what land was and was not confiscated. Mōkau Māori apparently thought the Pukearuhe redoubt signalled the northern edge of the Taranaki confiscation. They continued to make use of the Waipingao Valley, north of Pukearuhe, from time to time as they pleased, even though officially the Crown had confiscated the area.<sup>129</sup>

While Mōkau Māori resented the Crown's hold on their prized Pukearuhe, Pākehā settlers soon complained of the increasing ease with which Māori travelled back and forth in full view of the redoubt, free to sell their produce in Pākehā settlements, whereas Pākehā traders could not have similar access to the other side of the aukati. Indeed, rather than contain Te Rohe Pōtae Māori, the confiscation seemed to encourage them, as they sometimes traded with the soldiers stationed at Pukearuhe.<sup>130</sup> In practice, as Mr Thomas makes clear, '[i]t was difficult, although not impossible, for Te Rohe Pōtae Māori to go south of Pukearuhe. It was highly unwise for the Crown [and Pākehā settlers] to go north of it.'<sup>131</sup> Reflecting the uneasiness of the times, in 1868 the *Taranaki Herald* described Mōkau Māori as 'turbulent' and said that the Kīngitanga was not committed to peace.<sup>132</sup> Their response to the renewal of conflict in Taranaki, however, brought the *Herald* to the view that it would be preferable to allow a form of local Māori political authority while demonstrating the riches to be earned from land-based economic development. Te Rohe Pōtae Māori aspirations for independence would 'utterly break down' when faced with the choice between 'seclusion' and prosperity.<sup>133</sup>

What appeared to change the situation, at least so far as Mōkau Māori were concerned, were reports that the Crown was planning to resettle Ngāti Tama on the Poutama lands, between Pukearuhe and Mōkau. The process for initiating their return (from the Chatham Islands) began in 1866, when it was reported that Ngāti Tama and Ngāti Mutunga were 'making active preparations for a speedy return to their original settlement, Mokau.'<sup>134</sup> Initially, they resettled to the south of Pukearuhe at Mimi. However, as the Taranaki Civil Commissioner<sup>135</sup> Robert Parris put it, the problem was that Ngāti Tama 'have been very desirous for a long

129. Document A28, p 153.

130. Document A28, p 159.

131. Document A28, p 156.

132. 'White Cliffs', *Taranaki Herald*, 1 February 1868, p 3; *Taranaki Herald*, 7 March 1868, p 2; doc A28, pp 159–160.

133. Editorial, *Taranaki Herald*, 22 August 1868, p 2; doc A28, pp 160–161.

134. Document A28, p 167.

135. Document A28, pp 167–168. Governor Grey had established the office of civil commissioner in 1861. Civil commissioners and other Crown officials, as well as resident magistrates, worked alongside local rūnanga, and Māori assessors and constables, in a manner that was intended to introduce colonial law by working through existing Māori institutions: Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Legislation Direct: Wellington, 1996), p 88.

time to repossess themselves of Poutama.<sup>136</sup> Local Mōkau chief, and Kīngitanga supporter, Tikaokao attempted to control the situation by initiating the marriage of his daughter to the Taranaki leader Rawiri Rauponga. Their intention was to offer support for the group returning to the area north of Pukearuhe in return for support from the group for the Kīngitanga. However, many other Mōkau chiefs, including Wetere, opposed their return.<sup>137</sup> Parris described the return of Ngāti Tama to settle in the area as crucial to preventing any future attacks on northern Taranaki. In response to reports of possible attacks on Pukearuhe in late 1868, Parris commented that reinforcements were not needed because ‘the Chatham Islanders are a great protection to us’.<sup>138</sup>

After the attack on Pukearuhe in early 1869, Parris conceded that the return of Ngāti Tama to the region may have in fact had the opposite effect. Reporting to the Government, he said that the only conclusion he could arrive at was that ‘the *take* or cause of it [the attack] is the return of the Ngatitamas from the Chatham Islands; and that the Pukearuhe massacre is intended by the Ngatimaniapotos as a declaration of their intention not to surrender Poutama to the Ngatitamas’. He added that it was ‘difficult to explain why they should murder Europeans as a warning to the Ngatitamas not to occupy any part of Poutama, but that is the decision of the whole of the Ngatiawa and Taranaki tribes’. Parris further acknowledged that while Ngāti Tama had yet to take up occupation of the land, they were intending to do so, which Ngāti Maniapoto had undoubtedly heard about.<sup>139</sup>

Two months after the attack the Crown made a perfunctory response: Colonel Whitmore ‘fired four token shots’ from a steam ship taken to the Mōkau Heads for that purpose. He returned to New Plymouth.<sup>140</sup> (One of the cannon balls Whitmore fired could still be viewed at Mōkau Museum at the time of the Tribunal’s hearings.) But the matter was not over yet, for either Te Rohe Pōtae Māori or the Crown. In Pākehā and official circles, discussions centred on identifying the individuals directly responsible for the killing of civilians – Mrs Gascoigne, the children, and the Reverend Whiteley. According to Mr Thomas, the inquest ruled that ‘unknown natives’ were responsible for the killings.<sup>141</sup> Some Pākehā commentators at the time expressed alarm that Wetere, with his reputation for friendliness towards Europeans, could be involved. Nonetheless, within a month of the incident, Waikato resident magistrate William Searancke officially reported that the ‘actual murderers’ were Henry Phillips, Herewini, Te Tana, and Wetere, and went on to name Wetere as the individual who shot Whiteley. While it is not entirely clear, Searancke appears to have obtained his information from Louis Hetet.<sup>142</sup>

The import of the Pukearuhe attack remains a live issue for the people of Mōkau

136. Document A28, p 168.

137. Document A28, p 168.

138. Document A28, p 169.

139. Parris to Richmond, 4 March 1869 (doc A28, p 169).

140. Belich, *I Shall Not Die*, p 274; doc A28, p 170.

141. Document A28, p 163.

142. Searancke to Pollen, 4 March 1869, AJHR, 1869, A–10, p 13; doc A28, p 163.



today. Yet even the claimants could not say with certainty who killed Whiteley or the Gascoigne family or the soldiers. In their evidence, Te Pare and Rangi Joseph described Wetere Te Rerenga as having ‘carried the blame’ for the attack ‘for years.’<sup>143</sup> Kōrero Tuku Iho and written accounts agree that Wetere had a pivotal role. Certainly, government officials and the press quickly identified Wetere as the leader of the attack.<sup>144</sup> Some oral accounts distinguish between his taking responsibility as chief and admitting to being personally responsible for the killings.<sup>145</sup>

Wetere never denied he led the attack. On the contrary, he portrayed it as a legitimate action, much like the usual policing of the aukati, sanctioned by the Kingitanga, and only carried out after repeated warnings to leave the redoubt went unheeded.<sup>146</sup> Other reports claimed it was Tāwhiao who ordered the attack.<sup>147</sup> But there is also good evidence that Tāwhiao and other Te Rohe Pōtae chiefs were as alarmed as their Pākehā counterparts and very uneasy about the whole affair. Searancke reported that Tāwhiao was angry and that the killings had been ‘committed in direct defiance of his wishes and authority.’<sup>148</sup> Wahanui, who some thought to have been involved in the killings, claimed responsibility for them as a rangatira with close ties to Mōkau. Tohe Rauputu said of this: ‘Ko te mahi o te rangatira, ahakoa, anā, nā tētehi mahi ka riro mai i te kupu mana. Ka riro mai hoki te hē, he hara rānei, māna, pēnā hoki te āhua o te rangatira. [Although it was someone else who committed the act, he steps forward to accept the consequences of that act.]’<sup>149</sup> Claimants also interpret Tāwhiao’s actions and utterances following the attack as expressions of remorse (see sidebar).

In the aftermath of the Pukearuhe attack, the area was soon deserted. Overland trade virtually dried up for the next few years. Mōkau Māori rarely passed through or stopped, and Taranaki Māori moved southwards. The Crown, too, moved on, relying on Taranaki Māori to patrol the area and only occasionally sending troops to visit. Through the 1870s Mōkau chiefs, including Wetere, turned their attention to repairing their now shattered relationship with the Crown. In doing so, they sought a return to the commercial relationships and enterprises they had enjoyed prior to the war. Though admirable, their cooperative approach would not relieve them of the challenges the aukati faced. And the question of Wetere’s culpability would be raised again in the early 1880s, at a time when he had made some progress in re-establishing friendlier relations with the Crown. At that time, in February 1883, Wetere was regarded as subject to the Government’s general amnesty (see section 8.3.1.3).

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143. Document H2, p 3 (Te Pare Joseph and Rangi Joseph).

144. See, for example, doc A28, p 163.

145. Transcript 4.1.5, pp 168–169, 179–180 (Tohe Rauputu, Haumoana White, Ngā Kōrero Tuku Iho hui, Maniaroa marae, 18 May 2010); doc A78, pp 634–635.

146. Document A28, p 163.

147. Parris to McLean, 5 January 1871, AJHR, 1871, F-6B, p 12; doc A28, p 166.

148. Searancke to Pollen, 27 February 1869 (doc A28, p 165).

149. Transcript 4.1.5, p 169 (Tohe Rauputu, Ngā Kōrero Tuku Iho hui, Maniaroa marae, 18 May 2010); doc A110, p 614.

### Claimant Evidence about the Pukearuhe Attack

‘Ka hinga i au te kau momōna o te tau, ko ngā toto a panea ki te pari ki Parenīnihi, hei hōroi i tōku tuhi marei-kura, ko Te Koharua te mutu a Tautahi.’ (‘I have slaughtered the fatted calf of the year and the blood I have daubed on the precipice at Parininihi to wash away my tuhi marei-kura and Te Koharua, the chief’s responsibility.’)<sup>1</sup>

Claimant kōrero regarding the attack on the Pukearuhe redoubt in 1869 indicated that there was tension between the Kīngitanga’s principles of peace and the necessity to protect the aukati line. The reasons for the attack are still not well understood. However, claimants emphasised the significance of the site’s location on the aukati line and the importance of protecting the lands within the boundary. Tohe Raupatu believes that the incident confirmed ‘the extent to which we were bound by the kupu mana of our obligations to protect our lands and the boundaries from the intrusions of those that did not respect our laws.’<sup>2</sup>

Haumoana White gave a number of motives for the attack. In his kōrero, it had been Whiteley who carried Te Tiriti from Mōkau to Kāwhia in 1840. After being turned away by the rangatira he had subsequently returned in 1869 ‘after transferring to New Plymouth as an honorary land commissioner and a spy with the military to effect compulsory purchase of the Poutama whenua.’<sup>3</sup> Mr White said that the attack upon the Pukearuhe redoubt was in response to the war crimes of the colonial military in Taranaki, and was intended to pre-empt a planned intrusion by the Crown into Poutama lands.<sup>4</sup> However, he did not suggest that the murder of Reverend Whiteley had been planned as part of the attack. Mr White and Tohe Raupatu told the Tribunal that Whiteley was shot at the border of the Poutama land block after refusing to turn back when repeatedly asked.<sup>5</sup>

That Wetere (Te Rerenga) is said to have warned the military settlers to leave Pukearuhe in late 1868 suggests that there was some attempt to align the removal of the militia with the peaceful principles of the Kīngitanga movement.<sup>6</sup> However, when the violent incident did occur, the various interpretations and versions of the whakataukī suggest that Wahanui and Tāwhiao took on responsibility (as leaders

1. Claimants gave several slightly different versions of this saying. Most attributed it to Wahanui but Ms Aranui attributed it to Tāwhiao: transcript 4.1.5, p 139 (Hinekahukura Aranui, Ngā Kōrero Tuku Iho hui, Maniaroa marae, 17 May 2010); see also transcript 4.1.5, pp 169, 179 (Tohe Raupatu, Haumoana White, Ngā Kōrero Tuku Iho hui, Maniaroa marae, 18 May 2010); doc A110, pp 631–632.

2. Document H13, p 6 (Raupatu and Tūwhangai).

3. Transcript 4.1.5, p 178 (Haumoana White, Ngā Kōrero Tuku Iho hui, Maniaroa Marae, 18 May 2010).

4. Transcript 4.1.5, p 179 (Haumoana White, Ngā Kōrero Tuku Iho hui, Maniaroa Marae, 18 May 2010).

5. Document H13, p 6, transcript 4.1.5, p 179 (Haumoana White, Ngā Kōrero Tuku Iho hui, Maniaroa Marae, 17 May 2010).

6. Document A78, p 99.

of their people) for the killing, even though in most accounts Te Wetera or his people were the perpetrators. According to Tohe Raupatu, Wahanui daubed the blood of the fattened calf on to the precipice of the cliffs at Parininihi so that he and the marae, Te Koharua, would have the responsibility for the act washed away.<sup>7</sup> Haumoana White said the whakataukī referred to two bags of gold sovereigns carried by Whiteley, which were intended to effect the purchase of the Poutama lands and were discarded into the sea at Te Ruataniwha after he was shot.<sup>8</sup> Hinekahukura Aranui said the whakataukī was Tāwhiao's message to Titokowaru. He was appealing to their common descent from the tūpuna wahine Ruapūtahanga and saying that he did not want Titokowaru to be held responsible for the killings, and wanted the killing to stop with Whiteley. According to Ms Aranui: 'Titokowaru understood . . . and he replied yes, me mutu ngā whāwhai [the fighting should stop], and it was at that stage that all the fighting started to be closed off.'<sup>9</sup>

7. Transcript 4.1.5, p 169 (Tohe Raupatu, Ngā Kōrero Tuku Iho hui, Maniaroa Marae, 18 May 2010).

8. Transcript 4.1.5, p 179 (Haumoana White, Ngā Kōrero Tuku Iho hui, Maniaroa Marae, 18 May 2010).

9. Transcript 4.1.5, pp 129–130 (Hinekahukura Aranui, Ngā Kōrero Tuku Iho hui, Maniaroa Marae, 17 May 2010). Translation by Waitangi Tribunal.

### 7.3.3.5 Challenges to peace: Te Kooti's arrival in the district

The challenges to the Kīngitanga's peace policy did not end with the attack on the Pukearuhe redoubt. Even before the attack, the spectre of Te Kooti Arikirangi Te Turuki – the spiritual leader and founder of the Ringatu faith – loomed large. By mid-1869, when Te Kooti arrived in the Taupō district, he had already been pursued by colonial forces for some months since his return to the mainland from Wharekauri. He had sought refuge with the iwi of Te Urewera, but since his departure from there he was now seeking a new sanctuary. Te Rohe Pōtae presented an obvious potential destination, and there were persistent reports that Kīngitanga groups might join him.

Upon leaving Te Urewera, Te Kooti was involved in a series of engagements with Crown forces in the Taupō, upper Whanganui, and Patetere areas that continued into 1870. His actions quickly drew the Kīngitanga into his ambit, even as they tried to remain detached. Te Kooti was openly disdainful of both Tāwhiao and the chiefs who had united under him. In his view, the Kīngitanga protected an older order of chiefly authority whereas what Māori needed was a new kind of leadership, one Te Kooti could provide, that could overcome the challenges of colonisation.<sup>150</sup>

150. Judith Binney, *Redemption Songs: A Life of Te Kooti Arikirangi Te Turuki* (Auckland: Auckland University Press, 1995), p 155; doc A78, p 103.

Concerned, Tāwhiao sent word to Horonuku Te Heuheu to be neutral and let Te Kooti pass if need be. But at Waihi, Te Kooti challenged Te Heuheu directly and demanded that the Taupō chiefs take him to Tokangamutu to see Tāwhiao. A group of them agreed to do so, but not before Te Rohe Pōtae leaders had warned he should only come to Tokangamutu if he came in peace. They were themselves prepared for any trouble that might arise, Tokangamutu being well-armed at that time. His escorts – rangatira from Ngāti Tūwharetoa and Ngāti Raukawa, including Te Heuheu and Hitiri Te Paerata – ensured he could cross the aukati without being sent back by aukati patrols.<sup>151</sup>

At Tokangamutu, Te Kooti did not get the audience with Tāwhiao that he sought, because Tāwhiao and some of his senior advisors declined to meet him. Those who did meet were diplomatic. They heard what Te Kooti had to say, but ultimately rejected his challenges and threats. The Kīngitanga would not unite with Te Kooti against the Government, but they would respect his commitment to leading Māori resistance. They made an offer that if he were to accept the authority of the Kīngitanga and refrain from any further armed conflict, he could live in peace in Te Rohe Pōtae. When Te Kooti declined the offer, he was escorted back across the aukati, beyond its western border.<sup>152</sup> Later that year Rewi told McLean he had seen Te Kooti ‘out of my district’ and would not protect him (Te Kooti) ‘when beyond my boundaries.’<sup>153</sup>

Following his visit to Tokangamutu, Te Kooti resumed his military attacks in the Taupō area, stirring up sympathies among communities still coming to terms with their post-raupatu existence, whether rebuilding – and often relocating – communities ravaged by war and confiscation, or withstanding new waves of Pākehā settlement. Though Te Kooti kept his activities away from the inner aukati, he did operate unnervingly close to its edges, at times ignoring it and taking temporary refuge in the upper Whanganui area. The pressure was intense. The Kīngitanga viewed Te Kooti as disruptive and disliked the military presence that had followed him into the district – government forces and their tribal allies whose goal was Te Kooti’s capture – though none of them breached the inner aukati.<sup>154</sup>

Their patience stretched to breaking point, Kīngitanga chiefs began to plan for Te Kooti’s capture. With Tāwhiao’s express support, they opted for an arrangement that – in keeping with Kīngitanga philosophy – placed authority with the Whanganui chiefs. It was a wise diplomatic move, one which encouraged neutrality among communities that may have otherwise sympathised with Te Kooti. Similarly, the earlier diplomacy extended to Titokowaru no doubt contributed to him acceding to Tāwhiao’s request that he not join Te Kooti.<sup>155</sup>

Some communities did back Te Kooti, threatening, but not displacing, the Kīngitanga line to hold fast to peace. Without the full support he needed to

151. Document A78, pp104–105.

152. Document A78, pp104–105.

153. ‘The Native Minister’s Interview with Leading Waikato Chiefs’, AJHR, 1870, A-12, p4; doc A78, p105.

154. Document A78, pp105–106.

155. Document A78, p106.

successfully continue his campaign, Te Kooti left the area in 1870 and made his way back to Te Urewera.<sup>156</sup> Thus, the Kingitanga had successfully maintained the peace and contained the possibility of a further outbreak of war.

Te Kooti did not return for another two years, in which time the Crown's pursuit of him had continued. He arrived in May 1872 and travelled to Te Kūiti to request sanctuary. There, a hui was convened to discuss Te Kooti's request. Once again, the chiefs repeated the condition that Te Kooti would have to respect the authority of them and King Tāwhiao, as well as the policies of the Kingitanga. In particular, he had to respect their policy of peace. Te Kooti accepted these terms, and Rewi took personal responsibility for his conduct.<sup>157</sup> On Te Kooti's own account, however, he did not adopt the peace policy until 1873. From this time, Te Kooti's teachings emphasised peace and a commitment to the rule of law. As a mark of his gratitude to the Kingitanga, he supervised the carving of the whare Tokanganui-ā-noho, which he gifted to Tāwhiao.<sup>158</sup>

### Claimant Accounts of Te Kooti's Years of Refuge

Te Kooti Arikirangi Te Tūruki was a Māori spiritual leader who fought a resistance campaign against the Crown between 1868 and 1872. In June 1866, he was imprisoned without trial on the Chatham Islands on suspicion of spying. During his incarceration, Te Kooti had begun to experience premonitions that laid the foundation for the Ringatu faith. After seizing the schooner *Rifleman*, Te Kooti planned to travel to the Waikato and challenge Tāwhiao for the spiritual leadership of the Māori people. Following his escape, Te Kooti made his way down the east coast of the upper North Island, attacking Whakatāne, Ōpōtiki, and Mōhaka in early 1869 before reaching Lake Taupō on 8 June, where he set up camp on the south-eastern side for a time.<sup>1</sup> Claimants provided a number of traditions concerning Te Kooti's years of refuge in Te Rohe Pōtae.

According to Nigel Te Hiko of Ngāti Raukawa, Te Kooti and a group of armed supporters arrived at Tokangamutu (modern-day Te Kūiti) on 7 July 1869, demanding to be escorted to King Tāwhiao's residence. Here, Te Kooti had discussions with a number of people, including Rewi Maniapoto, but Tāwhiao refused to see him.<sup>2</sup> When leaving Tokangamutu several weeks later, Te Kooti was accompanied by Rewi

1. Document K24, pp 13–14 (Nigel Te Hiko).

2. Document K24, p 14.

156. Document A78, p107.

157. Document A78, pp179–180.

158. Judith Binney, 'Te Kooti Arikirangi Te Tūruki', in 1769–1869, vol 1 of *The Dictionary of New Zealand Biography*, ed WH Oliver (Wellington: Allen & Unwin and the Department of Internal Affairs, 1990), pp 462–466.

Maniapoto and Horonuku Te Heuheu. The decision of these two men to accompany him reflected a potential alliance forming between Te Rohe Pōtae rangatira and Te Kooti. As Piripi Crown explained, the potential for an alliance between Te Kooti and the two men was to be short lived:

Rewi went to assist and to observe the soldiers who were pursuing Te Kooti Rikirangi, and see whether the troops could fight . . . But on their arrival they could see the soldiers surrounding the pā where Te Kooti and his party were holed up and Rewi said: 'Let's go home, because he will probably be caught by the soldiers.'<sup>3</sup>

Following his defeat at Te Ponanga Pā, south of Lake Taupō, Te Kooti found himself with little option but to return north, having made enemies in every other direction.<sup>4</sup>

Following his loss, Te Kooti is said to have crossed the Waikato River into Ngāti Raukawa territory. Piripi Crown told the Tribunal that whilst resident in the Rohe Pōtae, Te Kooti had sought wisdom and understanding from the tohunga of Miringa Te Kākara and had learnt from them, an experience which may have guided his Ringatu faith.<sup>5</sup> He recounted a conversation which took place between Te Kooti and the Ngāti Raukawa tohunga, Te Rā Kārepe at Pārehareha Marae. 'Pārehana asked Te Kooti, "Why have you come here" He responded to Te Rā, "Ra I come here to take the mana of Miringa Te kakara."<sup>6</sup> This place was the whare wānanga of Ngāti Maniapoto, a marae renowned for the teachings of the Pao Miere faith,<sup>7</sup> astronomy, medicines, and ancestral knowledge.<sup>8</sup> 'Te Rā said to him, "Te Kooti, on my tongue you will find that mana. If you want this mana, come and fetch it."<sup>9</sup> After three days, Te Kooti is said to have accepted Te Rā Kārepe's offer of hospitality,

3. Transcript 4.1.6, pp 359–360 (Piripi Crown, Ngā Kōrero Tuku Iho hui, Te Tokanganui-ā-Noho Marae, 11 June 2010).

4. Document K24, p 15.

5. Document L18(a), pp 20–21 (Crown).

6. Transcript 4.1.6, p 360 (Piripi Crown, Ngā Kōrero Tuku Iho hui, Te Tokanganui-ā-Noho marae, 11 June 2010).

7. Pao Miere was a nineteenth century faith led by Te Rā Karepe and another tohunga Rangawhenua Tāwhaki of Ngāti Pahere and Ngāti Urunumia. It was based at the whare wānanga Te Miringa Te Kākara at Tiroa (near Pureora). The name Pao Miere (refuse honey) was a reference to the decision to remain aloof from the Native Land Court. Claimants referred to several Ngāti Maniapoto hapū following Pao Miere and to followers coming from throughout the country to study at Te Miringa Te Kākara: doc 12, pp 17–20 (Crown); doc L18(a), pp 18–20; doc R13, pp 24–25 (Tūwhangai); doc L1, pp 4–5 (Te Rā) .

8. Transcript 4.1.11, p 47 (Piripi Ngāwhira, hearing week 5, Te Ihingārangi marae, 6 May 2013); doc S40(d) p 2, (Peni).

9. Transcript 4.1.6, p 360 (Piripi Crown, Ngā Kōrero Tuku Iho hui, Te Tokanganui-ā-Noho marae, 11 June 2010).

and to have sought asylum in these parts for 11 years.<sup>10</sup> Whilst there, Tāwhiao sent Rewi, Wahanui, and Taonui Hikaka (who had now assumed the leadership role of his father, also named Taonui Hikaka) to Wellington to request a pardon for Te Kooti, so that he could return to his own lands.

According to Nigel Te Hiko, Te Kooti was neither offered refuge by Ngāti Raukawa, nor did he stay at Pārehareha Marae for any significant amount of time. Te Kooti is said to have re-entered Raukawa territory on 16 December 1869 and then again on 10 January 1870. Te Hiko presented the letters of the Raukawa chief Hitiri Te Paerata to the Tribunal, in which the chief expressed his worry that the ‘whole of the tribes and hapū of Raukawa, on the other side of Waikato and extending to Tauranga, have joined Te Kooti.’<sup>11</sup> Te Hiko noted that this is likely to have been exaggerated. Te Kooti is said to have moved on to Tapapa, arriving on 14 January. Here, Government forces, including those of the Crown’s Māori allies, are said to have been closing in on Te Kooti.<sup>12</sup> At this stage, the rangatira of the Kīngitanga were warning Raukawa against associating themselves with Te Kooti. Tāwhiao is even said to have offered the iwi asylum in the Rohe Pōtae.<sup>13</sup> Te Kooti managed to escape his assailants, fleeing back to Te Urewera, but there was to be no safety of refuge there. In 1872 Te Kooti is said to have again entered Raukawa territory with a small party of followers, only to be told by the iwi that he was not welcome. From here, Te Hiko states, Te Kooti made his way into Te Rohe Pōtae, where he lived in exile for 11 years.<sup>14</sup>

Tame Tūwhangai of Ngāti Urunumia, also recalled Te Kooti’s presence in Te Rohe Pōtae prior to his seeking asylum. According to Tūwhangai, Te Kooti initially stayed at Papawaka, near the Taringamotu River.<sup>15</sup> Here, he was engaged in a tournament for mana against Rewi Maniapoto. According to Tūwhangai, two pou were erected, one to represent Rewi and one Te Kooti. Te Mangapakura told his warriors to fire bullets at the two poles to see who had the most mana. ‘All the bullets missed Rewi and when they fired at Te Kooti it blew him apart.’<sup>16</sup> Te Kooti then travelled to Ngāruawāhia to await an audience with Tāwhiao. This incident likely overlaps with the 7 July meeting with Rewi and other Kīngitanga rangatira mentioned by Te Hiko.<sup>17</sup> According to Tūwhangai, Te Kooti returned to Te Rohe Pōtae after the bat-

10. Transcript 4.1.6, p 360 (Piripi Crown, Ngā Kōrero Tuku Iho hui, Te Tokanganui-ā-Noho marae, 11 June 2010).

11. Document k24, p 15.

12. Document k24, p 16.

13. Document k24, p 17.

14. Document k24, p 19.

15. Transcript 4.1.17, p 749 (Tame Tūwhangai, hearing week 11, Wharauora marae, 2 April 2014).

16. Transcript 4.1.17, pp 775–776 (Tame Tūwhangai, hearing week 11, Wharauora marae, 2 April 2014).

17. Transcript 4.1.17, p 776 (Tame Tūwhangai, hearing week 11, Wharauora marae, 2 April 2014); doc k24, p 14.

tle at Te Pōrere in about 1869–70. He arrived at Te Horangapai, where, upon hearing him, the locals fled to the edge of a nearby forest. Te Kooti explained that he and his warriors came with peaceful intentions and bid the people come out from their hiding places. Tūwhangai stated that it was the Ngāti Hari iwi that shared their homes and resources with Te Kooti and his people in his years of asylum.<sup>18</sup>

One of Te Kooti's main legacies for the people of Te Rohe Pōtae was a carved whare at Te Kūiti, the carving of which he supervised. Piripi Crown recalled carved whare in Te Kūiti that Te Kooti gifted to Tāwhiao, which he named Tokanga-nui-ā-mutu, but which Tāwhiao subsequently renamed Tokanga-nui-ā-noho.<sup>19</sup> Benny Anderson told us at the Ngā Kōrero Tuku Iho hui, that the whare had been gifted to Ngāti Rōrā, and that it had been Taonui who was responsible for the name change. According to Mr Anderson, Te Kooti built the house and resided in it for his tenure in Te Rohe Pōtae, during which time he referred to it as Tokangamutu. Towards the end of his residence in the district, Te Kooti requested the service of a master carver from Ngāti Kahungunu who extended and enlarged the house. On 2 January 1883 Te Kooti opened the house up to the chiefs of Ngāti Rōrā. Te Kooti said 'Welcome my chiefs, come to our treasure that stands here and as you gather your thoughts and my thoughts, this house was erected as a token of love to the people.' To which Taonui responded that the house would be named, and that it would stand as a monument for the island (Te Rohe Pōtae), but that now the lands were being taken and the remnants of the tribes must have a place to gather. This house would be known as Tokanganui-ā-noho and would be a monument for all the land of Te Rohe Pōtae.<sup>20</sup>

18. Document A44, p 13 (Tame Tūwhangai).

19. Transcript 4.1.6, p 361 (Piripi Crown, Ngā Kōrero Tuku Iho hui, Te Tokanganui-ā-noho marae, 11 June 2010).

20. Transcript 4.1.6, pp 27–28 (Benny Anderson, Ngā Kōrero Tuku Iho hui, Tokanganui-ā-noho marae, 9 June 2010).

Titokowaru, Te Kooti, and the attack on Pukearuhe placed massive challenges before the Kingitanga and rigorously tested the political organisation of Te Rohe Pōtae, the strength of their peace policy, and the effectiveness of their diplomatic relations, both internally among their people and supporters and externally with other iwi and even the Crown and Pākehā. Those tests occurred during a period of post-war anxiety, in which Native Land Court hearings, the building of roads and telegraph lines, and gold prospecting all contributed to increased concern among Te Rohe Pōtae Māori. In their handling of the events discussed here, the Kingitanga leaders showed dedication to ensuring a genuine end to all conflict. And, in holding fast to peace, they also positioned themselves for constructive discussions with government officials, who shared their concerns about Te Kooti.



### 7.3.3.6 *Policing the aukati in the context of a peace policy*

Te Rohe Pōtae Māori had a territory to protect and an aukati to enforce. More often than not, their warning system successfully deterred trespassers from entering the aukati. This warning system developed over time and increased in severity for every breach. On a first attempt at crossing into the district, trespassers could expect to be stopped (*puru*) and warned verbally to leave the area. In 1876 and 1877, land and gold prospectors had put enough pressure on the aukati in the upper Whanganui region that it was decided to restrict entry into the region even further. In 1877, Resident Magistrate Woon and Major Nixon attempted to take two strangers on a canoe trip upriver into Te Rohe Pōtae. The party was turned back even though Woon and Nixon were on friendly terms with local Māori. Te Hai (Taumatamahoe), who stopped Woon and Nixon, is thought to have suspected the two strangers of surveying for gold.<sup>159</sup> The tightening of entry restrictions into the aukati during this period shows how flexible Te Rohe Pōtae Māori were in responding to external pressures without violence.

The warnings then progressed to the firing of warning shots, *mu*ru (confiscation of belongings), and physical eviction from the territory. These more extreme warnings were generally reserved for persistent offenders or gold prospectors, surveyors and land purchase agents who were perceived as a threat to the preservation of Te Rohe Pōtae land and natural resources. In 1868, a runholder named William Buckland attempted to move cattle through the aukati and was stopped by a Kīngitanga patrol. The patrol turned Buckland back and confiscated his cattle.<sup>160</sup> The evidence suggests that these rules were well-known and recognised by Pākehā in the region, and were generally only tested by gold prospectors or surveyors for whom the lure of gold or land proved too powerful to resist.

Death was the ultimate, but seldom dispensed, penalty for trespassing beyond the aukati. The Kīngitanga avoided promoting or encouraging its use, aware that use of the death penalty could provoke violent retaliation from Pākehā. Though regression to warfare was a risk, Te Rohe Pōtae Māori felt compelled to uphold the aukati and do 'what was right in Maori custom and law'.<sup>161</sup> The final sanction in enforcing the aukati appears to have been a last resort after all else had failed. Keepers of the aukati reserved death for extreme cases where offenders had ignored previous warnings against deliberately and repeatedly breaching the aukati. Only four were reported between 1870 and 1880: John Lyons, Richard Todd, Timothy Sullivan, and William Moffatt. The death penalty was imposed on individuals who had been involved in banned or restricted activities, such as gold prospecting or land speculation, and only followed multiple warnings to desist.<sup>162</sup>

The first, John Lyons (or Lyon) in January 1870, did not initially appear to be in defence of the aukati. Lyons was killed while building fences at the Pūniu River in

159. Document A78, pp120–121.

160. Document A78, p 77. King Tāwhiao later ordered the return of the cattle to Buckland.

161. *Evening Post*, 3 June 1873, p 2; doc A78, p 115.

162. Document A78, p 109. There was also one near-death.

the vicinity of Ōrākau. It was reported that he was killed after confronting an opportunistic thief whom he caught trying to steal his coat, and certainly this is what the coroner's inquest found.<sup>163</sup> However, two years later, the local correspondent for the *Daily Southern Cross* claimed that, in 1870, Lyons and a friend, John Cash, had been prospecting for gold in the area, at times crossing the aukati, and had been warned off by Māori. The person said to have killed Lyons was named as Tamati Kiharoa of Ngāti Maniapoto and Ngāti Raukawa. Both he and his father reportedly fled their village, Wharepapa, and were understood to be hiding within the aukati.<sup>164</sup>

The second followed only a few months later in November 1870, when government surveyor Richard Todd, also known as Manukau, was killed (by a group of Ngāti Taimanu men, according to one report) while surveying at Pirongia, having been previously warned off twice.<sup>165</sup> This and the Government's reaction further are discussed in section 7.3.5.1.

The third occurred in April 1873, when Purukutu and his supporters of Ngāti Hauā killed Timothy Sullivan as they chased him and two others back across the confiscation line at Pukekura (between Maungatautari and Cambridge).<sup>166</sup> Sullivan's companions, David Jones and Charles Rogers, made it and were not pursued beyond the aukati. Sullivan did not share their luck, and was caught and killed. They had been hired to work on land that had been through the Native Land Court as part of the Maungatautari block claim, and had subsequently been leased to two Europeans. Purukutu and his supporters had refused to take part in the hearing, but continued to regard the land as theirs. There is no evidence that Sullivan was personally warned. However, Kingitanga warnings against such breaches of the aukati had been publicly circulating for years, and – when they went unheeded – Purukutu had taken other action such as killing or driving off stock, and burning a whare on the land. In January, Kingitanga supporters had held a meeting about Pukekura and had resolved to warn Major Mair to remove the cattle (though Mair subsequently denied having received the message). As a final warning, in February 1873 another workman, James Laney, had been seriously injured in a similar incident.<sup>167</sup> Taking responsibility for Sullivan's death, Purukutu explained that it was his 'last resource [*sic*] . . . to kill any pakeha I found on my land.' Pākehā law did not extend past the confiscation boundary, he said, 'and is not known on this side.'<sup>168</sup>

The fourth and final killing was of William Moffatt in 1880. This killing illustrates how the warning system worked progressively towards the ultimate penalty of death. Moffatt had some history with various Te Rohe Pōtae communities, but

163. *Daily Southern Cross*, 15 February 1870, p 7; doc A78, p 111.

164. 'The Alleged Waikato Goldfield', *Daily Southern Cross*, 12 February 1872, p 2; doc A78, pp 111–112.

165. Clarke report, 16 March 1871, AJHR, 1871, F-6, p 10; doc A78, p 111.

166. 'Sullivan's Murder Explained', *Daily Southern Cross*, 20 May 1873, p 3; doc A78, pp 114–115.

167. 'Report from Mr James Mackay, Jun', 10 July 1873, AJHR, 1873, G-3, pp 3–4; doc A78, pp 272–274.

168. Document A78, p 115.

perhaps over-estimated his popularity among them.<sup>169</sup> In 1872, facing charges of theft and fraud, Moffatt fled into ‘the King’s Country’ with Detective Kell of the armed constabulary in pursuit, bearing a warrant for Moffatt’s arrest.<sup>170</sup> On this occasion, a Kingitanga patrol allowed Kell to capture the fugitive Moffatt. This permission allowed Kell to exercise his authority to arrest Moffatt.<sup>171</sup>

In 1875, having served his jail sentence, Moffatt was reportedly living at Te Kūiti as ‘the King’s pakeha.’<sup>172</sup> But his various dubious dealings, both inside and outside the aukati, soon saw him once again captured inside the aukati, under the authority of chiefs at Tūhua, to face charges brought by colonial authorities outside the aukati. Sentenced in early 1877 to two years’ hard labour, for offences under the 1860 Arms Act, Moffatt headed back to the upper Whanganui area in late 1878. He seemed set on continuing his earlier practices of moving back and forth across the aukati line, dealing with people and communities on each side. However, chiefs within the aukati, particularly those at Tūhua, had little patience with him. A council of chiefs that included Wahanui, Rewi, Taonui, Ngatai Te Mamaku, and Te Pikikōtuku decided Moffatt must leave and not return. Moffatt was personally warned: he would be killed if he ever crossed the aukati again. Initially, he did heed the warning, leaving the district when he heard the council’s decision.<sup>173</sup>

But in 1880, for reasons that remain a mystery, Moffatt pressed his luck one last time, attempting to secretly enter the district accompanied by a man named Henare.<sup>174</sup> Moffatt was intercepted and shot by the chief Ngatai Te Mamaku. (Though it seems that the shot was not fatal – Tame Tūwhangai told us that the death blow was delivered by Pūkawa with a tomahawk.<sup>175</sup>) Sir Archie Tairoa explained this event (at the Taumarunui Kōrero Tuku Iho hui):

Haere atu ana ki roto o Whanganui, anā ten ngā rangatira, anā, e whakarite i tērā wā, tērā wā me kī, te rohe e aukatihia e kī ake kaua e haere mai ngā Pākehā ki roto ki konei, ā, pērā hoki i roto Taumarunui nei ana tō mātou tupuna a Ngātai . . . kī ake kaua e haria mai ngā Pākehā ki konei ka haere mai ka kī atu ahu kaua hoki mai i konei ka haere engari ka hoki mai te wā, ka hoki mai, patua kia mate ana koirā pea te āhuatanga o te aukati e kōrerohia nei, arā, i konei, nō reira e kī ana ngā mea kāore i te whakarongo . . .

169. Ms Marr gave a full account of Moffatt and his eventual demise: doc A78, pp 112–146.

170. Specifically, Moffatt faced charges of horse-stealing and acquiring goods under false pretences: ‘Clever Capture’, *Daily Southern Cross*, 13 November 1872, p 3; doc A78, p 113.

Ms Marr was not certain that the William Moffatt who Kell arrested (studied in detail by historian David Young) and the William Moffatt later killed as punishment for repeatedly breaching the aukati is one and the same (p 112). However, she did not explain that sliver of doubt, and continued as if she and Young have studied the one person.

171. Document A78, p 114.

172. *Thames Star*, 7 April 1875, p 2; doc A78, p 122.

173. Document A78, pp 122–124.

174. Document A78, p 124.

175. Transcript 4.1.5, pp 226–227 (Tame Tūwhangai, Ngā Kōrero Tuku Iho hui, Maniaroa marae, 18 May 2010).

As far distant as the Whanganui districts to the south, chiefs enforced the boundaries of Te Rohe Pōtae. Pākehā were forbidden to enter; that was the case in Taumarunui. Our ancestor Ngātai . . . said “Don’t bring Pākehā here”, but they came anyway. He said “Go. Go away and don’t come back”. The Pākehā were sent [away] but they came back, and the Pākehā . . . was killed. That is what an aukati means; no one allowed to come in. That was the mana, that was the strength of the word of the chiefs. They said, “Do not enter. If you do there is a price, you come in and you pay the price . . .”<sup>176</sup>

Ngatai explained to John Bryce at the Kihikihi hui in 1883 how Moffat had ignored repeated warnings to leave:

I sent my man called Te Kati to warn him not to come, but he paid no attention to my message, and persisted in coming on . . . I sent him a letter by my messenger telling him to return from that place as there was trouble in this district . . . he was turned back on one day. He persisted in coming on the next day and was killed.<sup>177</sup>

The responsibility and authority for the killing was signified by a taiaha – ‘Mahuta’ – left in the vicinity of Moffatt’s shooting. The symbolism of ‘Mahuta’ cannot be underestimated. Signifying a kind of sanctioning of the death penalty, Rewi later said it was he who sent the taiaha to Ngatai.<sup>178</sup>

The movement of the taiaha throughout the rohe, handed from chief to chief, is also a reminder that what made the aukati effective was the cohesive and sound organisation of its leadership. In doing so, the Kingitanga leadership worked with the local community leadership, drawing on a mix of historical alliances (such as those displayed much earlier at Mātakitaki and other battles) and practical knowledge of hapū and iwi politics. Ultimately ‘Mahuta’ also became a symbol of peace: its name was changed to ‘Maungarongo’ in recognition of this fact. In 1885, it was handed from Wahanui to government agent George Wilkinson to give to Ballance in a gesture indicating the dissolution of the aukati and the end of violence (see chapter 8).<sup>179</sup>

As far as is known, Moffatt was the last European to be killed in defence of the aukati. Moffatt’s companion, Henare, was let go, so that he could tell the cautionary tale that Moffatt’s death provided to any others who might seek to cross the aukati and enter Te Rohe Pōtae without the appropriate permission. Moffatt experienced both the tolerance that policing of the aukati allowed – living among Te Rohe Pōtae Māori reasonably freely so long as he did not make a nuisance of

176. Transcript 4.1.4, p 263 (Sir Archie Taiaroa, Ngā Kōrero Tuku Iho hui, Ngāpūwaiwaha marae, 27 April 2010).

177. ‘Notes of an Inquiry made by Hon Native Minister at Kihikihi, December 19, 1883’, AJHR, 1886, G–8, p 2; doc A110, p 610.

178. Document A110, p 610; doc A78, p 146.

179. Document A110, p 617.

himself – and the severity – he was stopped, warned both verbally and in writing, and asked to stop breaching the aukati. Although he paid the ultimate price, Moffatt understood that he put his life at risk when he chose not to heed the warnings he received.

Not all killings during this period were connected to breaches of the aukati. The murder of Pākehā farm worker, Edwin Packer, in January 1876 clearly had nothing to do with the aukati and occurred on a farm in Epsom, Auckland. The young man wanted for the murder was Henare Winiata, who had whakapapa links to Ngāti Mahuta and Ngāti Pare. Winiata fled before Packer's body was discovered, and it was believed that he would run to the King Country, where his father was said to be living.<sup>180</sup> However, Packer's death was certainly exceptional – and led to exceptional treatment of Winiata (see sidebar in section 7.4.4.6.3).

The Kīngitanga implemented the warning system to the best of their ability and only resorted to the death penalty when other options had proved ineffective. They were not necessarily comfortable with implementing the death penalty, even though they consciously chose it. To reduce the number of times this sanction was used, the Kīngitanga reached out to settlers in a series of diplomatic initiatives.<sup>181</sup> In 1881, Tāwhiao visited Alexandra, Mangatāwhiri, and several other Waikato towns, aiming to ease settler fears of the Kīngitanga and build better relations with them. Other strategies that were employed to reduce the risk of conflict included encouraging communities near the aukati to use techniques of passive resistance and encouraging vulnerable communities to move from the northern boundary line to Tāwhiao's settlement at Hikurangi.<sup>182</sup>

Major Mair interpreted the friendship tour as a first step by Tāwhiao towards engagement with the Government. This was reinforced by Tāwhiao's decision at this time to move his own headquarters from Hikurangi to Whatiwhatihoe, on the other side of the Pūniu from Alexandra. For the time being, however, Tāwhiao chose to engage only at a local level and meet no-one more senior than Mair.<sup>183</sup>

In defence of the aukati, the Kīngitanga demonstrated that it was able to effectively govern its territory by controlling who entered and on what terms. Although they sometimes used force to protect the aukati and their mana, the Kīngitanga and Te Rohe Pōtae Māori showed restraint when implementing the ultimate penalty. The Kīngitanga preference was a successful district-wide warning system and peaceful diplomacy that both effectively prevented unauthorised entry into the district while simultaneously maintaining a relative peace with Pākehā settlers and authorities.

We now look at how the Crown responded to the enforcement of the aukati.

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180. Document A78, pp 367–368.

181. Document A78(d), p 4.

182. Document A78(d), p 4. For a full account of these visits, see doc A78, pp 534–535.

183. Document A78, pp 535–536, 543–544.

### 7.3.4 The formation of Crown policy on the aukati

After enacting the confiscation legislation, the Crown never directly challenged the aukati, but nor did it accept the independence of the people within the aukati. Rather, the Crown regarded Te Rohe Pōtae as an area in which it would one day effectively exercise its sovereignty. From time to time it noted its concern for citizens who ventured across the aukati and issued what might be regarded as the equivalent of modern-day foreign travel warnings against such risky action. It also made several diplomatic overtures towards the Kīngitanga and Te Rohe Pōtae leadership, which were attempts to relieve the impasse in which their tense relations existed. Since 1864, the colonial government had complete responsibility for Māori affairs, following the full transfer of responsible government from the imperial authorities. By 1870, it had come to adopt a policy that Te Rohe Pōtae would be treated as an independent territory, until such time that those Māori who resided there could be persuaded (without force) to admit the Crown's authority.

The claimants acknowledged that the Crown initially respected the aukati but maintained that it nonetheless had no intention of sharing any political control, even within a confined area. The Crown, they said, had the opportunity to give effect to the Treaty of Waitangi through section 71 of the 1852 Constitution Act. However, it chose not to do so.<sup>184</sup> They point to the evidence of Crown historian, Dr Donald Loveridge, who noted that the Crown had little or no interest in adopting any scheme which was not clearly under the control of the colonial government.<sup>185</sup>

Crown counsel submitted that the Crown regarded Te Rohe Pōtae as an area 'within which it could not for the time being exercise its authority or enforce colonial law without inviting civil unrest (or worse).'<sup>186</sup> From the 1860s, the Crown sought to establish 'an accommodation' with the Kīngitanga, but it encountered 'stumbling blocks' over the Kīngitanga's claimed sovereign authority over the region, as well as its demand for the return of all confiscated land. 'These were major impediments to both sides settling mutually agreeable terms.'<sup>187</sup> Any serious consideration of establishing Te Rohe Pōtae as a district under section 71 of the Constitution Act was 'quickly superseded by a preference for New Zealand founded institutions.'<sup>188</sup> This was because responsible government was transferred to New Zealand, including formal Ministerial control of Māori policy in 1864. Section 71, the Crown contended, had been intended to 'provide for those Māori outside the effective jurisdiction of provincial and general assemblies to have their own Native districts in which Māori customs and laws were maintained', though only temporarily 'until Māori could take their full place in the political system.'<sup>189</sup>

Crown counsel acknowledged that 'the practical exclusion of most Māori from

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184. Submission 3.4.128(b), p 6.

185. Submission 3.4.128(b), pp 6–7.

186. Submission 3.4.301, p 2.

187. Submission 3.4.301, p 3.

188. Submission 3.4.301, p 19.

189. Submission 3.4.301, p 20.

the settler assemblies had helped contribute to support for the Kīngitanga, which 'wanted a separate government under their own King with nominal supervision of the Crown'. However, in 1868 and 1869, 'the government refused to consider formal recognition of a Kīngitanga district on the basis that the Kīngitanga leaders were facing so many challenges [they] could not exert an authority that could be recognised over the territory'.<sup>190</sup> In practice, Crown counsel said, 'the government followed a policy of not directly challenging the aukati in the period from 1866 to 1883'. Rather, the Crown thought Te Rohe Pōtae Māori would come to see for themselves the benefits of engaging with the government.<sup>191</sup> This view conflicted with the Māori view of Te Rohe Pōtae as an independent territory, unhindered by British law, and subject only to the authority of the Kīngitanga and that of iwi and hapū leaders.

This section examines the formation of Crown policy toward the aukati up to the beginning of sustained negotiations in 1875, but also looks at how the Crown dealt with difficult questions, such as the imposition of death penalties under customary law within the aukati, up to 1882.

#### **7.3.4.1 The Crown's initial response to the aukati**

The Crown developed its attitude to the aukati and the territory it defined against a backdrop of changing political circumstances, following the transfer of full authority for Māori affairs to the settler government at the end of 1864. In subsequent years, different Ministers and officials took responsibility for Te Rohe Pōtae, and Native affairs more generally, as ministries were voted into and out of office. War initially continued in other parts of the country. Settlement also expanded in many regions, which assisted in the consolidation of Crown authority.

The Crown came to develop its first understanding of the aukati shortly after the proclamation of the confiscations in Waikato and Taranaki. This was particularly the case in the north of the district, where the confiscation boundary and the aukati coincided along the Pūniu River. In April 1866, Governor Grey travelled to Kāwhia in an effort to meet with Kīngitanga representatives, but accepted it was best not to force a meeting. He later reported to the Secretary of State for the Colonies that 'Rewi had expressed himself as desiring never to see a European face again', noting also that there was a 'line laid down by Rewi', one behind which the Kīngitanga planned to remain in 'complete isolation'.<sup>192</sup> A later report of a hui at Hangatiki in May 1866 confirmed that an aukati had been set in place near Hangatiki 'beyond which no white man is to pass'.<sup>193</sup> Whether or not it was an entirely accurate depiction of how the aukati came to be enforced, the Crown quickly formed an understanding that an aukati had been established, one which would be defended against any further incursions.

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190. Submission 3.4.301, p 20.

191. Submission 3.4.299, p 18.

192. Grey to Secretary of State for the Colonies, 3 May 1866, GBPP, 1866 [3750], pp 2–3 (IUP, vol 14, pp 758–759); doc A22, pp 211–212, 703.

193. Captain Tisdall to staff adjutant, Waikato force, Hamilton, 21 May 1866; doc A22, p 214.

The Stafford Ministry – which had defeated Weld’s administration in the polls in late 1865 – did not seek to establish a specific response to the aukati, apart from continuing to implement the confiscations that had only recently been enacted. Instead, it developed policies that were generally intended to incorporate Māori into the colonial system of government rather than any specific acknowledgement and provision for Māori authority, particularly for areas such as Te Rohe Pōtae where the Kīngitanga exercised effective control.<sup>194</sup> There was no immediate thought as to whether areas such as Te Rohe Pōtae might receive special consideration – including whether it could be proclaimed as a district under section 71 of the Constitution Act 1852.<sup>195</sup>

Instead, the Government had initiated the revised and expanded Native Land Court under the Native Lands Act 1865. Other Tribunals have consistently found that the court was created primarily with the intention of facilitating the transfer of land to settlers.<sup>196</sup> The Stafford Ministry continued to pass various measures – including the Juries Act 1868, and the Resident Magistrates Act and Native Schools Act in 1867 – that were intended to incorporate Māori within the colonial system.<sup>197</sup> However, in the case of the Juries Act, the Government never implemented the policy.<sup>198</sup>

The Government’s main initiative was to accommodate Māori within the settler Parliament. In 1867, four Māori seats were established – well below the proportion of representation for the Māori population.<sup>199</sup> William Searancke, resident magistrate for the Waikato district, commented in 1868 that Māori in ‘lower’ Waikato were said to have noted their bemusement and indifference to the limited form of representation that had been provided to them.<sup>200</sup> Turning his attention to Te Rohe Pōtae, Searancke observed that the Kīngitanga would eventually ‘tire of their isolated state’ if left alone and seek out communication with the Government.<sup>201</sup> The following year, he claimed to be the first government official to visit Te Rohe Pōtae after the imposition of the aukati, where he attended the Maehe – the annual hui of the Kīngitanga – following the invitation of Tāwhiao’s chief advisor, Tāmaiti

194. Document A78, p 293.

195. Document A78, p 289.

196. Waitangi Tribunal, *Te Urewera*, 8 vols (Wellington: Legislation Direct, 2018), vol 3, p 1009.

197. The Juries Act 1868 allowed Māori ‘whose capability may be certified’ to serve on juries. The Resident Magistrates Act 1867 made it law that summonses and warrants addressed to Māori had to be accompanied with a translation.

198. Document A78, p 294.

199. In 1867, the European population of New Zealand, which was approximately 250,000, had 72 seats – one for every 3,500 people. The Māori population, approximately 50,000, had 4 seats – one for every 12,500 people. Māori would have required 14–16 Māori seats to have the same level of representation: see Rawiri Taonui, ‘Ngā māngai – Māori representation – Effect of Māori seats’, in *Te Ara – the Encyclopedia of New Zealand*, Ministry for Culture and Heritage, <https://www.teara.govt.nz/en/nga-mangai-maori-representation/page-2>, last updated 15 July 2016.

200. Document A78, p 294.

201. WN Searancke report, 9 March 1868, AJHR 1868 A-4, p 5; doc A78, p 296.



Ngāpora. The latter had by this time changed his name to Manuhiri, to reflect the status of his people now living in exile in Te Rohe Pōtae.<sup>202</sup>

In June 1868, Governor Bowen (who had recently replaced Grey as governor) set out his preliminary thoughts on the situation to the Colonial Office. He affirmed that the territory would be contained as much as possible, but would otherwise be tolerated – reluctantly – in the hope that it would fail on its own account. War had proved ineffective in achieving the goal of establishing *de facto* Crown authority throughout the district, but armed force was no longer possible. He noted that there were conflicting views on the appropriate course of action that should now be taken.<sup>203</sup>

Bowen commented on the situation as he understood it in respect of the Kingitanga. Originally, he said, the King movement might have been used as an instrument ‘for elevating the Native race, by the introduction of institutions subordinate to and in harmony with the European Government of the Colony’. One possible view of the situation, he said, was that a ‘Native Province might have been created, to be ruled, like the territories of the semi-independent Rajahs of India, nominally by a great Māori chief, but really by the advice and influence of a British Resident or Commissioner.’<sup>204</sup>

However, Governor Bowen considered that the opportunity for an arrangement of that kind had been lost: Tāwhiao was now ‘surrounded by fierce and bloody fanatics’. In his view, it would be more politic humane to ‘outlive’ the King movement than to ‘suppress’ it by the ‘strong hand’. This was especially so because there were peaceful and civilising influences among the ‘disaffected’ tribes. In addition, Bowen thought it wisest to adopt a defensive position due to the limited number of soldiers then stationed in New Zealand.<sup>205</sup>

Bowen advanced his views further in January 1869. He was now convinced that it was of ‘vital importance’ for the colonial government to ‘come to a peaceful understanding’ with the ‘so-called Māori King’, one that was ‘not inconsistent with the sovereignty of the Queen.’ All opportunities should be taken for opening what may prove a ‘friendly communication with Tāwhiao.’<sup>206</sup>

It was now fully within the realm of the colonial government to decide what course of action to take on the Crown’s behalf. In his response, Native Minister J.C. Richmond assured Bowen that the colonial government would respond ‘in a liberal spirit’ to any offers of peace that Tāwhiao might extend.<sup>207</sup> Bowen also invited Tāwhiao to visit him and Prince Alfred, the Duke of Edinburgh, who was expected in New Zealand in May on New Zealand’s first Royal visit. Bowen

202. Document A78, p 296.

203. Bowen to Duke of Buckingham, 30 June 1868, AJHR, 1868, A-1, pp 76–77; doc A78, pp 297–298.

204. Bowen to Duke of Buckingham, 30 June 1868, AJHR, 1868, A-1, pp 76–77; doc A78, pp 297–298.

205. Bowen to Duke of Buckingham, 30 June 1868, AJHR, 1868, A-1, pp 76–77; doc A78, pp 297–298.

206. ‘Confidential Despatch’, 7 January 1869 referenced in Bowen to Duke of Buckingham, 12 March 1869, AJHR 1869, A-1, p 57.

207. J.C. Richmond to Governor Bowen, 12 March 1869, AJHR, 1869, A-1, p 60; doc A78, p 299.

promised Tāwhiao he would be treated respectfully.<sup>208</sup> Tāwhiao, however, did not meet the Duke as hoped, despite the encouragement of several intermediaries.<sup>209</sup>

It took the new Fox Ministry, formed in June 1869, and in particular the new Native Minister, Donald McLean, to advance matters further. A career public servant, McLean became both Native Minister and Defence Minister. His tenure as Native Minister would have been uninterrupted until his resignation in 1876, were it not for the Fox Ministry losing power for several weeks in September and October 1872. McLean led negotiations with Te Rohe Pōtae Māori on behalf of the Crown through much of the 1870s. His preference was not to push Te Rohe Pōtae leaders too aggressively, following the postwar precedent set by both Grey and Bowen. Underlying his approach was a policy of amalgamation by which Māori would be 'fused and blended' into a single general political and legal system.<sup>210</sup>

McLean treated the business of colonisation – which under the Fox Ministry included a massive public works and immigration undertaking – as an opportunity to encourage Māori to participate in the economic prosperity available through the expanded settlement programme. He argued for developing friendlier relations with Māori who were not actively resisting the Crown through greater consultation and inclusion within the machinery of the settler state. By doing so, he hoped to direct Māori energy into the industriousness and progression of the growing nation.<sup>211</sup> McLean theorised that genuine economic and political opportunities, coupled with a measure of coercion and greater provision for Māori needs, would lead to a softening of the attitudes of those who shared the so-called separatist ideals of the Kīngitanga, leaving the Kīngitanga isolated – and weakened – in its political stance.<sup>212</sup> But McLean did not ignore the Kīngitanga or its constituent hapū and iwi. Indeed, he applied his strategy of fostering personal relationships with influential chiefs widely – to chiefs he regarded as friendly, including several Kīngitanga chiefs, Rewi among them.<sup>213</sup>

As Native Minister, McLean sought a cohesive and coordinated approach, managed centrally by his office, in official handling of relations with Te Rohe Pōtae Māori. In part, that required more careful use of intermediaries, which had previously seemed ad hoc and poorly planned. Some had acted of their own accord, and some with official support (though all appeared to enter the aukati with the appropriate permission). Among those who sought to broker Bowen's invitation to Tāwhiao, for instance, was settler and businessman John Wilson who, under instruction, delivered a letter from Bowen inviting Tāwhiao, Manuhiri, and Rewi to an event at Government House. Another such emissary, Josiah Firth, entered the district without the kind of government official sanction that Wilson had enjoyed. Firth – who later angered Ministers over an agreement to meet Te Kooti

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208. Document A78, pp 298–299.

209. Document A78, p 300.

210. McLean, 3 August 1869, NZPD, 1869, vol 6, p 202; doc A78, pp 303–304.

211. Document A78, pp 303–304, 311–313.

212. Document A78, p 311.

213. Document A78, pp 306, 312–313.

– led a small deputation to also persuade Tāwhiao to accept Bowen's invitation.<sup>214</sup> McLean did not completely rule out the go-between role certain individuals could play; indeed, he would employ some of them. But he appreciated the importance of careful management for discussions that, if not handled sensitively, had considerable potential to go quite wrong. Those he took on would have to work to his close instruction.<sup>215</sup>

In August 1869, during a House committee discussion on internal defence, McLean discussed what he described as the 'calamitous state' into which the country had plunged in the previous 12 months. This included the 'great loss of life and property that has taken place', as well as the 'dangerous spirit of fanaticism' which had arisen.<sup>216</sup> He told the committee: 'Notwithstanding many years of Colonial experience, we still seem not to have recognized those national feelings by which the race with whom we have come in contact has been animated'. Commenting on the 1835 declaration of independence, McLean said that a 'race capable of such aspirations was deserving of the highest consideration on the part of any Government'. A fact generally overlooked is that a 'race possessed of such qualities must be naturally jealous of the jurisdiction of a foreign power.'<sup>217</sup>

Echoing Governor Bowen, the Native Minister commented that the combined imperial and colonial forces had failed to establish the Queen's writ 'from end to end of the island'. Despite the troubles that had ensued, McLean said that it was now the 'object of the Government, during the recess, to place itself, as far as possible, in communication with the various tribes through the Northern Island, to see if it is possible to arrive at a settlement of the great leading differences between them and the Europeans.'<sup>218</sup>

McLean noted that it had been suggested that native districts might be formed 'in the government of which the Natives themselves should take a considerable share', adding that the 'Governor has the power to proclaim districts.'<sup>219</sup> McLean (unlike Bowen) made explicit reference to section 71 of the New Zealand Constitution Act 1852. The section stated:

whereas it may be expedient that the laws, customs, and usages of the aboriginal or Native inhabitants of New Zealand, so far as they are not repugnant to the general principles of humanity, should for the present be maintained for the government of themselves in all relations to and dealings with each other, and that particular districts should be set apart within which such laws, customs, or usages should be so observed.

The power to create such districts resided in 'Her Majesty, by any letters patent to be issued under the Great Seal of the United Kingdom'.

214. Document A78, pp 301–303.

215. Document A78, pp 295–303.

216. McLean, 3 August 1869, NZPD, 1869, vol 6, pp 202,203; doc A78, p 303.

217. McLean, 3 August 1869, NZPD, 1869, vol 6, p 202.

218. McLean, 3 August 1869, NZPD, 1869, vol 6, p 203.

219. McLean, 3 August 1869, NZPD, 1869, vol 6, p 203; doc A78, p 304.

Dr O'Malley explained that the British Government, which introduced the 1852 legislation, intended the provision for creating native districts to operate in tandem with the provision for offering Māori the franchise in areas where they had become more integrated with the European community. He pointed to the statement of Sir William Molesworth, during the Bill's second reading in the House of Commons, who said that 'New Zealand was to be divided into two parts, an English part, and a native part. Within the English pale, English laws were to be enforced; without the pale, in the native part, native laws and customs were to be maintained by the Governor-in Chief of New Zealand, notwithstanding the repugnancy of any such laws to the laws of England'.<sup>220</sup>

The Central North Island Tribunal commented that the power to act under section 71 was officially delegated to the governor in 1858. Governor Browne contemplated its exercise on several occasions in respect of the situation posed by the Kingitanga at that time, but refrained from doing so due to a concern about how finances in those districts might be raised and questions around whether the section allowed Māori in districts to pass new laws.<sup>221</sup> Proposals were made by former chief justice William Martin (who favoured the use of the section) through which additional institutions could be created to give effect to the legislative functions of Māori authorities in Native Districts.<sup>222</sup> Apart from Grey's 'New Institutions', which we discussed in chapter 6, no steps had been taken to implement such potential solutions by the late 1860s. In addition, only a handful of Māori were eligible to vote in general elections. O'Malley commented that 'Māori were thus increasingly subjected to the arbitrary control of a . . . body from which they were excluded'.<sup>223</sup>

In discussing section 71, McLean acknowledged that the governor had the power to proclaim such districts. However, he was of the view that it was now 'too late' to do so.<sup>224</sup> He commented that a major failure of government policy up to that point was the policy of detribalisation, particularly the failure to acknowledge 'that power of chieftainship'. '[O]ur tendency', he said, 'has been too much to break down existing institutions amongst the Natives, instead of aiding and helping those institutions, to the benefit of both races'.<sup>225</sup> He suggested that supporting existing Māori leadership in the future would be a way of overcoming their present difficulties.

The Minister's proposed solution was to support Māori leaders in 'pursuits of industry'. In addition, the Government's policy would be 'non-aggressive'. He explained: 'It is not the intention to advance expeditions into different parts of the country . . . The object is to defend our frontiers – not to recede in the slightest degree'.<sup>226</sup>

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220. Document A23, p 150.

221. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 227.

222. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 230.

223. Document A23, p 150.

224. McLean, 3 August 1869, NZPD, 1869, vol 6, p 203; doc A78, p 304.

225. McLean, 3 August 1869, NZPD, 1869, vol 6, p 204.

226. McLean, 3 August 1869, NZPD, 1869, vol 6, p 205.

**7.3.4.2 The opening of dialogue at Te Pahiko, 1869**

McLean put these views to the test in meeting with Kingitanga leaders in November 1869 at a hui that was convened inside the aukati, at a small settlement called Te Pahiko.<sup>227</sup> The precipitating subject for the hui was Te Kooti's arrival in the district. The meeting reportedly came about as a result from an invitation from Rewi Maniapoto and Tamati Ngapora. McLean arrived in Alexandra on 4 November, before proceeding on to the residence of Louis Hetet at Ōtorohanga. There, he was met by a Ngāti Maniapoto chief, who escorted him across the aukati line and on to Te Pahiko.<sup>228</sup> Although Tāwhiao was not there, the hui was well attended by many key Ngāti Maniapoto rangatira, including Rewi, Wahanui, Taonui, and Hauauru.<sup>229</sup>

The Government's record of the hui indicates that after the karanga, karakia, and kai, a considerable time elapsed when no words of welcome were offered to McLean. Instead, he moved to the front of the house and said, 'I have for some time been waiting to hear the usual words of salutation to the stranger; but as I am given to understand you wish to depart from your custom, and desire that I should speak first on this occasion, I will do so.' He continued, 'I do not wish to deceive you by talking of peace when we may have discord, but that they had the opportunity to choose between 'good or evil'. McLean acknowledged their effort to remove Te Kooti from the district.<sup>230</sup>

Rewi Maniapoto, who led the negotiations on behalf of the Kingitanga, replied to McLean:

Ko te riri kia mutu . . . ka whitingia te whenua e te ra i runga i ta ratou korero, ka uaina e te ua, a ka tino kaha amuri ake nei te mahana me te maramatanga o te ra.

Mr Meredith provided the following translation:

Anger shall cease. The sun shines over the land with what they have discussed, the rain washes away, and afterwards the sun shall be much more warmer and brighter.<sup>231</sup>

The hui at Te Pahiko continued to hold special importance for Rewi as the occasion when he first promoted the Kingitanga's peace policy directly to the Crown. Later, he recalled that it was at that hui where he first planted a 'tree of peace' – a metaphor of their relationship with the Crown that he returned to in subsequent years.<sup>232</sup> (Grey had in fact introduced a similar metaphor prior to the Waikato war in proposing his 'New Institutions'; it is unclear whether Rewi adopted the

227. According to Donald McLean, Te Pahiko was a small settlement south of Hangatiki, about 7–8 miles from Tokangamutu: AJHR, 1870, A-21, pp 8, 11.

228. 'The Native Minister's Interview with the Leading Waikato Chiefs', AJHR, 1870, A-12, p 1.

229. Document A78, pp 305–306.

230. 'The Native Minister's Interview with the Leading Waikato Chiefs', AJHR, 1870, A-12, p 1.

231. *Te Waka Maori*, 18 November 1869, p 1; doc A110, p 615.

232. Document A110, p 615.

metaphor in the knowledge that Grey had used it previously, perhaps as a commentary on Grey's decision to go to war.<sup>233</sup>) McLean agreed: there should be peace.

Through the hui, the Kīngitanga leaders agreed terms of conduct for the Crown's pursuit of Te Kooti. Essentially, they pledged neutrality: they would not support Te Kooti and would not act against the Crown. In return, the Crown would respect the aukati and discontinue its pursuit if Te Kooti crossed it. They also agreed that if Te Kooti ceased his military actions, the Crown would stop chasing him.<sup>234</sup> Such an outcome would have made a peaceful retirement for Te Kooti a very real prospect. Although broader issues concerning the relationship between the Crown and the Kīngitanga were left to one side, the hui at least established a platform upon which future negotiations could commence.

McLean's journey to Te Rohe Pōtae, and particularly his meeting with Rewi, had prompted other observations. He noted in his diary the difficulty that Tāwhiao would invariably face in maintaining the support of those hapū and iwi within the aukati. He also recognised Rewi as an influential chief in his own right as well as a Kīngitanga leader. McLean identified Rewi as a potentially 'valuable and powerful ally' of the Government, despite his reputation as having been an instrumental Kīngitanga leader during the Taranaki and Waikato wars.<sup>235</sup> Over coming years, a common theme of official correspondence on Te Rohe Pōtae was that there were increasing divisions within the Kīngitanga, based in part on Rewi's decision to meet with Crown officials separately from Tāwhiao. However, these views tended to obscure the fact that Rewi was representing both the Kīngitanga and the interests of local Māori communities. In doing so, he left broader questions of how the Kīngitanga's authority should be recognised to Tāwhiao to negotiate. This was the case at least until 1882, when renewed Crown efforts to open Te Rohe Pōtae proved more divisive and created a substantial challenge for the Kīngitanga (see section 7.4.4).

#### **7.3.4.3 *The confirmation of Crown policy after Te Pahiko***

Following the immediate defusing of the situation with Te Kooti, the Government turned its attention to the policy it intended to adopt in respect of the Kīngitanga. In February 1870, former chief justice Sir William Martin wrote a memorandum to the Government outlining his views on the situation. Martin suggested that there was a significant body of Māori who did not accept colonial rule. If they could be persuaded to accept the Crown's authority, a large step would be taken towards the pacification of the country. He therefore advocated for a 'reasonable arrangement' with Waikato and Ngāti Maniapoto, one that would allow them to 'conceive themselves to be acting rather as allies than as subjects.'<sup>236</sup>

Before the Waikato war, Martin had advocated the use of section 71 of the New Zealand Constitution Act 1852, and for the establishment of additional institutions

233. Document A78, pp 290–291.

234. Document A78, pp 306–307.

235. Document A78, p 222.

236. Martin memorandum, 21 February 1870 (doc A78, pp 308–309).

that would address concerns about the ability of Māori in those districts to pass new laws (see section 7.3.4.1). Now, Martin made a proposal for how Māori in Te Rohe Pōtae Māori could govern themselves without the use of section 71. Instead, he proposed that the Crown, using its legislative powers, provide for the ability of Māori to exercise self-government in the colonial State.

Martin proposed the definition of a district ‘within which the Natives may make rules binding on themselves, for their own Government and good order, to be administered among themselves by such persons and in such way as they may think best.’<sup>237</sup> Provincial council laws would not apply. This would require the leading chiefs of the district and the Government to agree on the territory to which their self-government would apply, which would have the effect of limiting the influence of the Kīngitanga outside of that district. Those chiefs would also need to agree to keep the peace within their district and prevent their people from acting aggressively outside of it. Pākehā could only live among them with their express permission. In addition, Martin suggested that the Government return portions of the confiscated Waikato land. Those who accepted grants for returned confiscated lands would also have to accept that they were to relocate and live under colonial law.

Resistance to Martin’s suggestions was strong. Annotations made on the memorandum show that Ministers viewed the idea of Māori governing themselves in a separate district as ‘pernicious’ and formal recognition of the Kīngitanga as ‘madness.’ They also said that a separate district could not be easily defined, because the territories of Kīngitanga supporters and those of other Māori were intermingled.<sup>238</sup>

The Government’s policy was formalised in a memorandum McLean placed before Cabinet in September 1870.<sup>239</sup> In the memorandum, McLean argued that while a state of peace had largely returned to the North Island, the potential for a resumption of war was ever-present; and, though reconciliation with the Kīngitanga had taken place, it was desirable to achieve a ‘more definite and distinct arrangement.’ Having said this, McLean argued that a ‘policy of non-interference is decidedly the safest.’ Alluding to Martin’s views, McLean discussed the suggestion of defining districts ‘within which the natives can carry out their own laws and usages.’ While he acknowledged this would be the preference for Kīngitanga supporters, the policy of non-interference was the preferable approach. If Kīngitanga supporters maintained ‘a friendly neutrality within certain definite limits, it would be prudent to gratify their desire in this respect’ – that is, to leave them be, but take no action to provide formal recognition.

In coming to this conclusion, McLean referred to the impracticality of the idea that ‘the whole [Māori] race [should] come under the designation of British subjects’ and that, therefore, ‘no exceptional system or laws should prevail under

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237. Martin memorandum, 21 February 1870 (doc A78, p 309).

238. Document A78, p 309.

239. Document A78, pp 309–310.

the same sovereignty'.<sup>240</sup> This was but 'mere theory', which had two effects, both of which were unhelpful. On the one hand, it had led Europeans 'to expect the enforcement of the Queen's writ throughout the country'; and on the other, it 'exasperat[ed] a large section of the aborigines who emphatically declare national independence'. McLean argued that it was time to acknowledge that while English law prevailed 'within certain settled limits where the large majority are of the European race', the Government was not prepared to 'afford protection to any who may choose to reside beyond the frontiers of territory acquired from the natives'.

Turning to the specific situation presented by the Kingitanga, McLean argued that any terms would need to 'recognise the giving up of offenders guilty of murder'.<sup>241</sup> McLean suggested that it was 'possible by judicious management to glide into a state of peace without any specific terms'. However, he acknowledged the difficulties in determining how to deal with criminals, noting the example of the 'powerful Ngatimaniapoto', who were 'holding aloof until they know the fate of the White Cliff Murderers' (a reference to the killings at Pukearuhe, discussed in section 7.3.3.4). It would be untenable to prolong war for the sake of capturing all criminals, he argued, and 'to forgive them may appear humiliating'. Instead, he suggested that if it were made known that the Government would only pursue the most 'notorious murderers', such as Te Kooti, there would be 'less apprehension' on behalf of Māori who remained 'neutral'.<sup>242</sup>

In any case, he said, tribes who had been in 'hostility' should not be placed in a better position than those who had been 'friendly'. To this end, McLean advocated the importance of holding hui with Māori, and 'instituting a Council of Chiefs, to be elected by the people, who should represent the feelings and wants of their respective tribes'. In addition, he said that '[a] measure providing for local self-Government in certain districts' may be found necessary, but only in districts where Māori 'express a spontaneous desire for it'. Such institutions would be open to Māori and Pākehā and would be of 'an empowering nature', allowing for bylaws to be made for municipal purposes such as roading and fencing.<sup>243</sup> McLean said that Māori should be assured that the Government 'does not propose to revert to a policy of confiscation', though he did not discuss the consequences of previous confiscations, which were obviously going to complicate matters.

Not all his colleagues agreed with McLean, and the Government did not accept his recommendation for the establishment of a council of chiefs. It did, however, accept his proposal to tolerate the aukati, and to foster diplomatic relations with the chiefs of the territory without interfering in their affairs.

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240. McLean to Cabinet, 16 September 1870, McLean papers, MS 32/30, pp 13–16, object #1007778, ATL.

241. McLean to Cabinet, 16 September 1870, McLean papers, MS 32/30, pp 16–21, object #1007778, ATL.

242. McLean to Cabinet, 16 September 1870, McLean papers, MS 32/30, pp 20–21, object #1007778, ATL.

243. McLean to Cabinet, 16 September 1870, McLean papers, MS 32/30, pp 21–23, object #1007778, ATL.



McLean's approach, in short, was to urge incremental steps toward the goal of extending British sovereignty across the Kingitanga territory. This 'gradualism', as Ms Marr called it, fitted well with McLean's focus on tolerating the Kingitanga as an interim measure to maintain peace and avoid war.<sup>244</sup> He reiterated his support for improved consultation with Māori and proposed that no more land confiscations be made. This was consistent with McLean's other proposals. A year earlier, in recommending cooperation with Te Heuheu, McLean had also proposed leniency for Ngāti Tūwharetoa and no confiscation of Taupō lands.<sup>245</sup>

He was also open to doing more to incorporate Māori into the operations of the state at both national and local levels. And though he regarded a degree of local Māori self-government as feasible, any concessions in that direction would be limited and consistent with the overriding policy of amalgamation. Nor would McLean ever formally recognise the aukati as containing an independent territory. Rather, he maintained that what was at issue was less the independence of those who lived beyond the reach of colonisation and more the fact that, in practice, government authority extended only so far. For this reason, he maintained that Pākehā who travelled beyond the limits of government authority did so at their own risk.<sup>246</sup>

### 7.3.5 The implementation of the Crown's policy, 1870–75

As befitting a 'gradualist' approach, McLean progressively turned to address the situation in Te Rohe Pōtae over the following years, partly in response to events as they arose and partly on his own initiative.

#### 7.3.5.1 *The Crown's response to Todd's killing*

As McLean acknowledged in his memorandum of September 1870, the Crown would be tested by any killings of Pākehā that occurred inside the aukati. As it turned out, the Crown chose not to pursue the killers. Rather, it prioritised the need to deal with Te Kooti and make sure his activities did not lead to a more general uprising among Kingitanga supporters.<sup>247</sup>

Yet, crime – and murder in particular – that went unpunished by British law would remain a sticking point. McLean wanted an agreement that Te Rohe Pōtae Māori would maintain law and order in their district and, specifically, give up anyone who committed murder. He understood, however, that if the Crown was too aggressive in its pursuit of such criminals, or too severe in its punishment, Māori resistance would likely intensify. The policy he came down on in his proposal to cabinet was that the Government should be selective about which offenders it pursued, and how – this would be the best way of gliding into a state of peace without having to offer specific terms.<sup>248</sup>

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244. Document A78, p 310.

245. Document A78, p 305.

246. Document A78, pp 310–304.

247. Document A78, pp 310–311.

248. Document A78, pp 310–311.

McLean's approach was immediately put to the test when, in November 1870, government surveyor Richard Todd was killed while surveying at Pirongia, having been previously warned off twice (discussed earlier at section 7.3.3.6).<sup>249</sup> The alleged killers, variously named in the press as Tipene and Witiora, and as being of Ngāti Tamainu, sought and were granted sanctuary within the aukati.<sup>250</sup> As at Pukearuhe, the northern confiscation boundary ran through Pirongia, but where exactly was unclear to the locals on the ground. Tākerei Te Rau had warned the Government against surveying in what was considered a sensitive area as early as 1865.<sup>251</sup> The killing of Todd tested that sensitivity.

Kingitanga supporters struggled to balance regret over Todd's death with justification and deep concern for protecting the aukati. Internally, they debated whether or not to give up those responsible to government authorities. Kingitanga leaders also wondered if the Government might respond with military action, utilising the troops that were stationed at Taupō. Both McLean and William Mair – newly appointed as a special agent tasked with addressing issues concerning Te Rohe Pōtae<sup>252</sup> – tried to encourage Rewi to hand over the accused. Rewi had sought a meeting McLean when he visited Alexandra in an attempt to resolve the issue peacefully.<sup>253</sup>

In a confidential memorandum to the premier and Ministers in early March, before he met with Rewi, McLean explained that thought that the Kingitanga would vigorously defend any assertion of colonial government authority over lands within the aukati. He accepted that going after the offenders would seriously risk the already fragile peace, and therefore argued against a military response despite his view that the killing of Todd provided reasonable justification for such action. He also thought friendly and neutral iwi would side with the government if it did come to war. However, he also warned that war would incite a new wave of resistance against the government and stimulate support for the King. An aggressive response might strike a blow against the Kingitanga, but it would also be costly, and 'very much injure' the Government's 'colonizing projects'. He proposed that a strategy of 'judicious management and care' during peace might 'hasten the decay of the King party, more than open hostilities'.<sup>254</sup>

McLean met with Rewi in the hope coming to some 'arrangement', with the goal of encouraging him both to give up the men and to persuade him to abandon the Kingitanga's cause. He told Rewi that the Government was gradually gaining influence over North Island tribes 'and that prolonged isolation on his [Rewi's] part . . .

249. Document A78, pp 111, 314–317.

250. 'Telegraphic: The Waikato Murder', *Daily Southern Cross*, 30 November 1870, p 2; doc A78, pp 110–111.

251. Document A78, p 315.

252. George Peterson, 'William Gilbert Mair', in *An Encyclopaedia of New Zealand*, ed AH McLintock, <http://www.TeAra.govt.nz/en/1966/mair-william-gilbert>, accessed 5 March 2018.

253. 'McLean report to Premiers and Ministers', 11 March 1871, McLean papers, MS 32/33, p 1, object #1008036, ATL; doc A78, p 317.

254. 'McLean to Premier and Ministers', 4 March 1871, McLean papers, MS 32/33, pp 3–6, object #1002232, ATL; doc A78, p 320.

was not calculated to add to his own popularity, or advancement'. According to McLean, Rewi wanted peace and was willing to hand over Todd's killers – but he was not willing to break from the Kingitanga or to act without the support of his own people or Tāwhiao. Notwithstanding Rewi's position, McLean's view was that support for the Kingitanga was gradually declining, and that, of its remaining supporters, Rewi had the largest following. With sufficient care, he suggested, 'the alliance of Rewi can be effectually secured; and that thus a powerful supporter would be detached from the King party'.<sup>255</sup> McLean continued:

it is clearly the duty of the Government to use every effort to secure his cooperation. The ice is now broken; and if proper caution be observed, I do not think it will be a difficult matter to gain him over to our side. I would be disposed to treat him liberally; and to confer upon him some authority, within his own district, whenever he openly declares his withdrawal from the Waikatos, and the section of natives antagonistic to Europeans.<sup>256</sup>

While McLean's policy held sway, he was forced to defend it. In Parliament in October 1871, he denied that choosing not to pursue Todd's killers meant that the Government condoned murder. At the 'proper time' and in the right circumstances the colony would be able to seek justice, but in the meantime, he would not agree to any military or police action that might provoke confrontation. Rather, it was important, he argued, that Māori saw the Government would be neither too hasty nor too easily provoked.<sup>257</sup>

### 7.3.5.2 *Parris meets with Wetere, 1871*

The Government's non-aggression policy, coupled with an attempt to persuade certain leaders away from the Kingitanga, had been in effect earlier in 1871. This was evident when Taranaki Civil Commissioner Parris visited Wetere in Mōkau on 13 May to discuss peace and partnership between the Crown and the Kingitanga. Wetere had asked Parris to visit on several occasions, in apparent attempts to rehabilitate his reputation after the events at Pukearuhe. Parris had rebuffed these invitations, but now accepted when he heard that Rewi and Tawhana Tikaokao would be there. It was an opportunity to test the Government's strategy: Parris said he would investigate whether a 'large section of the Ngatimaniapoto could be detached from the King party and establish friendly relations with the Government' so that 'a great step would be taken to secure the permanent peace of the North Island'.<sup>258</sup> The Crown viewed this meeting as a 'testing of the waters' to see whether

255. 'McLean to Premier and Ministers', 11 March 1871, McLean papers, MS 32/33, pp 2–4, object #1008036, ATL; doc A78, pp 315–318.

256. 'McLean to Premier and Ministers', 11 March 1871, McLean papers, MS 32/33, p 4, object #1008036, ATL; doc A78, pp 315–318.

257. McLean, 11 October 1871, NZPD, vol 11, p 225; doc A78, p 321.

258. 'Mr Civil Commissioner Parris' Visit to Mokau', *Taranaki Herald*, 13 May 1871, p 2; Parris to McLean, 10 May 1871, AJHR, 1871, F-6B, pp 16–17; doc A28, p 173.

progress might be made towards securing a permanent peace.<sup>259</sup> Claimants viewed this as evidence of the Government's 'relentless' pursuit of opportunities to break the aukati and assert its own authority within Te Rohe Pōtae.<sup>260</sup>

Parris had an additional interest in visiting at that time, due to the Government's ongoing efforts to re-establish Ngāti Tama on the Poutama lands. Thomas says that in late 1870, after a series of hui with some Ngāti Maniapoto and Kingitanga leaders, a group of Taranaki Māori had received permission to return to Poutama.<sup>261</sup> Though Wetere did not participate in this 'agreement', those Ngāti Maniapoto chiefs who made the arrangement did so on the understanding that they had not given up their ultimate authority over the land. Ngāti Tama, according to Parris, had a different understanding of the arrangement, thinking the territory was restored to them. The proposal, he said, had originated with Wahanui and had received Tāwhiao's support, with no conditions on the return of the land; but Tikaokao had proposed that a condition of their return should be that the people should be 'united as one people'.<sup>262</sup>

Irrespective of the exact arrangement that was envisaged over the land at the time, Parris was concerned that the resettlement would lead to an alliance between Ngāti Tama and the Kingitanga. Parris noted that Ngāti Tama had delayed their return to Poutama because they were wary of the Government's reaction. By February 1871, Thomas says, Parris was concerned that events were moving beyond the Government's control.<sup>263</sup>

In travelling to Mōkau in May 1871, Parris was accompanied by around 30 Taranaki Māori, in the hope that he would be able to settle pro-government groups on the land.<sup>264</sup> Around 60 Mōkau Māori gathered for the hui. Although hospitality ran high, with much ceremony made around Parris' presence, the meeting did not go well. It ended in an abrupt walkout, Parris and his company departing 'without shaking hands or doing anything else which would encourage [Māori] to come in amongst our settlers before the Government has sanctioned such a course.' In response, Mōkau Māori called out 'E horo pea he mataku' ['You have run away because you are afraid'].<sup>265</sup>

The walkout was spurred by several factors. Parris was perturbed by Wetere's 'boasting' manner and his refusal to take responsibility for the Pukearuhe raid. It was not an act of an individual but of the King movement, Wetere claimed. Wetere also made his allegiance to the Kingitanga and the movement's core principles clear. Though Wetere was explicit in his commitment to peace, he also said a lasting peace was dependent on the Crown returning the confiscated lands as had been recently demanded by Rewi and the Kingitanga, and the removal of troops from the area. The conversation was evidently not to Parris' liking, and when Rewi

259. Submission 3.4.296, p 3.

260. Submission 3.4.122, pp 7–8.

261. Document A28, p 177.

262. Document A28, p 178.

263. Document A28, p 178.

264. Document A28, p 173.

265. Document A28, pp 174–175.

and Tikaokao did not arrive, Parris decided that it was not befitting for him to be associating with ‘a lot of the people who committed the massacre at the White Cliffs; and he left.<sup>266</sup>

Oddly, considering the nature and termination of the meeting, Parris reported to the Government that ‘there is a strong desire . . . at present’ among Mōkau Māori to secede from the ‘Tokangamutu league’ [the Kīngitanga]. This, Parris wrote, in addition to the return of Taranaki Māori, would make an ideal buffer between Te Rohe Pōtae and the settled areas of northern Taranaki.<sup>267</sup> While the peace held, Parris was way off the mark: Mōkau Māori made a grand recommitment to the Kīngitanga at the ‘great meeting’ at Tokangamutu in September 1872, and remained important actors in the movement for many years to come. Later, in June 1876, a hui was held at Mōkau River involving between 1,200 and 1,400 Māori, the hosts including Wetere and Te Kooti. The purpose was to strengthen relationships between Ngāti Maniapoto and Taranaki, and to re-establish economic ties (the wheat and pig trade) and personal ties with Pākehā.<sup>268</sup> These were under arrangements authorised by Tāwhiao.

Also during 1871 and 1872, McLean and government agent Samuel Locke met with Ngāti Raukawa leaders on several occasions in the hope of encouraging them to break from the Kīngitanga. Reports from the time suggested that they enjoyed some success among Raukawa communities to the east of the Waikato River, where pressures from settlement were greatest, with some saying they were considering a break from Tāwhiao, and offering their support for a proposed Cambridge–Taupō road. Various factors seem to have influenced these Raukawa decisions, including disputes with Waikato over land and fear that they too might have lands confiscated if they did not accept the Crown’s authority.<sup>269</sup> A settler newspaper, celebrating the apparent success of the Government’s policy, reminded McLean of the proverb ‘Ka mutu te weka i te mahinga e kori hoki atu’ (when the weka has broken loose from the snare, he will not return to it again) – presumably meaning that if groups could be enticed away from the Kīngitanga they would not then return.<sup>270</sup>

### **7.3.5.3 Attempts to provide measures for tribal self-government**

In the meantime, McLean considered how he would implement his approach to the situation in Te Rohe Pōtae alongside broader efforts to engage with Māori elsewhere in the country. His September 1870 memorandum had expressed the view that Māori ought to be provided with limited means of governing their own affairs. Initially, McLean’s intention was to assuage those who were considered neutral or ‘friendly’. However, in late 1871 he had made a similar agreement with Te Urewera leaders: in exchange for peace, he promised that they would be granted measures of self-government.<sup>271</sup> Whether such an approach would apply in Te Rohe Pōtae

266. Parris to McLean, 10 May 1871, AJHR, 1871, F-6B, pp 16–17; doc A28, pp 173–174.

267. Document A28, p 175.

268. Document A26, p 113; doc A28, pp 190–191.

269. Document A12, pp 44–46, 48 (Hearn).

270. Document A12, p 46.

271. Document A78, p 322.

would need to be seen. In early 1872, he said that a settlement with Kīngitanga leaders was imminent – though on what grounds was unclear, given there had been no active engagement with them for some time.<sup>272</sup>

McLean's first attempt at providing Māori with some measures of control was in the Outlying Districts Sale of Spirits Act 1870. McLean said that the Act addressed Māori complaints about the lack of control over the introduction of liquor into their areas, especially where Pākehā settlement was on the increase and public works underway. It was in fact illegal to give or sell liquor to Māori in these districts, but in practice those prohibitions had never been properly enforced. The Act permitted Māori in districts proclaimed by the governor to have some say in the regulation and licensing of liquor for supply to Pākehā. Unsurprisingly, there were limits. No towns or cities could be made subject to the Act, which would only apply in districts where Māori comprised at least two-thirds of the population (such as Raglan, Taupō, and Upper Whanganui, which were districts the governor proclaimed). Furthermore, these liquor control provisions were intended to have a limited life, being available only while the Māori population (in each district) remained high in relation to the settler population.<sup>273</sup> Inside the aukati, neither the Act nor the circumstances that prompted its activation would apply, due to the absence of Pākehā settlement. But concern about liquor control was known to be as much an issue for the Kīngitanga as it was for others.<sup>274</sup>

In early 1872, McLean was prompted to turn his attention to the situation in Te Rohe Pōtae once again. He said he had received a letter from Rewi informing him that Manuhiri and Tāwhiao wanted a meeting with the governor.<sup>275</sup> The Government signalled its opposition to the idea, because the governor (rather than ministers) might be seen as the Government's primary representative for discussions.<sup>276</sup> In a draft memorandum that he planned to send to the governor, McLean explained that visiting the Kīngitanga would be seen as 'an act of humiliation on the part of the Europeans', and that the governor may be met by demands he could not agree to.<sup>277</sup> As it turned out, the governor visited communities on the edges of Te Rohe Pōtae in April and May 1872, but did not meet with Tāwhiao or any other Kīngitanga leaders.<sup>278</sup>

McLean met with unspecified 'Waikato & Maniapoto Chiefs' in mid-June 1872, though it does not seem he met with Tāwhiao. During the meeting, McLean said he acknowledged the Government would not press the construction of roads and other public works, and would consider whether any adjustment could be made to the confiscated lands.<sup>279</sup>

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272. Document A78, p 322.

273. Document A78, p 313; doc A71, p 202 (Robinson and Christoffel).

274. Document A78, p 313; doc A22, p 195.

275. Document A78, p 322.

276. Document A78, pp 323–324.

277. Draft memorandum, MS-papers-0032-0033, object #1018777, ATL; doc A78, p 325.

278. Document A78, p 323.

279. McLean, telegram to Bowen, 13 June 1872, MS-papers-0032-0075, object #1012695, ATL; doc A78, p 326.

McLean was unable to progress these matters further, however, because – in September 1872 – the Fox ministry was briefly voted out of office. The new Stafford Ministry only held office for a month, but in that time was able to advance considerations for how it would deal with the situation in Te Rohe Pōtae. In October 1872, government agent and land purchase officer James Mackay travelled to a hui at Pekanui near Tokangamutu to conduct discussions with Kingitanga leaders. According to the leaders spoken to by Robert Bush, clerk of the resident magistrate's office at Raglan, Mackay had suggested that a significant portion of the confiscated lands be 'given up to Tawhiao, and that the Government should be asked to recognize his *mana* over that territory'. The Bay of Plenty civil commissioner, Henry Tacy Clarke, expressed doubt that Mackay had made this proposal, but he reported that it was nonetheless the chiefs' understanding of the discussions that had taken place.<sup>280</sup>

When a new ministry was formed in October 1872 (with George Waterhouse as premier), McLean returned as Native Minister. He continued to advance policies for accommodating Māori into the machinery of state. The Government appointed Mokena Kohere and Wiremu Tako Ngatata as Māori members of the Legislative Council, and Wiremu Katene and Wi Parata, Māori members of the House, were appointed to the Executive Council. Though the extent of the influence of Māori members of the Executive Council is debatable, McLean would have them accompany him on important negotiations with Māori, including the Kingitanga.<sup>281</sup>

Then, in late 1872, McLean first introduced to Parliament his measure for providing Māori with some authority over their own affairs: the Native Councils Bill. The Bill ostensibly set out a framework for implementing several proposals McLean had made since assuming the position of Native Minister. In his September 1870 memorandum, he had suggested neutral and 'friendly' Māori could be further enticed into the ambit of government through the creation of a 'council of chiefs' and by providing for some measure of local self-government over municipal matters such as roading. Then, at the end of 1871, he had made a specific guarantee to Tūhoe that they would be provided measures of authority in their own district. A similar assurance had reportedly been given to Kingitanga leaders by the short-lived Stafford Ministry.<sup>282</sup>

More generally, the Bill was a response to Māori across the North Island who were by that stage advocating for more substantial control of matters affecting their lands. In 1871, the Haultain inquiry had heard evidence from Māori who were dissatisfied with the native land system. They sought a new system in which *rūnanga* (acting under the supervision of a Māori official) could decide questions of title, to be ratified by the Native Land Court. In 1871 and 1872, officials in a range of districts heard requests from Māori for official recognition of their *rūnanga*.<sup>283</sup> The question was how far the Bill would go to meet these varied ends.

280. HT Clarke to Native Minister, 30 January 1873, AJHR, 1873, G-1B, p 8; doc A78, p 327.

281. Document A78, pp 328–329.

282. Document A78, p 329.

283. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 309.

When introducing the Bill to Parliament, McLean said that such a measure had been suggested by the governor and was further prompted by the many petitions the Government had received from Māori for 'Committees to manage their own local affairs' (though subject, he claimed, to the direction of resident magistrates).<sup>284</sup> McLean explained that the Bill would only apply in native districts, and only in two or three where requests had been made. Ms Marr said that Wairarapa was one district that was identified as a possible area for establishing a native council, though no other districts were specified.<sup>285</sup>

The Bill provided that Māori, in districts where they were the majority of the population, could apply to the governor for their district to be subject to the Act. A council featuring six to 12 elected members, in conjunction with the resident magistrate, would then be authorised to conduct a range of activities, including passing by-laws on a range of local matters (including, among others, land use, public health, and liquor control<sup>286</sup>), deciding on all applications to the Native Land Court (with their decisions binding on the court by agreement of the parties), and recommending regulations for the future disposition of Māori land.<sup>287</sup>

While the Bill had support from some European members, and strong support from Māori members, others objected on the grounds that it might undermine the work of the Native Land Court and subvert the progress of settlement.<sup>288</sup> McLean insisted that Councils were intended to help the court, 'not to get rid of it'. However, he agreed that the Bill had been introduced too late in the session and it was therefore withdrawn.<sup>289</sup> In anticipation that McLean would press ahead with the Bill in the next parliamentary session, Māori in Tauranga, Rotorua, and Ōpōtiki were reported as having continued to advocate for self-governing institutions throughout 1873.<sup>290</sup>

McLean submitted an amended Native Councils Bill in late 1873. The 1873 version was, however, significantly watered down: it would be more difficult to create a district; councils would lose their jurisdiction once customary title was extinguished; it would no longer be mandatory for title applications to go to the council first; settlers could choose whether they would come under the jurisdiction of council by-laws; and the types of by-law that could be passed were more limited.<sup>291</sup> In introducing the new Bill, McLean insisted that its object was to provide Māori with means to 'govern themselves' in areas such as Te Urewera, the East Coast, and 'some parts of the Waikato'.<sup>292</sup> Much like the previous Bill, the 1873 version was

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284. McLean, 22 October 1872, NZPD, vol 13, pp 894–895; doc A78, p 329.

285. Document A78, pp 329–330.

286. Native Councils Bill 1872, cl 22; Native Districts Regulation Act 1858.

287. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 310.

288. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 310.

289. McLean, 22 October 1872, NZPD, vol 13, p 899; doc A78, p 331.

290. Document A78, p 331.

291. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 311; doc A78, pp 343–344.

292. McLean, 30 September 1873, NZPD, vol 15, p 1514; doc A78, pp 344–345.



criticised by Pākehā Members of Parliament on the grounds that it moved away from the policy of amalgamation and would undermine the work of the court.<sup>293</sup>

Once again, McLean said he would withdraw the Bill because it was late in the session. Another reason he gave was that the Bill required modifications, given that the new Native Land Act 1873 made some of the provisions in the Bill redundant, though he did not specify which provisions. The Central North Island Tribunal considered it was possibly a reference to the 1873 Act's requirement for district officers to be appointed to do preliminary work for the Native Land Court, which included making preliminary assessments of land interests in areas yet to come before the court.<sup>294</sup> Yet, that Tribunal noted, 'Parliament had enacted the Native Land Act in the knowledge that it was part of a package with the Councils Bill and was still expecting it'.<sup>295</sup>

McLean said he would introduce the Bill again in the next session, but this never happened. Ms Marr considered that reintroducing the Bill in 1874 would have been less 'politically feasible' in the 'cooler political climate towards the Kīngitanga' that ensued in the following months, in the wake of the killing of Timothy Sullivan (see section 7.3.3.6). However, as it was originally conceived, the Bill was intended to provide Māori in other districts with self-government institutions. Some Māori began to express the view that McLean never intended to pass legislation providing them with the ability to control the land titling and alienation process, and only introduced the Native Councils Bills to secure more pernicious land-taking measures.<sup>296</sup>

#### **7.3.5.4 Ongoing attempts to engage with the Kīngitanga**

McLean's introduction and withdrawal of successive Native Councils Bills occurred alongside renewed attempts to engage with the Kīngitanga. Late in 1872, McLean had initiated efforts to issue an amnesty, so as to progress a settlement with the Kīngitanga.<sup>297</sup> In March 1873, Governor Bowen, in a farewell speech to Māori at Ngāruawāhia, referred to the anticipated general amnesty for 'past acts of rebellion and other political offences'.<sup>298</sup>

Then, in early 1873, the *Luna* – carrying McLean, the acting governor, Chief Justice Sir George Arney, and other officials – turned into Kāwhia Harbour to shelter from a storm. On that occasion, local Māori were initially suspicious, but once they realised the visit was unplanned they welcomed those on board and even arranged a meeting at short notice with Arney, McLean, and a party of officials. Among the chiefs present was Tāwhiao's son, Tu Tāwhiao; among the topics discussed, peace and confiscated lands.<sup>299</sup> Towards the end of that year, Tāwhiao

293. Document A78, p 345.

294. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 311.

295. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 312.

296. Document A78, p 345.

297. Document A78, p 333.

298. Bowen, speech in reply to Maori addresses, 11 March 1873, AJHR, 1873, A-1A, p 11.

299. Document A78, p 334.

made his first visit to Alexandra since the war, where he inspected the redoubt and went on the river steamer. The settler press touted the trip as a significant gesture of goodwill, which ‘may be viewed as a burial of the hatchet’. During the following months, it was reported that Tu Tāwhiao continued his father’s peaceful overtures, visiting settlements in southern Waikato.<sup>300</sup>

Any sign of a warming in relationships, however, was put to the test following the killing of Timothy Sullivan (see section 7.3.3.6). According to Ms Marr, McLean’s careful work on amnesties was lost in rising tensions and calls for a return to war. Mackay travelled over the aukati to talk to Rewi and Tāwhiao but was attacked by Waikato Māori. Then, in June 1873, Ngāti Whātua leader Paora Tuhaere travelled to Te Kūiti to discuss Sullivan’s killing with the local leaders, who refused to hand over the main suspect, Purukutu. Arrest warrants were issued for both Purukutu and others thought to share responsibility, but no one was sent over the aukati to pursue them.<sup>301</sup> In July, Chief Justice Arney commented that the Government had done nothing to enforce the warrants that had been issued. Although (as he saw it) Māori in general had come to recognise the colony’s laws, there was ‘one district only in this colony in which a certain section of the natives withdraw themselves from our Courts.’<sup>302</sup>

There was very little engagement between the Government and the Kingitanga in the period immediately following Sullivan’s death. Ms Marr said that public criticism of McLean increased during 1874, following general recognition that the Sullivan killing was not going to result in an arrest.<sup>303</sup> Pressure also came from McLean’s government colleagues, who preferred to strengthen relationships with ‘friendly’ chiefs while sidelining the Kingitanga. No officials attended the Maehe of 1874, and the Government actively discouraged ‘friendly’ Māori from attending.<sup>304</sup>

Ms Marr considered that the cooler political climate of 1874, coupled with the way McLean had attempted to manage the situations that had arisen from the killings of Todd and Sullivan, motivated the Kingitanga leaders to take a different tack. In particular, they saw the need for Tāwhiao to take a more prominent role in the negotiations.<sup>305</sup> As such, preparations began to be made to invite McLean to a hui at Waitomo. This was a significant departure, one that heralded the various rounds of sustained negotiations that were to continue into the mid-1880s.

### **7.3.6 Treaty analysis and findings: the formation of the aukati and the Crown’s initial response, 1866–74**

Here we pause to consider what the various developments up to the commencement of sustained negotiations represent in terms of the claims before us. The Kingitanga’s imposition and early enforcement of the aukati, and the Crown’s

300. Document A78, pp 341–342.

301. Document A78, pp 336–339.

302. *Daily Southern Cross*, 8 July 1873, p 3; doc A78, p 339.

303. Document A78, p 342.

304. Document A78, pp 342–343.

305. Document A78, pp 346–347.

initial response, set the terms of engagement after the Waikato war. How might we view these engagements as against the principles of the Treaty of Waitangi?

### **7.3.6.1 *The Treaty of Waitangi and Te Rohe Pōtae after the Waikato war***

In chapter 3, we explained our view of the meaning and effect of the Treaty of Waitangi. The essence of the Treaty arises from the reciprocal acknowledgement of Crown and Māori authority: each had their own functions and were to operate together in partnership over matters of intersecting interest. The Crown had a particular obligation to protect the tino rangatiratanga of hapū and iwi in the process of establishing a colony of settlement. This was in effect a guarantee that Māori could maintain their autonomy within the developing colony so long as they chose to do so.

The Treaty was presented to and signed by a number of rangatira from Te Rohe Pōtae as part of the Crown's attempt to gather signatures from hapū and iwi around the country. Through this process, the fact of the Treaty was generally made known to Te Rohe Pōtae Māori, even though its terms may not have been well explained, particularly given the differences between the Treaty's two texts.

The Crown in this inquiry maintained that it 'was not *legally* obliged to seek further consent of the Rohe Pōtae Māori to the exercise of Crown authority in the district after 1840.'<sup>306</sup> However, as we explained in chapter 3, the Treaty required that further agreement be reached about how its terms would be put into practical effect. To this extent, the Crown acknowledged that:

The detail of how [the Crown's] governmental authority was to be exercised, particularly in relation to issues of concern to Māori, was largely left for future debate and discussion. British sovereignty did not preclude all Māori authority or all customary law from having legal status in the new colony. The terms of the Treaty did require the working out of institutional structures and relationships in the new colonial polity.<sup>307</sup>

Counsel did not address to what extent this working out of relationships took place in subsequent years.

In other chapters, we have shown how the Crown did not embark on any substantive discussions with Te Rohe Pōtae Māori about how the Treaty would be put into proper effect, but did initiate processes that resulted in land alienation, especially in coastal areas. Often these transactions took place in less than ideal circumstances (see chapters 4 and 5). In response to these and other events, Te Rohe Pōtae Māori put their energies into supporting the Kīngitanga as a means of protecting their land and traditional authority. They were particularly concerned about how Māori in other parts of the country were being denied their rights, particularly in the purchase of land – nothing signalled this to Māori more than the governor's decision to go to war over the disputed Waitara purchase.

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306. Submission 3.4.312, p 12.

307. Submission 3.4.312, p 1.

As we have found in chapter 6, the Crown's response to the Kīngitanga was to initiate war. The Crown chose not to tolerate a political movement that claimed independence from the colonial State, even though the Kīngitanga professed allegiance to the Queen. The outcome was war, resulting in significant prejudice to Te Rohe Pōtae Māori, who were among those who had land confiscated. They were forced to host Waikato on their remaining land, placing inevitable strains on relationships as they continued to look to Waikato for leadership of the Kīngitanga. The confiscations also meant that the Crown's territory now demarcated their northern and part of their southern boundaries.

It was in this context that Te Rohe Pōtae Māori, through the Kīngitanga, defined and asserted the aukati.

### **7.3.6.2 Was the enforcement of the aukati a legitimate action?**

The events of the Taranaki and Waikato wars required Te Rohe Pōtae Māori, through the Kīngitanga, to take the pragmatic step of establishing and defending the aukati to fend off any further incursions into their territory.

In practical terms, the aukati represented an enforcement of mana – absolute rights and authority – that had resided in the hapū and iwi of Te Rohe Pōtae Māori for many generations. While the aukati that was enforced was reminiscent of other, more traditional aukati, it was undoubtedly unique for the extent of the territory it contained, the circumstances in which it arose, the pressures it was responding to, and the mechanism – the Kīngitanga – by which it was enforced.

We reject the notion that the aukati represented an isolationist policy, in which those in the territory retreated into a sulky disengagement. Rather, as claimant counsel submitted, it was an expression of rangatiratanga.<sup>308</sup> Indeed, it was not long after the end of the Waikato war that the Kīngitanga turned to establish a peaceful relationship with the Crown, while advancing the various policies designed to protect the rights of hapū and iwi.

The long-term viability of the aukati depended on the ability of the Kīngitanga and its constituent communities to maintain it in accordance with tikanga. The Kīngitanga leadership protected the interests of its constituents and maintained a common purpose, through the policy of peace, and the exclusion of unwanted activities in the territory (such as prospecting, mining, surveying, public works, and the leasing and selling of land). These actions were implemented at the annual Maehe, but also through more frequent hui to discuss matters of importance. The Kīngitanga's objectives were maintained by rangatira, who cultivated the active and ongoing support of their communities. Rangatira were also responsible for enforcing the aukati at various points in their respective territories. They successfully restricted the passage of unwanted persons and activities within the bounds of the aukati.

On four occasions, rangatira who were granted authority to manage affairs in their districts determined that maintaining the aukati necessitated the death of those who had transgressed. Lyons, Todd, Sullivan, and Moffatt were all killed for

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308. Submission 3.4.128(b), pp 2–3.

this reason. Previous Tribunals have found that while some killings may be justified in tikanga terms, they were not justified under the Treaty.

The Tūranga Tribunal, for example, considered the situation of Te Kooti and the Whakarau, who had attacked the settler community at Matawhero, having been pursued by colonial forces following their return to the mainland from Wharekauri in 1868. In that situation, the Tribunal found that 'the day when tikanga provided a justification for the murder of these innocents had long passed. The Treaty itself signalled an end to these old ways.'<sup>309</sup>

The Ngāti Awa Raupatu Tribunal considered a situation in which Māori had killed several individuals in Ōpōtiki and Whakatāne in 1865. One was alleged to have 'compromised the security of local hapu' and the others to have breached an aukati that had been set in place by Pai Marire adherents. The Tribunal found that the Pai Marire aukati 'had no validity at Maori law', as it was made only at Matata but imposed over a much larger area. Moreover, those who set the aukati did not seek the support of all of those who it covered. Its inclusion of Whakatāne Harbour, for instance, did not have the approval of the Whakatāne people.<sup>310</sup>

In respect of these killings, the Tribunal concluded that because the Treaty allowed the governor to make laws for peace and order for the country as a whole, and because it was necessary there would be a law against murder, those laws necessarily applied to all Māori, 'even in remote places'. It was also known, the Tribunal added, 'that the Governor would take action against the murderers of Europeans no matter where they might be.' Therefore, in the instance they were considering, the Tribunal concluded that the governor was justified in Treaty terms in bringing to trial the perpetrators of the murders, and that he was 'justified in taking action to arrest those suspected of murder whether or not an aukati was in force in accordance with local law'.<sup>311</sup>

We consider that the aukati imposed by the Kingitanga and the way it was enforced present different circumstances. It was not a situation where Māori attacked colonial and Māori communities and Crown officials beyond traditional territory (as in Tūranga); nor was it a situation where individuals had been killed after breaching a broadly defined aukati that lacked local support (as in Ngāti Awa). It was, rather, initiated as a defensive measure in response to the large-scale Crown aggression in the Waikato and Taranaki wars and subsequent confiscations. The only sanctioned violence that occurred was in situations where the aukati had been breached without permission, and then only as the last resort after issuing multiple warnings.

This did not mean the Treaty was suspended. Far from it: the Treaty required both parties to work cooperatively to bring its terms into practical effect. But events had transpired to mean that the discussions required for this to happen had yet to occur, and war and confiscation had now put a functioning Treaty

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309. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), pp 215–216.

310. Waitangi Tribunal, *Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999), p74.

311. Waitangi Tribunal, *Ngati Awa Raupatu Report*, p127.

relationship far beyond immediate reach. In these circumstances, Te Rohe Pōtae Māori were entitled to maintain the aukati, and their tino rangatiratanga, while they sought to establish how the terms of the Treaty could be brought into practical effect in the district through negotiations with the Crown. This is what they attempted to do following the opening of dialogue in 1869 and in response to those killings that did occur after the aukati had been breached.

The attempt by the local leaders to manage the situation with Moffatt suggests that there were opportunities for the Crown and the Kīngitanga to have established means by which such incidents could be handled short of violence. However, the Crown did not seek out a system by which such incidents could be managed while the aukati was enforced. The policy proposed by McLean, and adopted by the Crown, was only to pursue the most 'notorious' killers.<sup>312</sup> The Crown's response to Sullivan's killing in 1873 indicated to the Kīngitanga that its interest was in capturing the killers, rather than discussing what should happen with those who had entered the aukati unauthorised. The Government only went so far as issuing warnings against travel in the region and did not take more active steps to prevent encroachments. Thus, in a period when it was unclear whether or how the Crown was prepared to recognise the Kīngitanga, the Kīngitanga was left to manage the situation as best it could, which required enforcing the aukati in the manner it did – in accordance with tikanga and with the protection of its constituent communities at front of mind.

The clear exception was the Pukearuhe killings. We do not consider the attack on the redoubt, including the killing of civilians, in the same light as the four deaths above. Those involved in the attack may have had legitimate reasons: the redoubt was located on land in which Mōkau Māori considered they had interests, and the redoubt itself symbolised the Crown's taking of the land; more immediately, they had concerns about the return of Ngāti Tama to the north of the redoubt. However, the attack was in breach of the Kīngitanga's own policy that no hostilities would occur outside of the aukati. Māori at the time understood Pukearuhe to lie within Crown territory at the confiscation line. In addition, the regret and remorse shown by Kīngitanga leaders at the time of the Pukearuhe killings indicates that they too did not consider the killings to be a legitimate enforcement of the aukati.

However, by establishing and enforcing the aukati, Te Rohe Pōtae Māori were asserting their right of tino rangatiratanga guaranteed to them under article 2 of the Treaty of Waitangi. These were legitimate actions for Te Rohe Pōtae Māori and the Kīngitanga to take to protect their territories and authority. The establishment of the aukati was a response to Crown aggression during the Waikato war, and while the Treaty required a working out of relationships, the defence of Te Rohe Pōtae from uncontrolled encroachment was necessary until circumstances allowed the parties to come together and discuss how the Treaty could be brought into practical effect.

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312. McLean to Cabinet, 16 September 1870, MS papers-0032-0030, pp 16-21, object #1007778, ATL.

The legitimacy of the aukati's enforcement was underscored by the fact that – not long after it was established – the Kīngitanga proclaimed that peace would prevail within Te Rohe Pōtae and that it would not engage in or condone any violent actions outside of the aukati. Although Tāwhiao was initially reluctant to engage directly with the Crown, Kīngitanga leaders sought out and established peace, a matter that was achieved at Te Pahiko in 1869. Thus, in enforcing the aukati while implementing a wide-ranging peace policy, the Kīngitanga created the conditions upon which it could safely negotiate with the Crown, firstly to resolve grievances that had arisen from the Waikato war and, secondly, to bring the Treaty of Waitangi's guarantees into proper effect over the lands that remained in Māori ownership.

### **7.3.6.3 What did the Crown do to establish a resolution with the Kīngitanga?**

This issue raises further questions: did the Crown take sufficient steps to bring about a mutually agreed resolution in the immediate aftermath of the wars, particularly after peaceful relations were established in 1869? Could the Crown have done more in Treaty terms to accommodate the Kīngitanga? Or were the circumstances created by war and confiscation too much for even the Crown to overcome so soon after they had occurred?

#### **7.3.6.3.1 SECTION 71 OF THE NEW ZEALAND CONSTITUTION ACT 1852**

The claimants put it to us that the Crown could have established Te Rohe Pōtae as a 'native district' under section 71 of the 1852 Constitution Act, but chose not to do so because it could not contemplate sharing any form of authority with the Kīngitanga.<sup>313</sup>

In the Crown's view, however, these districts, as envisaged under the Act, were only ever intended to be temporary in nature, and until such a time that Māori could 'take their full place in the political system.' According to Crown counsel, section 71 provided for the creation of districts that were 'outside the effective jurisdiction of provincial and general assemblies,' where Māori could maintain their customs and laws. Thus, the Crown submitted, the creation of such a district was not suitable for the circumstances of the Kīngitanga, which wanted 'recognition of its own territory where its own laws and customs could be maintained into the future.' The other obstacle to formal recognition of Te Rohe Pōtae as a district under section 71, the Crown submitted, was that the transfer of responsible government to the colony had nearly been completed by the late 1860s, following an 1857 amendment to the Constitution Act.<sup>314</sup>

Although counsel did not expand on this point, we take the Crown to be saying that the 1857 amendment meant that it was no longer possible to declare districts that would be outside the effective jurisdiction of provincial and general assemblies; and that this was because the imperial authorities had empowered the

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313. Submission 3.4.128(b), p 6.

314. Submission 3.4.301, pp 20–21.

colonial government to be fully responsible for all affairs conducted throughout all territories, irrespective of whether the Crown exercised substantive control.

It is not clear to us how or why the 1857 amendment or the transfer of responsible government prevented the use of section 71. The main effect of the 1857 amendment was to allow the General Assembly to ‘alter, suspend, or repeal’ all but 21 sections of the Act.<sup>315</sup> Section 71 was among those sections that the General Assembly was expressly forbidden to amend.

Indeed, as the Central North Island Tribunal concluded, though the section was somewhat of an anomaly after the grant of full responsible government, because it provided for Māori to exercise power independently of the New Zealand Parliament, it remained a constitutional possibility:

Until 1892, when the British Parliament amended the Act, the British Government could advise the Queen to issue Letters Patent establishing a Native District, or to delegate such a power to the Governor in New Zealand. After 1892, when the section authorising delegation to the Governor was removed, the New Zealand Government could still recommend the Secretary of State to exercise this power.<sup>316</sup>

The Tribunal noted the view of constitutional lawyer FM Brookfield that responsible government in New Zealand did not end the ability of the British authorities to carry out section 71.<sup>317</sup>

Thus, it remained within the discretion of the governor to create native districts under section 71, and the amendments to the imperial legislation that allowed the transfer of responsibility to the colonial government expressly retained the governor’s ability to do so. McLean certainly thought that the creation of such districts remained a possibility when he commented on the provision in Parliament in 1869.<sup>318</sup> Had the imperial legislature intended to provide the colonial legislature with the ability to amend that part of the constitution, or had it intended to do away with it altogether, it could have done so. Instead, the section remained on the books, available for use should the governor or imperial authorities consider it appropriate. Indeed, the section was not repealed until the Constitution Act 1986, which repealed its 1852 predecessor in full.<sup>319</sup> Nor did the section necessarily prevent the districts from operating on a permanent basis. The Central North Island Tribunal cited Professor Brookfield as saying that the section specified no time restriction.<sup>320</sup> Thus, there was nothing to prevent the Government from using the section for the purposes of allowing the Kingitanga to exercise authority over lands remaining in Māori ownership into the future.

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315. New Zealand Constitution Amendment Act 1857, s 2.

316. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 334.

317. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 334–335.

318. McLean, 3 August 1869, NZPD, vol 6, p 203.

319. Constitution Act 1986, s 26(1)(a).

320. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 227, 335.



A potentially more limiting factor was whether Māori in such districts could pass new laws. On this point, the Central North Island Tribunal also cited Brookfield to say that there was nothing to prevent this from happening.<sup>321</sup> However, the lack of a legislative function was considered a serious obstacle by the likes of Governor Browne. In response to Browne's concern, former Chief Justice William Martin in 1861 advocated for the addition of special legislative functions, hoping to win support for the idea of creating a native district.<sup>322</sup>

While there had been some limited acceptance among both colonial and imperial authorities about the need to give effect to Māori authority before the war, including the use of section 71, the climate of opinion in government circles did certainly change after the end of the war and the grant of full responsible government. The concern remained that Māori in these districts would be limited in their ability to develop new laws to meet new circumstances. Even Sir William Martin, previously a staunch proponent of implementing section 71, abandoned the idea. Instead, Martin promoted new legislation that provided for the exercise of Māori authority within Te Rohe Pōtae.<sup>323</sup> Indeed, as Martin's response indicated, any genuine concerns about how the section could have been implemented after the transfer of responsible government could have been overcome through the colonial government's use of its legislative powers providing other means of recognition.

Both Bowen and McLean were of the view that it was 'too late' to take any action of that kind – the question was whether the Crown could devise a reasonable means by which the Kīngitanga could be accommodated in the new circumstances of the colony; or whether the colonial Ministers should defer any action in the hope that the Kīngitanga would fail.

#### 7.3.6.3.2 OTHER MEANS OF PROVIDING FOR KĪNGITANGA AUTHORITY

Bowen suggested that some form of constructive accommodation with the Kīngitanga could be reached. McLean's view was somewhat different. The key cause of trouble in his view was the failure to acknowledge 'that power of chieftainship'.<sup>324</sup> McLean formalised his policy over the course of a year, in which time the situation with Titokowaru was defused and McLean had established initial peaceful relations with Kīngitanga leaders, in which they agreed on how to approach the situation with Te Kooti.

Crown counsel submitted that the government 'refused to consider formal recognition of a Kīngitanga district on the basis that the Kīngitanga leaders were facing so many challenges [they] could not exert an authority that could be recognised over the territory'.<sup>325</sup> The Crown did not point us to specific instances that would

321. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 227.

322. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 230.

323. Document A78, pp 308–309; Martin memorandum, 21 February 1870, MS-papers-0032–0030, object #1015647, ATL.

324. McLean, 3 August 1869, NZPD, vol 6, p 204.

325. Submission 3.4.301, p 20.

demonstrate this was the case. In our view, the evidence shows that although the aukati was ‘more like zones’ in its eastern areas, and subject to change according to circumstances and changing events, there was a core Kīngitanga territory that was protected by what Ms Marr described as the ‘inner aukati’ (see section 7.3.2.1). Those areas within the ‘inner aukati’ that had seen the most disruption in the late 1860s – at Mōkau and Kāwhia – had by the early 1870s seen attempts at reunification under Kīngitanga authority (see section 7.3.5.2). The challenges that were being faced were in eastern territories as land increasingly came before the newly established Native Land Court. These challenges did not, at least by the mid-1870s, prevent the Kīngitanga from asserting its authority over the core territory.

Certainly, Martin did not see challenges to the Kīngitanga territory as obstacles to making formal provision for the exercise of Māori authority in Te Rohe Pōtae. Martin went even further: the establishment of such a district was both possible and necessary. The Government’s rejection of Martin’s proposal was a significant missed opportunity, given the discussions that later occurred between the Crown and the Kīngitanga, and later still with Te Rohe Pōtae Māori.

The Crown rejected the claimants’ contention that it maintained a policy of ‘divide and rule’ during this period, seeking to draw Ngāti Maniapoto away from the Kīngitanga. There were, however, clear elements of this thinking in McLean’s policy statements. He hoped to achieve with the Kīngitanga without offering terms or any formal recognition for the King’s authority. Yet he also hoped to persuade ‘friendly’ Māori communities away from the Kīngitanga’s ambit of authority by offering some degree of recognition of their authority through membership of a council of chiefs and provision of a limited measure of local self-government.<sup>326</sup>

In responding to Todd’s death in November 1870, McLean revealed that he regarded Rewi Maniapoto as one of the potentially ‘friendly’ chiefs who could be drawn away from the Kīngitanga if the Government ‘treated him liberally’. This, McLean suggested, would include recognising Rewi’s authority, but only if he split from Tāwhiao. McLean regarded Rewi as the Kīngitanga’s most powerful supporter, and therefore believed his defection would significantly weaken Tāwhiao’s influence.<sup>327</sup> Although McLean’s assessments ultimately proved unfounded, they nonetheless indicate a willingness to take advantage of Rewi’s desire for peace and willingness to negotiate (as discussed in section 7.3.5.1).

Parris reflected the Government’s thinking in his efforts to meet with Ngāti Maniapoto chiefs in the same year, and to resettle Ngāti Tama on the Poutama lands (see section 7.3.5.2). Neither McLean’s nor Parris’s efforts were successful, however, and they were not pursued with any great commitment, the Government instead reverting to maintain McLean’s ‘gradualist approach’.

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326. McLean to Cabinet, 16 September 1870, McLean papers, MS 32/30, pp 21–23, object #1007778, ATL; McLean to Premier and Ministers, 11 March 1871, McLean papers, MS 32/33, pp 2–4, object #1008036, ATL.

327. McLean to Premier and Ministers, 11 March 1871, McLean papers, MS 32/33, pp 2–4, object #1008036, ATL.

Underlying the Government's policies and approaches was the same set of concerns the Crown held before the war: to the Crown, the Kīngitanga represented a challenge to its exercise of sovereignty in the district, and there was a fear that it harboured extremist elements who might prompt a return to war. As much as the discussion at Te Pahiko had helped defuse any immediate doubts the Crown might have had about the Kīngitanga's peaceful intentions, so long as the Kīngitanga continued to assert an authority separate from the colonial government the Crown would always see an obstacle to a durable settlement.

### 7.3.6.3.3 THE NATIVE COUNCILS BILLS

By 1872, the Crown was facing calls from Māori in many districts for recognition of their rights to self-determination and self-government. McLean responded to these calls by introducing the Native Councils Bills of 1872 and 1873. Although he had previously written of his wish to entice 'friendly' Māori away from the Kīngitanga by offering them a measure of local self-government, the evidence we have seen (discussed in sections 7.3.5.2 and 7.3.5.3) does not indicate that these Bills were specifically designed to achieve that end. Rather, they reflected the broader pressures he faced from Māori leaders to make some provision for tribal self-government.

The Central North Island Tribunal found that the Bill could have been used to establish autonomous tribal councils 'with state-sanctioned powers of self-government', which could have made a significant difference to Māori communities.<sup>328</sup> While we acknowledge that conclusion, we also note that the Crown and the Kīngitanga were only beginning to explore means by which they might secure peace and establish a cooperative relationship. They had not entered meaningful negotiations to determine how Crown and Kīngitanga authority might co-exist. The Native Councils regime was a Crown attempt to respond to Māori calls for greater self-government. It would have been certainly a considerable improvement on existing institutional arrangements, but we cannot know for certain whether the institutional arrangements it envisaged were ones that Kīngitanga and Te Rohe Pōtae leaders would have regarded as sufficient for their territories. Further negotiation would have been required to determine that. At the very least, McLean's introduction of the Bill demonstrated that the Crown did envisage a need to provide Māori communities with more meaningful measures of self-government.

The Central North Island Tribunal also found that the Bill 'could have empowered tribal communities to avert many of the worst aspects' of the Native Land Court, and the Crown's failure to enact it was a significant missed opportunity to address the reasonably held concerns Māori across New Zealand held about the native land system.<sup>329</sup> We agree with this conclusion. The consequences of this failure had significant ramifications for Te Rohe Pōtae Māori. Without any institution such as the Native Councils in place, the 1873 version of the Native Land Act operated without any significant protections for Māori. As we will discuss below

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328. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 312.

329. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 312.

(see section 7.4) and again in chapter 10, Māori in surrounding districts and even within Te Rohe Pōtae were compelled to bring their land to the court to protect their interests. This placed increasing strains on the Kīngitanga alliance.

#### **7.3.6.4 *The need for meaningful negotiation***

There were, then, a range of options open to the Crown as it turned its attention to the situation in Te Rohe Pōtae after the Taranaki and Waikato wars. Dialogue had been established in 1869, with further opportunities for discussions. Crown counsel argued that the Crown preferred to establish ‘New Zealand founded institutions’ when considering the situation in Te Rohe Pōtae, rather than pursuing options such as creating a ‘Native District’.<sup>330</sup> However, and despite multiple options being raised and discussed, the Crown chose to adopt none of them.

McLean was willing to entertain a degree of tribal self-government nationwide, and to acknowledge Māori concerns about the Court, but could not win the support of his Government. With respect to the Kīngitanga and Te Rohe Pōtae, the Government’s preference was simply to ‘glide into a state of peace’, without taking any specific steps other than choosing not to interfere in the district’s affairs. The Crown’s policy towards this district involved an active decision not to recognise the authority of the Kīngitanga, which the Government continued to see as a threat to its own authority, and which McLean hoped ultimately to undermine by encouraging iwi leaders to split from Tāwhiao. Because it was predicated on the eventual demise of the Kīngitanga, McLean’s policy, adopted by the Crown, was inconsistent with the Treaty principles of partnership and mutual benefit.

Notwithstanding the Crown’s reluctance to recognise the King’s authority, opportunities remained for the Crown and the district’s leaders to work towards mutually acceptable arrangements. While its policy was inconsistent with the Treaty, the Crown had made no final decisions, and, despite the pressures they faced and the Crown’s lack of support, Kīngitanga and Te Rohe Pōtae leaders continued to exercise authority within the aukati. In the years immediately after the establishment of peace at Te Pahiko both sides had proceeded carefully in their relations with each other.

Nonetheless, by 1875 it was becoming apparent to both parties that dialogue was needed. The Government recognised that it would need to take active steps to reach an accommodation with the Kīngitanga – it could not simply avoid the issue and wait for the Kīngitanga to fail, as McLean had previously hoped. Similarly, Tāwhiao saw that the situation required his active involvement. Some form of mutual accommodation would be needed to bring the terms of the Treaty of Waitangi into proper effect in Te Rohe Pōtae. As we will see, Tāwhiao and other Te Rohe Pōtae leaders would seek the return of confiscated lands, and Crown recognition of their mana. How exactly the Kīngitanga might be accommodated, and how it might accommodate the exercise of Crown authority within the aukati, would be matters for discussion. This was what was needed to give proper effect to the terms and guarantees of the Treaty in Te Rohe Pōtae.

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330. Submission 3.4.301, p 20.

#### 7.4 NEGOTIATIONS, 1875–EARLY 1883

From 1875, the Crown and the Kīngitanga entered into more sustained engagements over how to achieve a way of working together and to resolve the Kīngitanga's grievances that had arisen from the Waikato war. This occurred in three main phases of negotiation, in which a succession of government administrations attempted to engage with the Kīngitanga. From 1875, the first set of negotiations was led by Native Minister Donald McLean; after McLean fell ill and resigned in December 1876, they were briefly taken over by Premier Daniel Pollen. The second phase began after the Pollen administration was voted out of office, when the new Premier Sir George Grey and Native Minister John Sheehan took over. Their negotiations, however, collapsed following a hui at Te Kōpua in May 1879, and they were then voted out of office. Finally, after a period of hiatus, negotiations were resumed by John Bryce, who was to hold the position of Native Minister in a succession of ministries through the early 1880s.

Through these negotiations the parties managed to agree on some issues, but entrenched disagreement on key issues remained. In particular, the Crown did not accept the Kīngitanga's demand for the return of confiscated land or the potential role of King Tāwhiao in the administration of the land that remained in Kīngitanga control. Throughout this period, Rewi Maniapoto and Wahanui Huatare took an increasingly prominent role in the negotiations, where they were able to voice their concerns about Crown activities that increasingly pushed at the aukati, such as land purchasing and public works, as well as the ongoing work of the Native Land Court in surrounding districts.

The claimants maintained that the Crown's primary purpose during this period was to create a divide between Ngāti Maniapoto and the Kīngitanga, so as to undermine the strength and unity of the Kīngitanga alliance.<sup>331</sup> Despite such pressures, they submitted, Ngāti Maniapoto remained supportive of Tāwhiao and the Kīngitanga, as indicated by their ongoing protection of them.<sup>332</sup> Counsel for Ngāti Tūwharetoa submitted that several opportunities arose for the Crown to recognise the Kīngitanga, particularly in 1882, when Tāwhiao 'appeared willing to compromise in accepting the Crown's sovereignty, provided that Māori tino rangatira-tanga would be provided for in the form of self-governance.'<sup>333</sup>

The Crown submitted that a wide range of engagements with Kīngitanga and Te Rohe Pōtae leaders during this period of negotiations 'should not be interpreted as constituting a "divide and rule" policy.'<sup>334</sup> The Crown acknowledged that it 'perceived the Kīngitanga as a challenge to the Queen's sovereignty and it sought to persuade all Rohe Pōtae Māori to place themselves under the authority of the Crown. As such, it did not recognise the Māori King as having any kind of sovereign authority.'<sup>335</sup> However, the Crown also submitted that this 'did not constitute

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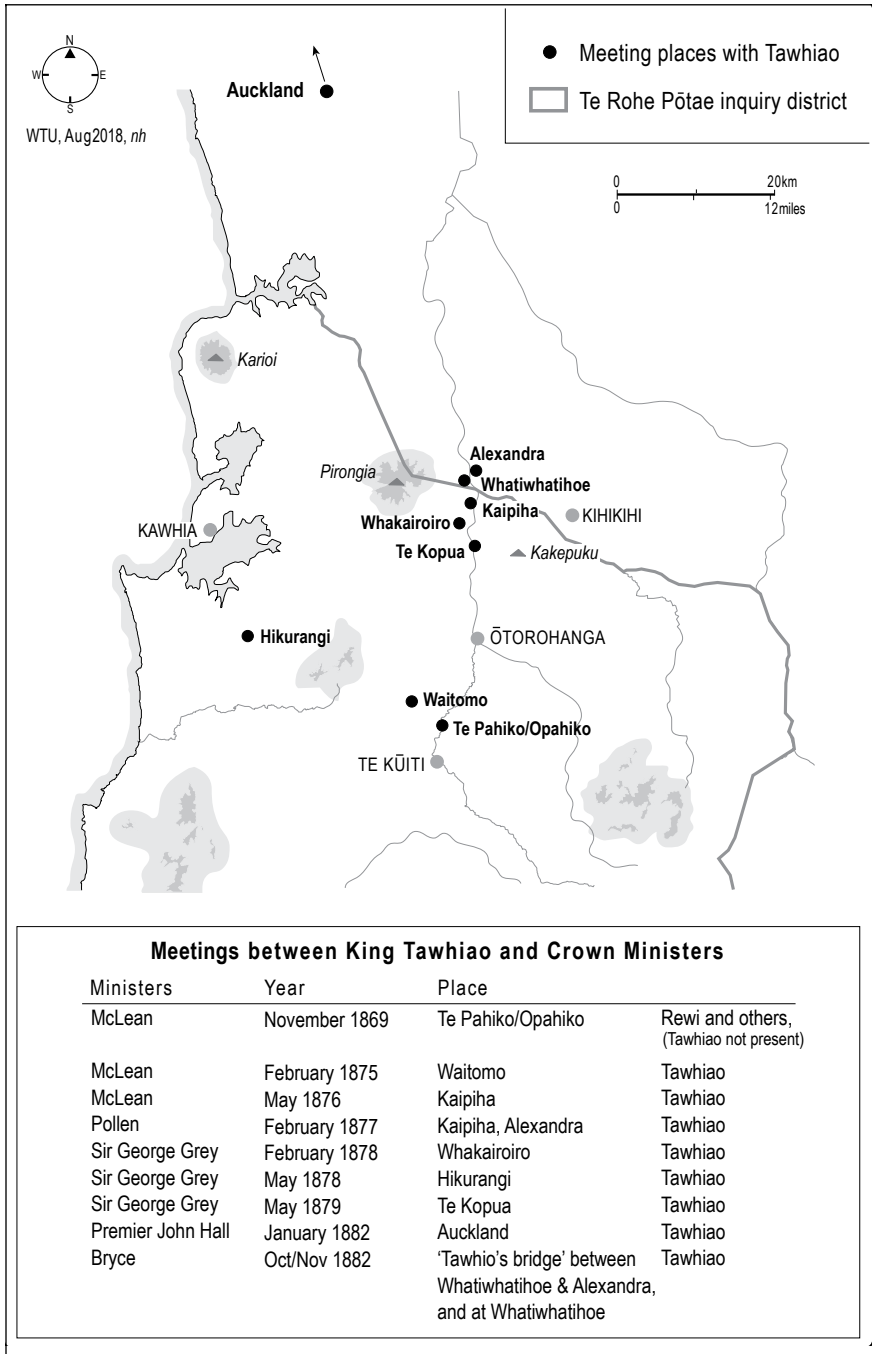
331. Submission 3.4.128(b), p 7; submission 3.4.281, pp 12, 26.

332. Submission 3.4.128(b), p 7.

333. Submission 3.4.281, p 25.

334. Submission 3.4.301, p 9.

335. Submission 3.4.301, p 23.



Map 7.1: Meetings between King Tawhiao and Crown Ministers, 1869–82

the undermining of the traditional authority of Ngāti Maniapoto and Kingitanga leaders', as it sought to recognise 'their authority as influential chiefs'.<sup>336</sup> The Crown considered that Bryce's proposals to the Kingitanga in 1882 were 'made on the essential condition that Tāwhiao and his supporters accept the sovereignty of the Queen and her laws'. The Crown did not accept that Bryce's actions constituted a 'breach of good faith', because they represented the Government's 'serious intentions about asserting the Crown's sovereignty, and to exercise the authority of the Crown and Parliament inside the aukati'.<sup>337</sup>

The issue for us to address in this section, therefore, is whether the Crown took sufficient and appropriate action to bring about a resolution through the negotiations that proceeded from 1875 until early 1883. At that time, Tāwhiao conducted his last negotiation with the Crown, and the Crown issued an amnesty to those who had participated in the war – actions which significantly changed the basis on which subsequent negotiations occurred.

#### 7.4.1 Negotiations with McLean and Pollen

Underlying the Government's approach to the negotiations from 1875 onwards was a renewed focus on opening Te Rohe Pōtae. A significant factor in the Crown's approach was the construction of the North Island Main Trunk Railway.

Julius Vogel, who had been premier since 1873 and colonial treasurer before that, had ushered in a programme of immigration and extensive public works, the latter funded through borrowing, of which the expansion of railways was the centrepiece. Under his scheme, public railways increased dramatically throughout the 1870s from 76 kilometres of open line to 1,828 kilometres by 1880.<sup>338</sup> However, during that decade much of the expansion in public works was focused on the South Island, including more than three-quarters of New Zealand's operational rail. Meanwhile, settler pressure mounted to promote more rail for the North Island, where the European population had practically doubled from just under 100,000 in 1871 to almost 200,000 in 1881.<sup>339</sup> The provinces neighbouring Te Rohe Pōtae reflected that growth: the European population of Taranaki province tripled between 1871 and 1881 (from 4,480 to 14,858), while Auckland's more than doubled (from 62,335 to 99,451, roughly half of the total North Island population).<sup>340</sup> By contrast the national Māori population, which had been overtaken by the settler population in 1858, was declining, both proportionally as a total of New Zealand's and in real terms.<sup>341</sup>

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336. Submission 3.4.301, pp 23–24.

337. Submission 3.4.301, p 15.

338. Document A20, p 24.

339. Document A20, p 34.

340. Document A20, p 34.

341. Claudia Orange, 'Treaty of Waitangi – Dishonouring the Treaty – 1860 to 1880', Te Ara – the Encyclopedia of New Zealand, <http://www.TeAra.govt.nz/en/graph/36364/maori-and-european-population-numbers-1840-1881> (accessed 8 May 2018).

Construction of the North Island Main Trunk Railway was central to the post-war push to reboot the economy and restore the confidence of the rapidly increasing settler population. The programme of public works and immigration signalled a recommencement of what Premier Fox described as ‘the great work of colonizing New Zealand’. The ‘object of the government’s proposals’ he said, was ‘if possible, to re-illuminate that sacred fire.’<sup>342</sup> Nor was the relationship between the Government’s colonisation project and its goal of overpowering Māori lost on commentators at the time. The *New Zealand Herald* put it bluntly:

Our business now is to conquer the native difficulty by the arts of peace; by piercing the interior of the country with roads; by attracting population by liberal land laws, especially suited to the requirements of the North Island, and so securing the utmost facility of locomotion on the one hand, and a large annual increase to the white population on the other. Attention to these two points is the main business of those who seek to end this native difficulty which has been the great curse of the colony.<sup>343</sup>

In 1874, the chief engineer, John Carruthers, set out preliminary route considerations. He reported on four possibilities; three ran west of Lake Taupō and were not in fact accessible at that time because they were well within the ‘King’s Country’, which remained closed to Pākehā. The fourth route ran east of Taupō, but while possible was deemed undesirable because it would require a considerable length of line and complicated engineering in order to cross the eastern central plateau. According to Carruthers, ‘if the country on the West Coast were open to survey’ a western route could be ascertained and would be desirable.<sup>344</sup>

With the most suitable of the proposed routes running through Te Rohe Pōtae, the need for the Crown to negotiate entry into the territory was made clear. Pressure to investigate proposed routes mounted as the railway line drew nearer to the aukati, opening for traffic to Ngāruawāhia in 1877, and to Te Awamutu in May 1880.<sup>345</sup>

#### **7.4.1.1 The Waitomo hui, February 1875**

The first sustained discussion for terms of settlement commenced at Waitomo in February 1875, following Tāwhiao’s invitation to McLean earlier in the year.

The Waitomo hui was facilitated by Wiremu Te Wheoro, who arrived as a member of McLean’s party. Te Wheoro had become distant from the Kīngitanga leadership in the lead-up to the Waikato war when he supported the building of a fortified constabulary at Te Kohokohe, near Meremere. During the war, he had been a guide in the employ of General Duncan Cameron. After the war, he had acted as an intermediary between the Kīngitanga and the Crown, including attempting to

342. Fox, 13 July 1870, NZPD, vol 7, p 395; doc A20, p 22.

343. ‘September Agenda’, *New Zealand Herald*, 27 July 1870, p 3; doc A20, p 22.

344. ‘Public Works Statement, by the Minister for Public Works, the Hon. Edward Richardson’, AJHR, 1874, E-3, pp 58–59.

345. Document A20, pp 36, 44.



arrange a meeting between Tāwhiao and the Duke of Edinburgh in 1869.<sup>346</sup> In 1873, he was appointed a major in the colonial forces, partly in response to settler nervousness in the lower Waikato after Te Kooti's decision to reside at Tokangamutu.<sup>347</sup> At the time of the Waitomo hui, he had become a key agent in the efforts of the Government to re-engage with the Kingitanga.

The hui was the first time since before the Waikato war that Tāwhiao met in person with a government Minister, rather than his usual approach of working through advisors or deputies. The hui – conducted over two days in early February 1875 – offered an opportunity for each party to make their position plain.

Rewi remained absent from the hui, which Ms Marr argued may have been so that McLean was under no illusions that he needed to conduct negotiations with Tāwhiao.<sup>348</sup> Instead, during this period, he visited Māori communities in the Bay of Plenty (see section 7.3.3.3). During that tour, Rewi was reported to have spoken in favour of the return of confiscated lands, about which he was personally concerned, having interests in lands north of Pūniū, including at Kihikihi where he lived. At one of the hui he said:

Ka maha nga Kawana me nga Minita Maori, me etahi Apiha i ki atu ai au, kaore he tangata o te Maungarongo kia au, me hohou e ratou te rongo ki te Whenua, ara, me whakahoki mai.

I told several Governors, Native Ministers, and subordinates that it was useless making peace with me; they must make peace with, the lands, by returning them.<sup>349</sup>

This was a position Tāwhiao was expected to take up on his meeting with McLean.

In the course of the hui, Tāwhiao made the position of the Kingitanga clear: all confiscated Waikato lands as far as Mangatāwhiri were to be returned to them. If that territory was reinstated, he would return to Waikato to live.<sup>350</sup> Ms Marr said that though this statement was referred to as requesting only the confiscated lands, 'the importance for the Kingitanga was also the recognition of their authority to the old boundary at Mangatāwhiri.'<sup>351</sup>

McLean, however, was equally insistent that the Government would not contemplate the return of all the confiscated territory. Instead, he made four proposals for the return of portions of the confiscated land and the recognition of Tāwhiao's authority:

346. Document A78, p 303.

347. Gary Scott, 'Wiremu Te Morehu Maipapa Te Wheoro', in *1769–1869*, vol 1 of *The Dictionary of New Zealand Biography*, ed WH Oliver (Wellington: Allen & Unwin and the Department of Internal Affairs, 1990), pp 524–526.

348. Document A78, p 348.

349. *Te Wananga*, 28 May 1875, p 89; doc A110, p 619.

350. 'The Hon Native Minister's Meeting with Tawhiao; and Rewi Maniapoto's Visit to the Bay of Plenty', AJHR, 1875, G-4, p 10.

351. Document A78, p 351.

1st. Tawhiao to exercise authority over the tribes within the district where he is now recognised as the head.

2nd. A certain number of Chiefs to be selected by him to assist him in maintaining order and repressing crime among his people

3rd. The Government to support him in carrying on the duty which would thus devolve upon him

4th. A suitable house to be built for him at Kawhia and certain portions of land on the Waipa and Waikato rivers to be granted to him.<sup>352</sup>

On the surface, the terms McLean proposed were significant, and reports indicated that Tāwhiao was ‘satisfied’ with them, although they did not meet his demands for the return of all confiscated Waikato land. Tāwhiao proposed that he meet with McLean and the governor to discuss the terms further at another hui, preferably as part of the 1876 Maehe that was scheduled to be held at Te Kūiti. McLean said he preferred to meet at Kāwhia, which would be more accessible for the governor. Although Tāwhiao eventually agreed, and despite reports that he had moved closer to Kāwhia around this time, the meeting did not eventuate.<sup>353</sup> The next meeting – 15 months later – was held at neither Te Kūiti nor Kāwhia, but at Kaipiha near Alexandra. Nor did the governor attend as Tāwhiao hoped.<sup>354</sup>

In the meantime, McLean honed his general proposals into more detailed measures. At the same time, he fended off criticism from political opponents and settlers, who particularly opposed his proposal to acquire land in the Pirongia area, which he intended to grant to Tāwhiao and his people as part of the settlement. Twenty-five settlers and land-owners petitioned Parliament on the matter, registering their objection to the possibility of having Māori live among them, especially ‘so-called King Maoris.’<sup>355</sup> They argued that granting land to Māori in the district was a backward step that would hinder progress for years to come. The presence of resident Māori would cause a decrease in property values and put new settlers off coming to the area. McLean and Premier Pollen defended the Government’s approach, explaining that the intention was to quietly settle Kingitanga Māori, who had no land of their own to speak of, and who wished to live peacefully alongside the Pākehā.<sup>356</sup>

Resolving the debates of settlers and politicians was only one factor affecting the settlement. The Crown and the Kingitanga had yet to reach agreement on the core matters outlined at the Waitomo hui: the extent of the lands that might be returned to Tāwhiao, as well as the nature of the authority he would be granted in remaining Kingitanga territories.

352. McLean to agent general, 16 February 1875, AJHR, 1875, G-4, p 3; doc A78, p 349.

353. Document A78, p 352.

354. Document A78, pp 362, 369.

355. ‘Pirongia, Waikato’, 18 October 1875, NZPD, vol 19, p 506; doc A78, p 365.

356. Document A78, pp 364–366.

**7.4.1.2 The Kaipiha hui, May 1876**

These matters were further discussed at the next hui, which took place in May 1876 at Kaipiha. The hui was once again facilitated by Te Wheoro.

During the hui, Tāwhiao continued to press for the Mangatāwhiri to be reinstated as the northern boundary of Kingitanga authority, including the return of land within that territory. McLean, however, insisted that it was impossible to return all Waikato lands, and that Tāwhiao's authority would not be acknowledged over the portions that the Government was prepared to return. McLean said that the Government would only acknowledge that Tāwhiao could 'continue to exercise authority over the affairs of your people in your own district'.<sup>357</sup> There was no precise description of the boundaries of this district, but McLean resisted any suggestions that Tāwhiao could exercise his authority north of the Pūniu.<sup>358</sup> McLean did, however, propose that land would be returned to the Kingitanga near Ngāruawāhia so that Tāwhiao could have a property near Te Wherowhero's resting place.<sup>359</sup>

McLean's proposals went some way to acknowledging the continued independence of the peoples living within the aukati. But there were also limits on what the Crown was prepared to offer. Tāwhiao would exercise authority over the tribes within the aukati, but in any returned Waikato lands he would be acknowledged no more or less than any other senior rangatira. Certainly, the Government had no intention of recognising him as King.

McLean also made several specific proposals that he considered would provide Tāwhiao with means to exercise authority over his district. As at the Waitomo hui, he said that Tāwhiao could play a role in maintaining law and order in conjunction with other chiefs, and that the Government would consult him on land matters and matters affecting the welfare of his people. But he also indicated that he was prepared to go further and provide Tāwhiao with a role in managing land matters. On one day of the hui, McLean suggested that the Government would merely 'consult' with Tāwhiao 'before purchasing or leasing lands within your own boundaries'; but on another day, he suggested that the Government would allow Tāwhiao to control the process of sale or leasing of land ('you will use your own discretion; if you object, the Government will not urge it upon you').<sup>360</sup> While these offers suggested that the Government was willing to offer Tāwhiao reasonably broad powers, the exact scope of the authority being offered, and how it would work in practice, was not yet precisely defined.

After the hui was completed, McLean advised the governor (now Lord George Normanby) that terms for a settlement were being finalised and would be concluded at another meeting soon.<sup>361</sup> It is unclear whether the Tāwhiao shared

357. 'Notes of meeting, May 1876', AJHR, 1876, G-4, p 2; doc A78, p 370.

358. Document A78, p 370.

359. 'Notes of meeting, May 1876', AJHR, 1876, G-4, pp 2-5; doc A78, p 371.

360. 'Notes of meeting, May 1876', AJHR, 1876, G-4, p 5; doc A78, p 372.

361. Telegram, McLean to Governor, 29 May 1876, ms 32/104 #1010875, McLean papers, ATL; document A78, p 373.

McLean's optimism. On the one hand, Tāwhiao appeared enthusiastic about the proposed offer of support for his authority within the remaining territories, as well as the offer of a house to be built at Kāwhia, which could be used as a council building and for hosting visiting dignitaries.<sup>362</sup> On the other hand, McLean did not offer to return all confiscated Waikato lands as Tāwhiao had sought, and at no point during this hui or the earlier one at Waitomo did Tāwhiao signal to McLean that he would be prepared to compromise. There was agreement for further discussions and negotiations through which some of these matters could be advanced.<sup>363</sup> The return of confiscated land, and the exact scope of the authority reserved for Tāwhiao, were both matters that would need further discussion.

The very fact of agreement itself was significant. The late Ngāti Maniapoto leader, Tui Adams, recalled that it was at these hui with McLean that a 'covenant' was established between the Kingitanga and the Crown. This covenant involved the Crown's recognition of Tāwhiao's authority within their remaining territories.<sup>364</sup> Wiki Henskes told us about an exchange of gifts that occurred between her tūpuna, Tāneora Wharauora (Ngāti Rākai and Ngāti Waikōrara hapū) and Donald McLean at that time (see sidebar). This suggests there was a degree of optimism that emerged amongst Ngāti Maniapoto, and the Kingitanga in general, from these meetings.

### A Gift Exchange

At our Kōrero Tuku Iho hui at Maniaora Marae, in Mōkau, Wiki Henskes told us about a gift exchange between her tūpuna, Tāneora Wharauora, and Donald McLean, and the way Tāneora is depicted on one of the poupou on her people's tūpuna whare:

He is depicted as wearing a tartan shawl, which I am wearing today, a black watch tartan which was received in exchange of gifts between the native minister, Sir Donald McLean and the Maniapoto people.

Today you may see a hat band of black watch tartan in the hats of men and in the shawls and skirts of women at gatherings. This is Maniapoto acknowledging and commemorating the exchange of gifts which took place at the meeting in February 1875. Tāwhiao extended an invitation to the Native Minister McLean to visit at Waitomo about halfway between the European boundary and the principal settlement of Te Kūiti.

362. Document A78, p 383.

363. Document A78, p 383.

364. Adams, Te Uira and Parsonson, 'Behold, A Kite Flies Towards You', p 102.

In the diary of McLean he mentioned such traits in common as the wearing of the kilt and the coronach is a Scottish dirge and the tangi, the chanted eulogies and the war customs.<sup>1</sup>

1. Transcript 4.1.5, p125 (Wiki Henskes, Ngā Kōrero Tuku Iho hui, Maniaroa marae, 17 May 2010).

Before the parties could turn to engage in further discussions, McLean faced a new round of political and public criticism, including an outcry about the Government's inability to bring to justice known criminals living openly within the aukati. He remained confident, but the further hui planned by Tāwhiao and McLean did not proceed, and McLean then fell ill. He resigned before the end of the year and died in early 1877.<sup>365</sup>

#### **7.4.1.3 Pollen meets with Kingitanga leaders, January 1877**

Premier Pollen took over the Native Affairs portfolio. By that time, Pollen had overseen a major change in New Zealand's governing arrangements. In 1876, the Abolition of the Provinces Act was passed, which effected the abolition of the provinces on 1 January 1877. Many of their functions were delegated to a range of new territorial authorities. Among them were county councils, which were established under the Counties Act 1876. Under the Act, New Zealand was divided into 63 counties. Historian Jane Luiten explained that each county council was empowered to levy general rates and raise loans for capital works, among other functions.<sup>366</sup>

The councils by and large did not come into effect in Te Rohe Pōtae. Luiten explained that the county councils for Raglan and Waipā declined to implement the full operation of the Act, resolving instead to operate as road boards; whereas the Kawhia and West Taupo counties were suspended – as Pollen told Parliament in October 1876 – because they were 'entirely Native districts'.<sup>367</sup> Of the counties that extended into Te Rohe Pōtae, most did not become operable until the early twentieth century. The exception was the Clifton County, which extended from northern Taranaki to the Mōkau River, which was created in 1885.<sup>368</sup> Thus, while the settler assembly established means by which local government could be administered in districts where Crown authority was in operation, it was essentially out of reach for Māori in Te Rohe Pōtae who sought the local administration of their affairs under the authority of the Kingitanga. (We return to these developments in section 7.4.5, and to the broader issue of local self-government in chapter 8.)

365. Document A78, pp369–373, 377–386.

366. Document A24 (Luiten), p9.

367. Pollen, 11 October 1876, NZPD, vol 23, p200; doc A24, p11.

368. Document A24, pp11–12.

Soon after McLean's passing, Manuhiri invited Pollen to meet with Kingitanga leaders, who were eager to know the status of McLean's proposals. Pollen accepted the invitation, later explaining he deliberately sought to keep the meeting discrete. Unlike the meetings with McLean, Tāwhiao did not attend and instead left it to his advisors – namely, Manuhiri and Tākerei Te Rau (Rewi and Wahanui both being absent) – to handle matters and report back to him and their people afterwards. Opening formalities were held at Kaihiha, inside the aukati, and then the gathering relocated to Alexandra, outside the aukati.<sup>369</sup>

Pollen did not share McLean's diplomacy or patience. Rather than assure the chiefs gathered that the terms McLean had offered still stood, he presented two proposals: first, Tāwhiao had to agree to maintain peace and uphold the law in cooperation with the Government; secondly, if the people wanted, the Government would set aside a district 'for Tawhiao and his people, within which he could administer the affairs of his people subject to the law'.<sup>370</sup>

The chiefs had little, if any, difficulty with the first proposal, which would have been entirely in keeping with Tāwhiao's by now well-established peace policy, and said they would consider the second. But they once again asked whether the Government would be prepared to return the confiscated Waikato lands. Pollen reportedly refused to discuss the matter, saying that the land was all in European hands and the Crown could not return it.<sup>371</sup> However, Pollen ventured, if Tāwhiao agreed to his proposals, the Government would reward him with a 'piece' of Waikato land.<sup>372</sup> McLean had not defined the areas he was prepared to return, except to rule out returning the entire confiscated area. While we cannot be sure, on the face of it Pollen appears to have been offering less.

The Kingitanga leaders also raised concerns with road construction at the boundaries of the aukati, and with lands beyond the aukati that had been pledged to the King which they wished to protect, particularly from the operations of the Native Land Court. Pollen was unmoved, suggesting that those who had disposed of their lands must have changed their mind about their pledge to Tāwhiao. He said that Tāwhiao could make his own decisions about lands within his own district, but in all other areas the court's authority would prevail. At issue, still, was the nature and extent of Tāwhiao's authority – unchallenged within the aukati; unwelcome beyond it.<sup>373</sup>

#### **7.4.1.4 Pollen meets with Rewi and other leaders, February–March 1877**

Having met with Tāwhiao's advisors, Pollen then met with Rewi in February and March 1877. During these hui, Rewi defined part of the boundary of Te Rohe Pōtae and set out demands for Māori authority within that boundary.

369. Document A78, pp 388–394.

370. 'Dr Pollen's interview with the Kingites', *New Zealand Herald*, 1 February 1877, pp 3; doc A78, p 390.

371. Document A78, p 391.

372. 'Dr Pollen's interview', *New Zealand Herald*, 1 February 1877, pp 3; doc A78, p 392.

373. Document A78, p 393.

As with McLean before him, Pollen hoped to encourage Rewi to act independently of Tāwhiao, an idea that had been bolstered by Rewi's absence from the hui at Waitomo with McLean. However, any suggestion that there was a growing rift between Rewi and other Kīngitanga (specifically Waikato) leaders was more the reflection of the wishful thinking of officials. As it turned out, Pollen's meetings with Rewi failed to confirm a growing division between Ngāti Maniapoto and Waikato. Rather, it was his opportunity to raise issues of local importance directly with the premier, particularly in areas where Crown activities were beginning to encroach on Te Rohe Pōtae Māori lands. Where he did venture into broader issues, he sought to clarify the Crown's approach on Tāwhiao's behalf but did not seek to conduct negotiations himself.

Rewi did not meet with Pollen alone. Rather, at the February 1877 hui he was among a party of Ngāti Maniapoto, Ngāti Raukawa, and Ngāti Hauā leaders who met Pollen at Alexandra.<sup>374</sup> Ngāti Raukawa leaders also featured prominently at the March meeting, which took place at the kāinga of Pohipi Tukairangi at Nukuhau (on the northern side of Lake Taupō by the Waikato River).<sup>375</sup> On both occasions, the leaders who spoke brought to Pollen's attention three main areas of concern: the sale of land, made possible – they argued – because of the operations of the Native Land Court; the use of advance payments as a land purchase method; and the ongoing issue of killings, or at least serious violence, when tensions near the aukati borders were allowed to escalate (such as those that had developed over work on the Taupō–Cambridge road). Their approach to the negotiations suggested both allegiance to the Kīngitanga and an expectation that local chiefly authority would be recognised.

Rewi outlined his concerns during the February hui. In Rewi's assessment, the native land laws allowed Māori to sell not only their own land, but also land belonging to others. The focus of Rewi's concerns was on lands on the north-eastern border of the aukati, north of the Pūniu River but outside the confiscated territory. In his view, the Native Land Court allowed people with lesser interests or no interests to claim their land. Once title was granted, those named could then arrange leases or sales without the knowledge, let alone consent, of the rightful owners or even the chiefs. Trouble ensued when Pākehā settlers – lessees and purchasers – attempted to occupy land for which the interests of Kīngitanga peoples had not been accounted.<sup>376</sup> Rewi wanted tensions at the northern and eastern borders peacefully resolved by negotiation between Pollen and the responsible chiefs of the respective areas.<sup>377</sup> Referring to lands in the Patetere district, Rewi said he wanted the Crown to stop paying advances there. He was also concerned that work on the Taupō–Cambridge road was extending into his lands.<sup>378</sup>

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374. *Te Waka Maori o Niu Tirani*, 27 March 1877, p 79.

375. 'The Native Meeting at Taupō', *Star*, 27 March 1877, p 3.

376. Document A78, pp 395–400.

377. Document A78, pp 398–404.

378. Document A78, p 404.

### Examples Used by Rewi to Illustrate Problems with the Native Land Laws

During his meetings with Pollen, Rewi drew on a range of examples to illustrate his views on the problems with the native land laws. One such example was the situation arising in respect of Ngamoko, near Maungatautari, which he said had been sold by people with no rightful claim to it. Another example concerned the case of the Otautahanga lands, which had been leased to the Tole brothers, who were now trying to occupy them – against the wishes of the Kīngitanga peoples to whom he said the land rightly belonged – increasing the risk for violence.

In 1873, Rewi had successfully seen that the Otautahanga case was withdrawn from the Native Land Court and thought he had reached an agreement with William Mair that the land would be left alone. However, he had since found out about the lease to the Toles. He likened the situation to a storekeeper locking up his shop but being robbed nonetheless during his absence because the thief had the temerity to enter by the chimney. 'Otautahanga was stolen in that way from me', he told Pollen. His point was that just because Ngāti Maniapoto and other Kīngitanga supporters refused to attend the court did not mean they relinquished their rights in lands outside the aukati.<sup>1</sup>

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1. Document A78, pp 395–396, 399; *Te Waka Maori o Niu Tirani*, 27 March 1877, p 82 (doc A78, p 400).

Although he left larger issues for Tāwhiao to settle, Rewi also queried what Pollen had meant when he proposed at Alexandra that Tāwhiao would be required to cooperate on matters of law once his territory and authority was confirmed.<sup>379</sup> Rewi said he had spoken with Tāwhiao and others about the matter, and he now sought further clarification. He was 'vexed' by the problem of Te Rohe Pōtae Māori who left the territory and stole from Europeans. He suggested that when European authorities caught such offenders, a message should be sent to Rewi or the offenders' relatives, so that they can 'at once make restitution' and pay a 'heavy fine'. In his view, 'this would be greater punishment than sending them to gaol, which does them no good'. Rewi said he had already recommended this approach to Tāwhiao, and now wanted to know the Government's opinion.<sup>380</sup>

These concerns were driven by one of the foremost issues facing the Kīngitanga: Crown recognition of the aukati, including agreed definition of its boundary. Rewi could see how the business of colonisation – the Native Land Court, private and Crown acquisition of Māori land, and public works – threatened the eastern boundary. He did not want anyone to 'disturb' his 'line', an area which

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379. Document A78, p 405.

380. *Te Waka Maori o Niu Tirani*, 17 April 1877, p 100; doc A110(a) (Ngāti Maniapoto researchers document bank), p 17; doc A78, p 405.



he reportedly indicated by making an oval shape on the table in front of him.<sup>381</sup> He described his 'line' as running from Mangauika to Tokanui to Taupō and Ruahine near Tongariro. He included Waipā, Mangakaretu to Horohoro, and Niho o te Kiore (a Raukawa pā near Atiamuri). According to Ms Marr, it is not clear 'whether Rewi was encircling his own parts of the boundary or the whole King territory' – the locations he pointed out were in the north-east and east of the remaining Kingitanga lands. Nonetheless, Ms Marr has asserted, Rewi's descriptions provided 'one of the first documentary sources setting out what had become the external boundary', the aukati, marking the territory now known as Te Rohe Pōtae.<sup>382</sup>

The existence of this line did not mean, in Rewi's eyes, that he and his people did not have interests beyond it – he had interests in lands north of the Pūniu.<sup>383</sup> Rather, he sought to prevent the activities that stemmed from the Native Land Court, and from settlement activities such as the Crown's land purchasing and road-building, from becoming involved in the lands within it. To this extent, by drawing a line, he seemed to be acknowledging that the way in which the aukati was enforced in the eastern area – as zones – might have to be redrawn as a defined boundary, which would contain those specific, contiguous lands which had yet to be affected. This would leave the Crown with a clearer understanding of the territory in which the Kingitanga authority would have to be recognised. How the Kingitanga would be recognised in the territory was up to Tāwhiao and Pollen to negotiate.<sup>384</sup>

In response to Rewi's concerns about land issues, Pollen said that the Government had no intention of purchasing any more land; it would only complete purchases already begun.<sup>385</sup> And he said that the Taupō–Cambridge road would only go as far as the Crown-granted lands in the area would allow.<sup>386</sup> Pollen also spent some time urging the chiefs to 'have recourse to the Courts', which he said was the only way to ensure that everyone's property rights were given their due protection, and to have wrongs remedied.<sup>387</sup> He said that Rewi could take action in the Supreme Court to try and recover some of his lands.<sup>388</sup> In response to this, Rewi said he would continue to refuse to appear before any court until the agreements reached between Tāwhiao and McLean were settled.<sup>389</sup>

On the question of cooperating over the treatment of Māori suspected of crimes, Pollen said that magistrates already had the discretion to fine rather than

381. *Te Waka Maori o Niu Tirani*, 17 April 1877, p 98; doc A110(a), p 15; doc A78, p 404.

382. Document A78, p 404.

383. Rewi was of Ngāti Paretekawa which was based on both sides of the Pūniu, but particularly at Ōrākau, Kihikihi, Rangiaowhia, and at the fighting pā Mangatoatoa and Haereawatea: doc A110, pp 227, 230.

384. Document A78, pp 403–404.

385. Document A78, p 398.

386. Document A78, p 404.

387. *Te Waka Maori o Niu Tirani*, 27 March 1877, p 81; doc A78, p 399.

388. Document A78, p 400.

389. Document A78, p 401.

imprison Māori, although that discretion was no longer widely exercised, and the current trend was to send Māori convicted of theft to prison. Nonetheless, Pollen's point was that Māori were being treated more leniently than Pākehā, because Māori could be fined *or* imprisoned, whereas Pākehā could only be imprisoned. He said the option of imposing fines had been tried and found wanting because theft continued; perhaps if the incidence of theft by Māori decreased, the magistrates would return to fines. Pollen did not offer to consider the matter further, or to amend legislation in a way that encouraged the magistrates to use their discretion more often.<sup>390</sup> While Rewi sought to find ways whereby the Crown and the Kingitanga could cooperate in handling specific instances of crime, Pollen put colonial law beyond the reach of negotiations. It seemed that, if he agreed to cooperate under the law, as Pollen's proposal asked, Tāwhiao would in fact be required to submit to British law.

The concerns raised by Rewi regarding lands at the eastern part of the aukati boundary meant that their discussion would continue beyond the February hui. Rewi particularly objected to recent Crown attempts to deal with the lands at Tokoroa, Te Niho o Te Kiore and Te Taetewa, which he considered had been pledged to the King. He wanted Pollen to ensure that the lands in that eastern area were left alone for now, suggesting that he would think about whether he might refer some to 'your law'.<sup>391</sup> In the meantime, he told Pollen: 'Kaua e tukua kia whakararua ahau i runga i tenei whenua e puritia nei a ahau. (Do not allow my possession of this land to be disturbed.)'<sup>392</sup> He wanted to discuss the eastern lands further, with all interested parties present, and proposed a meeting to be held after he finished his harvest at a location closer to the lands in question.<sup>393</sup>

That hui occurred in March 1877, at Nukuhau near Taupō, specifically to make attendance easier for local chiefs, who took the opportunity to further discuss questions surrounding the eastern lands.<sup>394</sup> Arising from these discussions, the settler press appeared hopeful that Ngāti Raukawa would soon become independent from the Kingitanga, because they appeared to be willing to consider using the Native Land Court for lands east of the Waikato River, and to agree to more roads. Ms Marr noted that Raukawa was effectively split at the river, with those in the west continuing to support the King while those in the east had become more willing to listen to the Government. Rewi asked that Ngāti Raukawa refrain from selling any lands in which he had interests, at least until they had reached an agreement with the Crown over the extent of the Kingitanga territory.<sup>395</sup> In addressing this issue, Rewi confirmed that the eastern boundary of the aukati in the Taupō area ran (in Ms Marr's words) 'from Horohoro to Atiamuri and then to Whangamata on Lake Taupō'.<sup>396</sup>

390. Document A78, p 406.

391. *Te Waka Maori o Niu Tirani*, 17 April 1877, p 98; doc A110(a), p 15; doc A78, p 404.

392. *Te Waka Maori o Niu Tirani*, 17 April 1877, p 98; doc A110(a), p 15; doc A110, p 621.

393. Document A78, pp 404–405.

394. Document A78, p 409.

395. Document A78, pp 410–412.

396. Document A78, p 410.

Pollen acknowledged that the aukati was still in place, and admitted that in practice the Government respected it, largely 'for the sake of peace and quietness'. But, in his opinion, it would be better 'blotted out', because it was 'the cause of strife'. And while he insisted the Government would not touch the aukati, he also urged those gathered to think instead in terms of ancestral boundaries, which could 'easily be proved' before the Native Land Court and settled by custom and evidence.<sup>397</sup>

At both the February and March hui, Pollen returned to his refrain of encouraging Te Rohe Pōtae Māori to submit (themselves and their land) to the colonial justice system. Meanwhile, the chiefs continued to hold to the aukati and the exercise of their authority within it, requiring proper Crown recognition of it before they would consider whether or to what extent they might make use of the legal system. This tension had persisted since wartime and would continue, even as Crown negotiators changed.

Whatever had been achieved at the hui, Pollen did little to progress his attempt to reach a settlement, and further planned meetings did not proceed. And, though prominent, Te Rohe Pōtae was not the only challenge facing the Government. For a range of reasons, political support for Pollen's Government continued to weaken in the months leading up to the election in October 1877.

#### 7.4.2 Negotiations with Sheehan and Grey

Following the 1877 election, a new Ministry was formed; former governor Sir George Grey became the new premier. Among the so-called radicals in his cabinet were Robert Stout and John Ballance, who later (in the mid-1880s) took on crucial roles in negotiating with Te Rohe Pōtae Māori. However, it was John Sheehan who was appointed Native Minister (and Minister of Justice) in the new Government.<sup>398</sup>

Both Grey and Sheehan were known by Māori of Te Rohe Pōtae. For better or ill, Grey had long-standing ties which dated back to his first term as governor, including with some of the Kīngitanga chiefs. Sheehan had built his reputation among Māori working as a lawyer for the repudiation movement through the 1870s, and earlier as a junior lawyer in the long-running Native Land Court investigation into Ōrākei.

Sheehan and Grey presented themselves as ideally placed to conclude a durable settlement with Te Rohe Pōtae leaders. On winning at the polls, they publicised messages of congratulations received from various Kīngitanga chiefs, including Manuhiri, and before the election results were even finalised they telegraphed Rewi to say that they wished to meet with him.<sup>399</sup> But they also had to win the confidence of those settlers who had lost patience with McLean's attempts at reaching a settlement, which they regarded as too soft. Their policy was to rapidly progress towards a resolution with the Kīngitanga and the abolition of the aukati, without provoking another war.

397. 'Great Native Meeting', *New Zealand Times*, 26 March 1877, p 2; doc A78, p 410.

398. Document A78, pp 414, 770, 1057, 1068–1069, 1293; doc A41, pp 149–150, 165–175, 177–179.

399. Document A78, p 414.

Underlying this objective was the desire to open the district to allow settlement and the construction of the main trunk railway, for which they developed policies as their administration progressed. This included the survey of the Waimate Plains to the south of Te Rohe Pōtae in Taranaki, which very quickly brought into focus the passive resistance movement of Te Whiti o Rongomai and Tohu Kakahi at Parihaka. The Government's policies in this part of the district raised questions for the Kīngitanga leadership, particularly Rewi, as he increasingly sought to secure the borders to the south and the east against the potential incursion into the territory he had identified in discussion with Sheehan in 1877. At the same time, Rewi looked to manage relationships with rangatira who held authority in their local communities, such as Wetere Te Rerenga at Mōkau, who increasingly looked to engage in diversified economic activities in respect of their lands. And Mōkau was one area that had been suggested as a possible route for the railway line to run.<sup>400</sup>

Although settlers expected Grey to do a better job than McLean had done, Grey did have to combat significant opposition, much of it led by Government agent William Mair. In a move designed to put some distance between Grey and McLean's supporters, the long-serving Mair was dismissed from his post and replaced with William Grace. Grace was known locally, largely because of his marriage to Ngāti Maniapoto woman Makereti Hinewai.<sup>401</sup> He would later become entangled in events at Mōkau which saw Joshua Jones turn a private agreement to mine coal into a long-term, Government-backed lease of Māori land (see chapter 11, section 11.6). Mair, meanwhile, remained in the Alexandra area, making known his opposition to Grey and Sheehan's approach to negotiations with the Kīngitanga, often with the support of local Pākehā settlers and land speculators.<sup>402</sup> According to historian Russell Stone, Mair was duly rewarded when he returned to government employment under the Hall administration, which defeated Grey's Government at the polls in 1879.<sup>403</sup>

### William Henry Grace (1848–1913)

The eldest son of the Reverend Thomas Grace, William Henry Grace was 16 when the family left Pūkawa. William claimed that he was one of the first licensed interpreters in the colony. In October 1877, he joined the Native Department in Wellington. He was employed first as an additional interpreter to the House of Representatives, and then as private secretary and interpreter to Native Minister Sheehan until the end of August 1878; during that period, he was present at a

400. Document A28, p 202.

401. Document A78, p 415; transcript 4.1.14, p 325 (Wayne Taitoko, hearing week 9, Parawera marae, 10 December 2013).

402. Document A78, p 415.

403. RCJ Stone, 'The Maori Lands Question and the Fall of the Grey Government, 1879', in *New Zealand Journal of History*, vol 1, no 1 (April 1967), p 55; doc A78, pp 414–415.

number of meetings with Rewi Maniapoto. William was appointed native agent for the Upper Waikato from 1878 until his contract was terminated at the end of 1879. At that time, he became a private agent for land speculators while also advising some Ngāti Maniapoto leaders about land and court processes. He had settled at Kihikihi by this time and remained there for the rest of his life.

William first married Mary Matuku (or Matahua) with whom he had one son. This marriage appears to have been short-lived. He subsequently married Makareti Te Hinewai, said to be a niece of Rewi Maniapoto. In 1883, he was involved in the 1 December 1883 meeting between Bryce and Te Rohe Pōtae leaders that led to an agreement for the survey of the external boundary, at which William urged them to place their lands before the court or fall victim to counter-claims. From the beginning of 1886, William was again employed by the Native Department as a land purchase officer, a position he held until the end of March 1888. During this period, he negotiated for the purchase of Taupōnuiātia lands. He was also involved in negotiations for the acquisition of the central North Island mountains. He was later re-employed by the Native Department as an interpreter.<sup>1</sup>

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1. Document A78, pp 499, 567, 684, 706, 889, 943, 954; doc A28, pp 235, 243, 260–261, 284–285, 395.

Expecting that Grey would see the negotiations through to an agreeable resolution, Rewi was willing to talk. But following the line he had established with McLean and Pollen, he wanted to also maintain regard for Tāwhiao and to negotiate over local and tribal matters only after government representatives spoke first and foremost with the King. Tāwhiao registered his interest in negotiating when he began preparations for a hui with Grey to be held at Hikurangi in November 1877, just a month after the election.<sup>404</sup>

#### **7.4.2.1 The hui at Whakairoiro, February 1878**

For a variety of reasons, that hui did not proceed as planned. Instead, both Grey and Sheehan, accompanied by several officials, attended a hui at Whakairoiro, near Te Kōpua, in February 1878. The hui was the first meeting of Kīngitanga chiefs and Grey since the wars, and it included kawē mate (a mourning ceremony subsequent to a tangihanga) for the rangatira Tākerei Te Rau.<sup>405</sup> Major Te Wheoro facilitated and more than 2,000 people attended.<sup>406</sup>

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404. Document A78, p 416.

405. Tākerei Te Rau was offered the role of King but proposed Te Wherowhero, and advised both Te Wherowhero and Tāwhiao. Though known more as a mediator than a warrior, he was among those who defended Rangiriri Pa. His daughter Te Paea was shot there and subsequently died from her wounds. For his obituary, see *Waikato Times*, 26 January 1878, p 2.

406. Document A78, pp 415–417.

Concurrent with the main hui, Grey also had several private conversations with Tāwhiao and senior Kingitanga chiefs. Detailed terms of settlement were not discussed, but the parties agreed to talk. Grey referred to the analogy of planting a tree of peace that he had used when he was governor, and which Rewi revived at the hui at Te Pahiko in 1869.<sup>407</sup> He said that the Government and those gathered would water and grow the tree they had now planted together. Rewi welcomed Grey's goal of improved relations and the idea of sharing responsibility for a tree of peace – which he saw as confirmation of the Kingitanga's peace policy. Rewi said that Grey would need to meet with the people four times to ensure the tree bore fruit – once to plant the tree, once to promote its growth, and twice more so that the tree would flourish.<sup>408</sup>

Immediately after the hui at Whakairoiro concluded, Sheehan met with Rewi. Rewi raised the same local and border issues that he had earlier discussed with Pollen, including lands at Horahora, Otautahanga, and Patetere.<sup>409</sup>

But in a striking variation, Grey and Sheehan also encouraged Wetere Te Rerenga to meet and discuss the issues relating to Mōkau. It was quite a change in attitude for Grey, who had previously criticised McLean's tolerance of wanted fugitives during earlier negotiations. However, Grey had established strong relationships with Wetere's father, Tākerei Waitara, in his first term as governor in the late 1840s (see section 5.3). Remarkably, Wetere – who was still regarded as responsible for attacking Pukearuhe – left the security of the aukati to meet Grey in the settler-dominated town of New Plymouth.

Grey may also have sought out a meeting with Wetere in the hope of resolving tensions that had arisen at Mōkau partly because of increasing Māori engagement with settlers. Wetere had been in contact with New Plymouth-based settlers John Shore and his son George as early as 1876 about opening a store at Mōkau.<sup>410</sup> That year the Shores and recent arrivals from Australia, Robert McMillan and Joshua Jones, visited Mōkau several times. They visited, at the invitation of numerous Mōkau chiefs, to engage in talks about opening the area up to European investment, namely through mining and forestry. In July 1877, the Shore and McMillan families established a settlement on the southern banks of the Mōkau heads.<sup>411</sup> By August, McMillan numbered the settlement at 19.<sup>412</sup> However, the settlement failed to grow, and infighting – including an alleged attempt by McMillan to kill Jones – tore it apart in 1879.<sup>413</sup>

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407. *Te Karere/Maori Messenger*, vol 1, no18, 16 December 1861; Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 241; 'Report of the Native Minister's Interview with the Leading Waikato Chiefs', AJHR, 1870, A-12, p 5; 'Waikato and Waitara Native Meetings', AJHR, 1878, G-3, p 4; doc A78, pp 290–291, 305, 417.

408. Document A78, p 417.

409. Document A78, pp 417–418.

410. Document A28, p 192.

411. Document A28, pp 194–195.

412. Document A28, p 195.

413. Document A28, p 219.

There were definite limits to this engagement: Europeans could only enter the region with Māori permission and were refused entry if they were considered threatening.<sup>414</sup> The aukati, in other words, remained in place. In August 1876, Weterere met with Tāwhiao, proposing that settlers be allowed to visit (but not occupy or take up land).<sup>415</sup> The settlement established by the Shore and McMillan families survived as long as it did in large part to Weterere's protection.

But it was perhaps foreshortened by events arising from a supposed lease agreement, also in August 1876, between the Shores, McMillan, and Jones, and four Mōkau chiefs, Epiha Karoro, Takirau Watihī, Te Oro, and Taiaroa, relating to the land on the southern bank – which became the subject of ongoing contention spearheaded by Jones, and ultimately resulted in the alienation of the land (see chapter 11). Thomas considered that the chiefs' motivation behind signing the deed was a desire to seek positive relationships with settlers.<sup>416</sup> Weterere took no part in the lease, on the grounds of his opposition to land transactions.

The chiefs who signed, however, disputed Jones' interpretation of both its duration and the amount of land in question. Thomas considers that the supposed lease was intended by the lessees as 'a springboard towards purchase'.<sup>417</sup> But to secure the lease, Jones required a court hearing and pressured local chiefs into applying for one. By July 1877, both Epiha and Pollen had made applications for a court hearing, though it is not clear what exactly motivated them to do so and to what extent Jones was responsible.<sup>418</sup>

These events caused inevitable tensions. In September 1876, Rewi had gone to investigate reports of the lease arrangement.<sup>419</sup> Little appears to have emerged from his investigations immediately. But in July 1877, following news that a court application had been made, Tāwhiao reportedly warned that if the Mōkau settlers 'will not move off at once they will be forcibly expelled by the Ngatimaniapotos, their goods taken, and their houses burned'.<sup>420</sup> The Government issued a warning to the settlers about the possibility of an attack, to which Weterere angrily replied (writing to the Native Minister) that only he, not the Government or anyone else, had the power to 'settle matters regarding the Europeans being at Mōkau' and that the Government should consult only with him regarding the settlers.<sup>421</sup>

The Government, however, decided that it was best not to allow the court to go ahead. Pollen rejected any thought that the court should sit in lands inside the aukati without Rewi's approval, a decision that Sheehan enforced when Jones wrote to the Government in November 1877 suggesting that he had received the approval from Mōkau Māori.<sup>422</sup>

414. Document A28, p 223.

415. 'Rumoured Visit of Tawhiao', *Taranaki Herald*, 30 August 1876, p 2; doc A28, p 191.

416. Document A28, p 197.

417. Document A28, p 197.

418. Document A28, pp 199–200.

419. Document A28, p 199.

420. *Taranaki Herald*, 25 July 1877, p 2; doc A28, p 196.

421. *Taranaki Herald*, 28 Aug 1877, p 2; doc A28, p 196.

422. Document A28, pp 200, 203.

In meeting with Grey, Wetere was accompanied by other Mōkau chiefs, including those who had signed the lease with the settlers. Wetere explained how Rewi had confirmed in writing that local management at Mōkau rested with the chief Epiha Karoro, so long as no land transactions and Native Land Court dealings occurred. These required the consent of Rewi and the wider leadership.<sup>423</sup> Rewi had also given his permission to open the Mōkau River for ‘navigation.’<sup>424</sup> This was because Wetere and Epiha had been insistent on re-establishing the coastal shipping that had brought them some success prior to the wars (see chapter 5). In that vein, Wetere told Grey he could talk about opening the Mōkau River for trading purposes, but no lands could be involved, and any trading would have to be managed closely under Wetere’s authority.<sup>425</sup> Grey inquired as to whether a court hearing was acceptable, but Epiha told him that Rewi had instructed to ‘leave all matters for the present’.<sup>426</sup>

#### 7.4.2.2 *The hui at Hikurangi, May 1878*

The hui at Whakairoiro was followed by another hui at Hikurangi, at which Grey offered specific terms. Initially planned for March 1878, the hui was delayed until May. It was the first hui to coincide with the Kīngitanga Maehe, something McLean had made sure to avoid.

The Hikurangi hui was more than double the size of the Whakairoiro hui, with an estimated 5,000 in attendance. Rewi did not attend, which no doubt fuelled rumours among settlers of a falling out between him and Tāwhiao. However, he was reportedly willing to attend at short notice if he was called on to do so, and he had requested his usual separate meeting with Grey after the main hui concluded. Further, Ngāti Maniapoto was well represented at the hui, and Tāwhiao specifically acknowledged the unity between Waikato and Ngāti Maniapoto when he addressed those gathered. Tāwhiao also referred to the guiding Kīngitanga principles of law, love and God.<sup>427</sup>

After the full hui, and to advance discussions, Grey asked to meet separately with Tāwhiao and some of the other chiefs. During this discussion, Tāwhiao told Grey that his authority extended to Mercer and the Mangatāwhiri Creek; the Crown’s authority began on the other side of that boundary. Reporters and officials at the time, and Grey himself, assumed Tāwhiao to be insisting on the return of all the confiscated Waikato lands, although he reportedly referred to authority and management rather than ownership.<sup>428</sup>

In response, Grey presented Tāwhiao with a set of specific terms, which are set out in the sidebar below. With respect to Tāwhiao’s authority, Grey said that

423. ‘Visit of Sir George Grey’, *Taranaki Herald*, 12 Feb 1878, p 2; doc A28, p 204.

424. Document A28, p 203.

425. Document A78, pp 417–419.

426. Document A28, p 205.

427. Document A78, pp 419–421.

428. Document A78, p 421.



Tāwhiao would be the administrator within his district. In addition, Grey made a range of other offers, including extensive returns of confiscated lands and funding for the administration of the district. Ms Marr summarised the whole offer as follows:

- ▶ Tawhiao would manage affairs ('stand in your authority') in his district;
- ▶ The government would assist Tawhiao and his chiefs to administer affairs in his district so matters could be conducted to ensure peace and goodwill between the races;
- ▶ It would be over to Tawhiao to say whether leases or sales would be allowed in his district;
- ▶ The government would give Tawhiao an allowance of £500 per year as a lump sum for the administration of his district to distribute between the chiefs who assisted his management;
- ▶ The government would give Tawhiao 500 acres near Ngaruawahia near his father's grave;
- ▶ The government would build a house for Tawhiao at Kawhia for holding his council meetings;
- ▶ The government would return lands it had not already disposed of to Europeans, west of the Waipa and Waikato rivers;
- ▶ The government would give selected town acres in each of the township settlements on the Waipa and Waikato rivers in trust to Tawhiao, the money to be appropriated in such a manner as he chose ('for the use of all the people');
- ▶ All roads would be decided between Tawhiao and the government;
- ▶ All surveys would be at the direction of Tawhiao;
- ▶ If the proposals were accepted, the government would assist so the people could occupy the lands returned and live 'comfortably and prosperously' in the homes that would be made.<sup>429</sup>

### Grey's May 1878 Proposals to Tāwhiao

The following proposals were made by Sir George Grey to Tawhiao, at a meeting at Hikurangi on 10 May, 1878:

1. E tu na koe i to mana, ka apitiria atu e te Kawanatanga ko koe ano hei Kai-whakahaere mo to takiwa, ka awhinatia koe e te Kawanatanga me nga Rangatira o to takiwa hei whakahaere, kia tau ai te pai me te rangimarie ki nga iwi e rua i te motu nei, ka titiro tonu te Kawanatanga ki a koe, e kore e titiro ki tetehi taha, ki tetehi taha, mau ano te kupu kia reti ka reti, kia hoko ka hoko i roto o to takiwa. Ka hoatu e te Kawanatanga he oranga mou me nga Rangatira ki te whaka-haere i to takiwa. Ka hoatu e te Kawanatanga e rima rau pauna

429. Document A78, pp 421–422.

maua ma Tawhiao i te tau, ko nga moni mo te takiwa katoa ka tukua nuitia ki a ia ki a Tawhiao mana te tikanga mo nga rangatira o tona Takiwa.

2. Ka hoatu e te Kawanatanga ki a rima rau eka mou i te takiwa o Ngaruawahia kia tutata ki te Urupa o to Matua. Ma te Kawanatanga e hanga he whare mou ki Kawhia mo to Runanga.
  3. Ko nga wahi i toe i te Kawanatanga te hoko ki te Pakeha i te taha Hauauru o Waikato o Waipa, ko nga wahi era e hoki ki a Tawhiao.
  4. A i tua atu o ena, i te mea ka nui toku hiahia kia whiwhi koutou i te rawa, e mea ana aha me whakaatu e te Kawanatanga etahi wahi i roto o nga taone katoa e tu ana i Waikato i Waipa, me hoatu ki a koe tiaki ai mo te iwi katoa, ko nga moni e puta mai ana, mau ano e whakahaere ki tau ritenga e pai ai. E mea ana hoki au kia hohoro koe te whiwhi i te rawa, no te mea ka hohoro tonu te tupu kia nui te pai o enei wahi.
  5. Mo te taha ki nga rori, ko taku hiahia mau maku e whakahaere te ritenga o ena, kaua te tangata e pokanoa ki te hanga rori i te mea kaore ano kia oti i a koe i te Kawanatanga nga ritenga mo te rori.
  6. Mo nga Ruri, mau ano te kupu kia ruritia ka ruritia.
  7. Kua maharatia e au enei mea, a ko taku hiahia nui, kia kite atu au kua noho pai koutou ki runga i nga whenua ka whakaaturia ki a koe, ki te whakaaetia e koe aku e whakaatu nei, ka mahi tonu au kia wawe te noho pai ki runga i nga wahi mo koutou i roto o aua takiwa ka whakahokia atu nei ki a koutou, a kaore ano kia tukua ki te Pakeha. Mo te taha ki etahi mea, ara parau, rakaraka me etahi atu mea e taea ai te whenua te mahi kia pai, ma te Kawanatanga tetahi ritenga mo tena, kia noho pai ai kia noho ora ai koutou ki runga i o koutou kainga ka hanga na. Heoi ano te mea e taea e au to whakarite atu ki a koe. Mo nga wahi i nga taone, ma maua tonu ko Tawhiao e titiro nga mapi, e kowhiti nga wahi e riro atu mo koutou.
1. You stand in your authority, to which the Government will add that you are to be the Administrator within your district. The Government will assist you and the Chiefs of your district to so administer affairs that peace and quietness will alight on the two races of this Island. The Government will always look to you; they will not look to one side or to the other. It is for you to say lease (land), and it will be leased, sell, and sales will take place within your district. The Government will give you and your Chiefs an allowance for the administration of your district. The Government will give you, Tawhiao, five hundred pounds a year. The moneys to be expended within the district will be given as a whole to him (Tawhiao), for him to distribute as he thinks proper to the Chiefs of his district.
  2. The Government will give you five hundred acres of land in the District of Ngaruawahia, near your father's grave. The Government will build you a house at Kawhia for you to hold your meetings in.

3. The portions of land remaining to the Government which have not yet been sold to Europeans, situate on the western side of the Waikato and Waipa—those are the portions which will be returned to Tawhiao.
4. In addition to this, inasmuch as I am very desirous that you should become wealthy, I consider that the Government should set apart certain town sections within all the townships situate on the Waikato and Waipa, and give them to you in trust for the people, the money arising therefrom to be dealt with as you shall think fit, for I wish that you should speedily become rich, because these are the places which are rapidly increasing in value.
5. With reference to roads, it is my wish that you and I should carry out the arrangements respecting them, and that no person should presume to make roads before it has been settled by you and the Government.
6. With reference to surveys, it is for you to say that surveys are to be made, and surveys will be made.
7. I have thought over these matters, and it is my earnest wish that I may see you living comfortably on the lands which will be set apart for you; should you consent to the proposals which I now make to you, I will give it my special attention, so that you may soon occupy the lands in those places which will now be given back to you, and which have not yet been disposed of to the Europeans. With respect to other matters, that is ploughs, harrows, and other implements, requisite for the proper cultivation of the soil, the Government will make some arrangement for that, so that you may live comfortably and prosperously in the homes that will then be made. These are all the proposals that I am able to make to you. With reference to the pieces in the townships, Tawhiao and yourselves must examine the maps, and select the portions for you.<sup>1</sup>

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1. 'Waikato and Waitara Native Meetings', AJHR, 1878, C-3, p 71.

To the surprise of many Pākehā, Grey's proposals were almost the same as those McLean had offered in 1875. In fact, Grey later revealed he had always intended to make the same offer that McLean had made. The one variation was the offer of additional allotments in the towns on the Waipā and Waikato Rivers, but what Grey meant exactly was unclear. The Crown had two categories of land it could possibly award Tāwhiao: confiscated lands not yet disposed of; and confiscated lands which had been disposed of but which McLean had repurchased for the specific purpose of returning them to Tāwhiao.<sup>430</sup> In fact, Sheehan later admitted in the House that the Government had no intention of returning any of the second category of land, and he was silent on which of the first category he was

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430. Document A78, pp 421–422.

willing to return.<sup>431</sup> Nonetheless, the Kingitanga appeared to receive the offer with some enthusiasm. Tāwhiao was eager to settle the issues as soon as possible and set about consulting with the various Kingitanga chiefs.<sup>432</sup>

The day after the Hikurangi hui, Grey and Sheehan met with Rewi and eight or so 'principal chiefs' at Pūniu where Rewi now lived.<sup>433</sup> Though Rewi had not attended, he was well informed about proceedings, and was pleased Grey and Tāwhiao had reached an agreement. He explained to Grey that he would do his part to ensure ratification by visiting Kingitanga communities throughout the rohe, including Mōkau according to some reports. Rewi also indicated his intention to visit Waitara, explaining that several chiefs had asked him to hold a peace-making hui there.<sup>434</sup>

Following the hui, Sheehan told Parliament that the Government had earned a 'good reputation' among Te Rohe Pōtae Māori. Ratification of Grey's proposals was imminent and, Sheehan said, such agreement was as good as submission to colonial authority.<sup>435</sup>

#### **7.4.2.3 The hui at Waitara, June 1878**

Rewi's Waitara hui took place in June 1878. Tāwhiao did not attend. He understood his business to have been dealt with at Hikurangi, whereas the Waitara hui was Rewi's business. Rewi had a long-standing goal to conduct a formal peace-making ceremony at Waitara, where the Taranaki war had first begun. Rewi saw the need for displays of peace-making that went beyond what had been achieved at Te Pahiko in 1869, and had previously embarked on peace-making missions outside of Te Rohe Pōtae (see section 7.3.3). Around the time of the Waitara hui, Tāwhiao also began spending time at Kāwhia and Raglan, partly to foster goodwill among settlers where he expected to have land returned and his authority restored.<sup>436</sup>

However, Rewi had additional objectives for the hui, which emerged as the hui progressed, much of which related to the ongoing issue of the confiscated lands at Taranaki. By the time of the hui, the Government had developed plans to survey the Waimate Plains, which was part of its broader ambitions to open the confiscated Taranaki lands for settlement. Later in the year, it announced plans to construct the main trunk railway through the district. As seen from the discussion with Wetere at New Plymouth after the Whakairoiro hui, the Government's plans for the region extended to include the southern part of Ngāti Maniapoto's territory at Mōkau.

The hui began at Waitara on 27 June. The 5,000 or so who attended included some 150 Ngāti Maniapoto, representatives from throughout Te Whanganui-ā-Tara, Manawatū, Whanganui, and Taranaki, Māori members of Parliament, and various reporters. Wiremu Kingi, Titokowaru, Te Whiti, and Tohu were absent,

431. Document A78, p 425.

432. Document A78, pp 422–423.

433. 'Waikato and Waitara Native Meetings', AJHR, 1878, G-3, p 21; doc A78, p 432.

434. Document A78, p 432.

435. 'Native Affairs Statement', NZPD, 1878, vol 29, p 224 (doc A78, p 442).

436. Document A78, p 435.

though a party from Parihaka represented them. Wahanui and Wetere attended with Rewi, apparently undaunted by the prospect of leaving the safety of the aukati.<sup>437</sup>

Although Māori and Pākehā alike appreciated Rewi's desire for peace-making and seemed to understand the symbolism of holding the hui at Waitara, Grey conveyed his reluctance to dwell on the wars. It was time, he said, to accept the change that had occurred since the wars and focus on the future. For Rewi, achieving a durable peace at Waitara in order to reconcile a significant part of the past was no impediment to looking to the future, and he was as keen to do that as he was to affirm peace. Rewi said that Waitara was the most fitting place to plant the tree of peace that had been discussed at the Whakairoiro hui.<sup>438</sup>

During the hui, however, Rewi caused some consternation when he asked Grey to 'give' Waitara to him. There was considerable confusion about what Rewi meant exactly, both then and afterwards. *Te Waka Maori o Niu Tirene*, however, thought that Rewi was being perfectly clear in asking for a portion of the confiscated lands to be returned on behalf of the chiefs, much as what Tāwhiao was seeking in respect of the Waikato lands.<sup>439</sup> Chiefs who spoke in support of Rewi also seemed to want terms of settlement akin to what they understood Tāwhiao had been offered. Referring to Rewi's proposal for Waitara, the Whanganui rangatira Mete Kingi noted that it was right that Rewi and Grey were now the 'protectors of Waitara.'<sup>440</sup> In fact, Mete Kingi's idea was probably a clearer interpretation of what Rewi meant when he asked for Waitara: for he and Grey to work to resolve the confiscation issues that Taranaki faced.

About six weeks after the Waitara hui, Rewi clarified his position in a telegram that expanded his tree of peace metaphor and which was published in several newspapers. He said he had first planted a tree with McLean at Te Pahiko in 1869, for the good of all the people. But that tree was blasted by the wind. When he met with Pollen, they had tried to plant a tree at Alexandra and Taupō, but it was destroyed by the snows (or frosts) of Tongariro. Now, though, the Waitara hui had drawn the sun out from behind the clouds. The tree was planted in June, and it was growing. In summer it would bear fruit, which everyone – Māori and Pākehā – could harvest. Indeed, he proposed the concluding hui to occur at the end of summer, when the negotiations would produce a firm settlement.<sup>441</sup> In a separate piece, Rewi said he had not asked for Waitara 'in the thoughts that Europeans have'. What he wanted was to be given back the 'evil' of Waitara so that he, Sheehan, and Grey could plant the tree of peace there, for the benefit of both Māori and Pākehā.<sup>442</sup>

Grey's response at the time of the hui was measured, if non-committal. In effect, the Government neither rebuffed nor fully supported Rewi's demands. The

437. Document A78, p 436.

438. Document A78, pp 436–437.

439. *Te Waka Maori o Niu Tirani*, 21 August 1878, pp 5–8; doc A78, p 437.

440. 'Waikato and Waitara Native Meetings', AJHR, 1878, G-3, p 51; doc A78, p 437.

441. Document A78, p 438.

442. 'Rewi on the Waitara Meeting', *Taranaki Herald*, 15 August 1878, p 2; doc A78, p 438.

low-key response likely contributed to criticisms that described the Waitara hui as ineffective.<sup>443</sup>

Rewi stayed at Waitara, as he said he would, expecting to hear from the Government with some definite proposals for Taranaki. According to Ms Marr, Government correspondence sent to Rewi shortly after the hui had left him confident that the Government was making plans for those who had had lands confiscated on the Waimate Plains south of Taranaki maunga.<sup>444</sup>

However, the Government had also initiated its efforts to take control of the confiscated lands. As the Taranaki Tribunal recorded, on 29 July 1878, the Government began its survey of the Waimate Plains ‘without prior notice to Māori’. Although Māori did not offer any opposition in the first five months of the survey, they began offering resistance in December 1878, when surveyors were turned back from one attempted survey. In February 1879, survey pegs were pulled out, then in March, various groups descended on survey camps, packing up the surveyors’ equipment and evicting them without violence.<sup>445</sup>

Alongside these efforts, in October 1878, the Government passed the Railways Construction Act 1882, which authorised the construction of the main trunk railway line from Te Awamutu to New Plymouth (in addition to a line from Wellington to Foxton). This line was anticipated to run along the West Coast – through Te Rohe Pōtae. In passing the Act, however, members of the House of Representatives pointed out that the feasibility of the proposed construction depended on the success of negotiations with the Kingitanga.<sup>446</sup>

In the meantime, the proposals Rewi had waited for from the Government about the confiscated lands never arrived. Ultimately, Rewi’s people ran out of patience before he did, summoning him to return to the King Country in late 1878.<sup>447</sup>

The Waitara hui did not achieve the goals Rewi had set, and the fate of the tree of peace remained unclear. But Sheehan and Grey did not think their relationship with Rewi had soured; far from it. The Government offered Rewi a seat in the Legislative Council, though it was an offer he never took up.<sup>448</sup> There were some reports suggesting that Sheehan and Rewi were making arrangements in late 1878 to push the railway north through Mōkau.<sup>449</sup> During the hui, Rewi and Wetere had re-emphasised the decision that the Mōkau River ‘was open for European traffic’ and that they sought the Government’s assistance to that end. The Mōkau settlers had proposed the construction of a small steamer, and Rewi and Wetere wanted the Government’s support – the Government agreed and offered payments in

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443. Document A78, pp 437–438.

444. Document A78, p 439.

445. Waitangi Tribunal, *The Taranaki Report*, pp 220–221.

446. Document A20, p 37.

447. Document A78, pp 438–439.

448. AJHR 1878, G-3, p 21; doc A78, pp 433, 440.

449. Document A78, pp 441–442.

shares.<sup>450</sup> Rewi, however, had not departed from the policy that land sales and the Native Land Court would not be allowed within the aukati.

In January 1879, Rewi met Sheehan at Kihikihi to discuss his proposed boundary. The hui included representatives of Ngāti Maniapoto (Taonui, Tupotahi, and Weterē), Ngāti Hauā, Ngāti Raukawa, and Ngāti Tūwharetoa (Te Heuheu Tūkino and Kingi Herekīkie), among others.<sup>451</sup> During the hui, Rewi defined his boundary as running 'from Aotea to Pirongia, then to Waipa, near the junction of the Mangapiko and Waipa rivers, through the Awamutu and Rangiaowhia, over Pukekura ranges, across the Waikato river, through Taupo, across the Ongarue river to the sea at Parininihi (White Cliffs)'.<sup>452</sup> He said that Europeans within these territories would not be turned off, but would have to accept Māori law and authority. For areas outside this boundary, such as Maungatautari and Waotu, Rewi said that he wanted the titles reopened so he could assert his ownership.<sup>453</sup>

In Ms Marr's view, Rewi had come to see the Court as a means of assisting the creation of a legally recognised external boundary, by determining title to immediately adjacent lands.<sup>454</sup> It also appears that he was responding to applications made by others for lands adjacent to the aukati or within border zones, or to specific local pressures in which he judged the Court to be the best option for ensuring the land remained under Māori control (see section 7.4.4).<sup>455</sup>

Other evidence from the time suggests the type of process that the Kīngitanga preferred for resolving tribal boundary issues within their territory. Soon after the Hikurangi hui, in May 1878, Sheehan had been present at a hui where the assembled rangatira sought to inaugurate a process in which they openly debated land issues – in that specific case, a boundary dispute between Ngāti Hauā and Ngāti Raukawa, involving some sections that remained committed to Kīngitanga policies and others that had been involved in land transactions in northern Taupō – and agreed a resolution which they asked the Government to endorse. Sheehan refused to entertain the proposal and instead encouraged the chiefs to take their boundary issues to the 'tribunal for the settlement of such matters – the Native Land Court'.<sup>456</sup> In Ms Marr's view: 'All the chiefs wanted at this time was a determination of a tribal boundary based on consideration of evidence from all knowledgeable chiefs including those Kīngitanga chiefs who would not recognise a colonial court. They wanted to reach such an agreement to avoid violence and when this was agreed, they wanted the government to accept this.'<sup>457</sup>

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450. Document A28, p 207.

451. Document A78, pp 453–454, 459; doc A110, pp 619–660.

452. *Te Waka Māori o Niu Tirangi*, 8 February 1879, p 287; doc A78, p 459.

453. Document A78, pp 453–454, 459.

454. Document A78, p 457.

455. Document A79, p 52 (Husbands and Mitchell); doc A28, pp 245–7.

456. Document A78, p 456.

457. Document A78, p 457.

**7.4.2.4 The hui at Te Kōpua, May 1879**

Anticipation of a settlement ran high as the hui to conclude and ratify Grey's proposed terms drew closer. Once again, the hui coincided with the annual Maehe. Estimates of the number of people present varied, but some reports suggest as many as 6,000 attended, including representatives from many of the major tribal groups in both the North and South islands. The venue was Te Kōpua, said to have been agreed to by Tāwhiao because of its proximity to the aukati, making it easier for Pākehā settlers to attend.<sup>458</sup>

In a grand show of the effectiveness of their networks and capacity to mobilise, Kīngitanga communities prepared for the hui for months in advance. Tāwhiao reportedly supervised fishing activities at Kāwhia. More kaimoana arrived from communities as far away as Waiuku and the Firth of Thames; pigs and cattle from Mōkau and upper Waipā; further gifts of food from Tūhua; and thousands of eels from Lake Whangape near Rangiriri. The activity even prompted an extension to the Kāwhia-Hikurangi dray road to assist in transportation of supplies.<sup>459</sup> The hui itself also opened with what the *New Zealand Herald* described as 'an imposing military parade': 180 young men, their heads dressed in feathers, carrying guns, spears and pistols, marched in slow time, with Te Ngakau at their head and Wahanui and Tāwhiao immediately behind. The men then engaged in prayers before seating themselves around Tāwhiao, who then began to speak.<sup>460</sup>

For reasons that were unclear then and remain unclear now, Tāwhiao began the hui with an expression of his defiance of the colonial government, and a call for all Māori to unite behind him alone. Addressing all the Māori present, from their various tribes throughout the motu, Tāwhiao said:

The word is this: Potatau alone is the ancestor of all people. Potatau alone is the chief of this Island, of you all, and you cannot deny it. . . . There is another one: Rewi is there on that side. On this side, then, be one, and I am another. These are my councillors; for this reason I say the land is mine. I have alone the right to conduct the business of my country . . . I therefore say this: Sir George Grey has no right to conduct matters on this Island, but I have the sole right to conduct matters in my land—from the North Cape to the southern end.<sup>461</sup>

Tāwhiao referred to his father's rejection of the Treaty, saying he did not consent 'to any of the arrangements which prevail on this Island'. Those arrangements, he said, had brought war. He then affirmed his commitment to peace, not war: 'There is not to be any fighting whatever; neither about roads, leases, nor about anything else. Let fighting be kept away to the other side.' At the end of his speech, Rewi stood and moved to Tāwhiao's side.<sup>462</sup>

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458. Document A78, pp 464–465.

459. Document A78, p 464.

460. 'The Native Meeting', *New Zealand Herald*, 8 May 1879, p 5.

461. 'The Native Meeting', *New Zealand Herald*, 8 May 1879, p 5.

462. 'The Native Meeting', *New Zealand Herald*, 8 May 1879, p 5.



Tāwhiao's speech surprised and disappointed Pākehā observers, who had expected the hui to be a simple ratification of the terms negotiated at Hikurangi. The *Herald* expressed concern about what it saw as Tāwhiao's appeal to 'a truly national sentiment' among Māori.<sup>463</sup> It worried that if a permanent national Māori movement formed with Tāwhiao at the centre, it would create the strongest possible barrier to opening any remaining Māori territories to Pākehā settlement.<sup>464</sup>

Other reports wondered if Tāwhiao had deliberately set out to cause offence and drive a wedge between Rewi (and Ngāti Maniapoto) and the Government. Some at the hui criticised Rewi over his discussions with Sheehan. Whereas previously Rewi had confined himself to specifically local or tribal matters, he now appeared to be negotiating over the future of the whole district.<sup>465</sup> In our view, Tāwhiao was not seeking to isolate Rewi, but rather inviting him to show his continued support for the Kīngitanga. Rewi himself would explain later that his only purposes in negotiating with the Government had been to secure peace and protect the lands over which Tāwhiao would exercise authority.<sup>466</sup>

Tāwhiao may also have been testing the resolve of the Government and of other iwi. Having won Grey's recognition of his right to exercise authority over the remaining Kīngitanga lands, he sought to determine whether that authority might extend outside those lands – a matter that would depend on the agreement of other iwi as much as it relied on the Government. He may also have been intending to convey that he would not accept an authority beneath that of the colonial government. Whereas the Government saw itself as a superior sovereign power offering to delegate some local authority to Māori under its jurisdiction, Tāwhiao was likely to have seen them as negotiations over the respective spheres of influence of colonial authorities and the Kīngitanga as equals. Immediately after the speech, Te Heuheu offered his support, and Wahanui and Te Ngakau advised that there would be no more discussion that day and that each tribe should take the evening to consider its position.<sup>467</sup>

For Māori in attendance, two days of debate followed, facilitated by Wahanui and Te Wheoro. The extent of Tāwhiao's authority – where it lay on the land – was the central issue. According to Ms Marr, reports of the hui suggested that those involved were 'split between those who supported the King and those who had never followed the King or no longer did'.<sup>468</sup> Those who did not support Tāwhiao (such as rangatira from Ngapuhi and Te Rarawa) expressed a wish to make their own laws in conjunction with the Government, but were not willing to accept a Waikato King.<sup>469</sup> Te Wheoro said he wanted to return to the terms Grey had proposed at the Hikurangi hui in 1879, which involved the recognition of Tāwhiao

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463. 'The Native Meeting', *New Zealand Herald*, 9 May 1879, p 5; doc A78, p 467.

464. 'The Native Meeting', *New Zealand Herald*, 9 May 1879, p 5; doc A78, p 467.

465. Document A78, pp 467–468.

466. Document A78, pp 468–469.

467. 'The Native Meeting', *New Zealand Herald*, 8 May 1879, p 5.

468. Document A78, p 468.

469. 'The Native Meeting', *New Zealand Herald*, 12 May 1879, p 6.

exercising authority in his districts, including in respect of sale, lease, roads and surveys.<sup>470</sup>

Speakers also discussed the establishment of the Kingitanga and the reasons for the wars in the first place. Wahanui argued a king was needed because the Treaty had failed to deliver to them on its promise, but the Kingitanga could continue under the 'shadow' of the Queen. He also asked who had 'severed' Māori from the Queen in the first place, then answered that it was the Government which had breached the Treaty by making war initially against Ngapuhi and then against others.<sup>471</sup> He told those assembled he had chosen the Kingitanga as 'the post to tie my canoe to; just as his forebear Hoturoa had tied *Tainui* to Te Ahurei.<sup>472</sup>

Rewi returned to his tree of peace metaphor, saying he had gone to Hikurangi to plant this tree and tended it at Waitara, but the tree had failed to flourish. The discussion at Waitara had been 'severed' by the Government's recent survey of the Waimate Plains, which had become a key focus of the Parihaka resistance movement; and the offer at Hikurangi had been destroyed on 'the road', which was probably a reference to the Government's building of the road from Raglan to Waipā. Addressing Grey directly, Rewi said: 'Speak . . . Tell us why the words at Hikurangi have been destroyed and not allowed to mature? Tell us the reason why we have come to talk like this today. I flew to the word that the tree of peace should be planted, and how is it that it has been split?'<sup>473</sup>

This suggests another potential reason for Tāwhiao's defiance: he and his advisors regarded the Government as offering to respect Tāwhiao's authority on the one hand, while pursuing unilateral actions that affected his lands on the other. Both Grey and Te Wheoro tried to guide the meeting back to the Hikurangi proposals.<sup>474</sup>

The hui broke for the weekend and began again on Monday 12 May. Rewi spoke again, saying he would continue to negotiate with Grey, to 'arrange matters, and find a place in which we may dwell in peace . . . I will hold fast to him that he may finish the work'. As noted above, Rewi also said that his purpose had been to protect the lands over which Tāwhiao would have authority. He told Grey that good work had been done in the previous hui at Whakairoiro, Hikurangi, and Waitara, then added: 'I will build up my district, commencing from a certain point and going right round. I will continue building up this land . . . and continue to work for the good of the people.'<sup>475</sup> Ms Marr saw this 'as a clear statement from Rewi that he had not intended to split from Tāwhiao but felt obliged to act urgently to protect the lands that form the district that Tāwhiao would act as political leader

470. Document A78, p 468.

471. Document A78, p 468; 'Te Kopua Meeting', AJHR, 1879, G-2, p 7.

472. 'The Native Meeting', *New Zealand Herald*, 12 May 1879, p 6.

473. 'The Native Meeting', *New Zealand Herald*, 12 May 1879, p 6.

474. Document A78, p 469.

475. 'The Native Meeting', *New Zealand Herald*, 13 May 1879, p 6.

for.<sup>476</sup> It was also a clear invitation to continue negotiations; even if an agreement had not yet been reached, Rewi was indicating that it remained possible.

Grey took the floor late in the day. He reminded the hui that his Government had offered terms of settlement, and he had come to the district three times to discuss them. He said he had no power to change or go back on those terms, although he later noted he could discuss amendments 'in minor details' only.<sup>477</sup> Grey identified three matters about which he had heard 'grumblings' and which he said were undermining the agreement: work on the Raglan road, Crown land sales at Harapepe (northeast of Pirongia), and the Government's intention to build a railway to Mōkau.<sup>478</sup>

Māori concerns regarding ongoing work on the Raglan road arose from the expectation that had been in place since the Hikurangi hui that the Kīngitanga would be consulted about roads in the territory over which the king's authority was recognised. In addressing the issue at the Te Kōpua hui, Grey did not mention this. Instead he said the road was laid out over land the Government had acquired by purchasing it fairly. He said that the road would benefit both Māori and Pākehā, and Māori had already benefitted by being employed in the road's construction.<sup>479</sup>

In explaining the sale of land at Harapepe, Grey said the Government regarded it as excluded from the proposal to return Waikato lands to Tāwhiao, even though McLean had included it in his offer of terms. This was, it seems, the first official public admission that not all Crown lands were to be made available to return to the Kīngitanga. In particular, the Grey Government planned to exclude the blocks that McLean had repurchased specifically to include them in the package of lands ringfenced for return, which were mostly in the Harapepe district around Pirongia. But Grey did say that some Harapepe lands would be set aside as an endowment for a school at which Kīngitanga children could be educated. And he said that the town allotments included in his terms would provide Māori with an immediate source of revenue. He did not take the opportunity to clarify exactly what other lands would be returned if the Kīngitanga agreed to his proposed settlement.<sup>480</sup>

As for the railway, Grey did not deny that the Government had arranged funding for a railway to Mōkau, but he assured the hui that there was no intention of building it without the chiefs' agreement. He noted the economic benefits that would enrich the Kīngitanga territory if the railway was allowed through. He said he expected nothing from them in return for the proposals he had made at Hikurangi. But he also criticised the Kīngitanga chiefs, saying that by shutting doctors and medicine out of their district they were letting innocent children die,

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476. Document A78, p 469.

477. Document A78, p 472.

478. 'Te Kopua Meeting', AJHR, 1879, G-2, p 15 (doc A78, p 472).

479. Document A78, p 470.

480. Document A78, pp 470-471, 477.

and claimed their policies prevented the people from accessing the wealth that would otherwise be available to them.<sup>481</sup>

Grey concluded his speech with an ultimatum: the Kīngitanga needed to accept the Crown's terms, or they would be withdrawn. He waited for an answer from them until 10 o'clock the next morning. His deadline came and went with no reply from the chiefs. He then wrote to Tāwhiao and formally withdrew his offer of terms, adding that the land intended for return would no longer be protected from sale.<sup>482</sup>

Before Grey left Te Kōpua, he reportedly fired one more volley: he left a 'book' with Rewi and Te Rerenga said to contain a list of Waikato chiefs who had leased or sold land outside the aukati in the Waikato and Auckland districts. It is likely the book recorded small allotments within confiscated territory set aside for certain chiefs, a markedly different scenario than dealings with extensive land blocks. Some chiefs explained they had done no more than sell sections the Government had allocated to them and to which they had no traditional claim. Some denied they had anything to do with the lands, and others said confiscated lands were beyond the reach of Tāwhiao's policies and jurisdiction. These arguments were among the several that followed Grey's departure as the various groups admonished each other while trying to make sense of what had happened and understand what lay behind the ultimatum.<sup>483</sup>

#### **7.4.2.5 Outcome of negotiations with Grey**

Settler newspapers were quick to blame Tāwhiao for the failure of the Te Kōpua hui, accusing him of refusing the best offer he was ever likely to receive. At the same time, many Pākehā were pleased with Grey's ultimatum. They looked forward to the Government being able to negotiate without having to indulge Tāwhiao. Grey seemed unconcerned. He claimed he had planned all along to offer the same terms as McLean. In Parliament, he explained that he had little choice but to continue the negotiations McLean had begun. Now that they had failed, negotiations could begin afresh.<sup>484</sup>

So far as the Kīngitanga was concerned, however, Grey's ultimatum meant there was no further opportunity over matters that remained of concern to them. Perhaps the major difficulty was the return of confiscated lands: Tāwhiao and other Kīngitanga leaders sought the return of Waikato land as far as the Mangatawhiri and the acknowledgement of Kīngitanga authority in those territories that had been pledged. Grey had offered to recognise Tāwhiao's authority over his territories, but uncertainty remained as to whether that would include authority over returned Waikato lands, and Tāwhiao also appears to have been reluctant to accept an offer that cast his authority as inferior to that of the colonial government. Another issue, alluded to during the hui, was the potential for Crown

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481. Document A78, p 472.

482. Document A78, p 472.

483. Document A78, p 473.

484. Document A78, p 474.

encroachment into Rohe Pōtae lands, particularly via the Raglan-Waipā road and the Mōkau railway. Both reflected dissatisfaction among Te Rohe Pōtae Māori about the way the Government's policies had come to impinge on the aukati.<sup>485</sup>

These were concerns with which the Government ought to have been well acquainted by 1879. However, it was clear that in the year since the hui at Hikurangi, Grey had done very little to identify which lands specifically might be offered to the Kīngitanga. Grey also admitted that the three specific complaints raised by Māori during the hui at Te Kōpua were the result of Government actions that had been taken over the past year. It was eventually revealed that Grey knew of these complaints before the Te Kōpua hui even began: Tāwhiao had personally written to Grey about these issues ahead of the hui, and Rewi had informed Grey that the chiefs' trust in him had wavered because of both the Raglan-Waipā road and the survey of confiscated lands on the Waimate Plains. For these reasons, by August 1879, the *New Zealand Herald* was beginning to cast doubt over whether Tāwhiao was entirely to blame for the parties failing to arrive at an agreement at the Te Kōpua hui, and suggested that Grey was less surprised at Tāwhiao's anger than he had claimed at the time.<sup>486</sup>

Following Grey's withdrawal of the terms offered, Te Rohe Pōtae Māori had to accept that there was no prospect of an immediate resolution. But they were as determined as ever to protect their territory and resist any encroachment on it. Following the Te Kōpua hui, Ngāti Maniapoto (including Wahanui) agreed that Rewi could continue negotiating with the Government to define the boundary of the Rohe Pōtae lands and protect them from the public works, leasing, purchasing and Native Land Court activities that gnawed at its boundaries. The arrangement presented a frustrating public relations problem. As Rewi carried out his task – for example, variously meeting with Sheehan throughout May 1879 – it was easy to claim he was acting independently of Tāwhiao and had effectively split from the Kīngitanga. Yet, there was little indication that the Kīngitanga was breaking up as many commentators suggested.<sup>487</sup>

Immediately following the hui at Te Kōpua, Sheehan met several times with Rewi at Kihikihi. There, he encouraged Rewi and others to define their boundaries, which would become a boundary between their territory and Crown-granted lands. Rangatira from across Te Rohe Pōtae were present, including Ngāti Maniapoto, Ngāti Raukawa, Ngāti Haua, Ngāti Tūwharetoa and Whanganui, all of whom conveyed their boundaries to Sheehan. Rewi conveyed his portion of the boundary 'very minutely', down to creeks. He stopped at the Taupō region, at which point the Ngāti Tūwharetoa chiefs, including Te Heuheu, took over. The boundary extended from Taupō, Ruapehu, and Tongariro, through to Mōkau. The territory it contained was estimated at 'not less' than 4,000,000 acres.<sup>488</sup>

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485. Document A78, pp 477, 479–481.

486. *New Zealand Herald*, 14 August 1879, p 4; *New Zealand Herald*, 12 May 1879, p 6; 'Editorial', *New Zealand Herald*, 17 May 1879; doc A78, pp 475–477.

487. Document A78, pp 478–480.

488. Document A78, pp 481–483.

Sheehan later reported on these discussions to Parliament. He suggested that so long as certain boundary issues were settled, Rewi and his people would accept ‘the boundary that had been laid down by the Government’. In exchange, he said, ‘if the Government would agree for a reasonable time to protect a certain area of country from occupation by sale or lease, Rewi would do his best to get his people to put their lands – amongst themselves as it were – through the Court, for the purpose of laying down a tribal boundary’. At that point ‘they would throw open the land for settlement’.<sup>489</sup> Regardless of whether Sheehan’s remarks were an entirely faithful account of what took place at the meeting, especially with respect to the opening of the district for settlement, they demonstrated the Government had some appreciation that Te Rohe Pōtae Māori sought the protection of an external boundary, along with recognition of their right to control the lands within it. However, as Ms Marr noted, in practice, the Native Land Court by this time no longer determined or confirmed tribal boundaries separate from its investigations of title. Any attempt to confirm a boundary would therefore also have resulted in the transformation of customary title.<sup>490</sup>

In May 1879, Sheehan persuaded Rewi to attend a Native Land Court hearing at Cambridge. Sheehan later told Parliament that this was the most ‘extreme step he ever took in his life’ and that the Government would now have in Rewi ‘a right-hand man, and a faithful helper’.<sup>491</sup> However, Rewi’s priority remained the protection of the aukati. Ms Marr says that Rewi’s focus in attending the court was seeking certain cases to be adjourned or struck out. These were cases that either impinged on the boundary or involved the interests of a range of iwi groups.<sup>492</sup>

Late in June, Rewi travelled with Sheehan to Auckland, in response to an invitation to meet Grey and current Governor Hercules Robinson. He was accompanied, as he so often was during this period, by representative Te Rohe Pōtae chiefs, including Wetere Te Rerenga and Hitiri Paerata. It was the first time any senior Kīngitanga chief had visited Auckland since the wars, and they were well received – taken to various colonial Auckland attractions and hosted at a series of civic receptions.<sup>493</sup>

The *Auckland Star* reported Rewi’s proposal ‘[t]hat a Maori district shall be formed, the boundaries to be pretty well identical with the present King Country—the line to run from some point north of Kawhia along the line of confiscation to Maungatautari, thence to Taupo, thence to the head of the Wanganui river, on to the coast, the sea forming the Eastern boundary’. The *Star* noted that some of the lands Rewi wanted to include lay east of the Waikato River and were disputed by some Ngāti Raukawa communities, but suggested that Rewi might be persuaded to bring his boundary back to the river.<sup>494</sup>

489. Sheehan, 23 July 1879, NZPD, vol 31, p 183; doc A78, p 484.

490. Document A78, pp 456–457, 484.

491. Sheehan, 23 July 1879, NZPD, vol 31, pp 183–184; doc A78, p 486.

492. Document A78, pp 485–488.

493. Document A78, pp 491–492.

494. ‘Rewi and the Governor’, *Auckland Star*, 20 June 1879, p 2.

Describing the proposed district as ‘Rewi’s Kingdom of Aotearoa’, the newspaper said it would be ‘governed by native rules’, led by Tāwhiao if he agreed. All residents, Māori or European, would be subject to Māori law and to the jurisdiction of Māori magistrates. All land would be permanently inalienable by sale (though some leasing may be permitted). The first step towards creating this district was to secure agreement on the boundary; from there, other decisions would follow, including the possibility that the district would be traversed by the North Island Main Trunk Railway.<sup>495</sup> Several of these proposals would be repeated four years later in 1883, when Ngāti Maniapoto, Ngāti Raukawa, Ngāti Tūwharetoa and northern Whanganui iwi would petition the Crown seeking statutory recognition of their rights of self-determination (see chapter 8, section 8.4.5).

When Rewi returned to Te Rohe Pōtae he was shown an allotment at Kihikihi which the Government had decided to gift to him and on which a house would be built. It was a welcome gesture. Kihikihi had been Rewi’s home, and it remained important long after the former Ngāti Maniapoto settlement, including the whare rūnanga ‘Hui Te Rangiora’, had been destroyed, the lands confiscated, and the people driven off (see chapter 6). Rewi did not relocate to the house once it was completed as government officials hoped, continuing instead to live inside the aukati, south of the Puniu River from Kihikihi, though he used it when he visited Kihikihi and allowed many others to use it similarly.<sup>496</sup> Later events involving the land granted to Rewi will be discussed in a future chapter of this report.

Instead of providing a new mandate to continue negotiations, the October 1879 election resulted in the end of Grey’s ministry. Arguably, the Kihikihi allotment was the only tangible outcome of the preceding two years of negotiations. Te Rohe Pōtae Māori had at least had the opportunity to signal their clear priorities in any future negotiations. As far as they were concerned, any agreement would be conditional upon the Crown’s recognition and protection of the aukati and the exercise of Māori authority within it. Meanwhile, Crown institutions or initiatives – including public works, land sales, leases and surveys, and the Native Land Court – would remain prohibited within the aukati for the time being.<sup>497</sup>

### 7.4.3 Suspension of negotiations, 1879–81

Following the election, a new Ministry was formed under the leadership of John Hall. It would not be an easy Ministry, with conflicting interests, personalities and policy preferences contained in the single cabinet. It was also a time of growing recession and therefore fiscal restraint. The new Government was elected based on its promises to cut back state spending and debt, while promoting economic development by opening up districts that remained in Māori possession. Initially, the Government also intended to continue construction of the North Island Main Trunk Railway.<sup>498</sup> However, citing financial pressures, the new Government

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495. ‘Rewi and the Governor’, *Auckland Star*, 20 June 1879, p.2.

496. Document A78, pp 493–494, 508; doc A110, pp 231, 560–561, 602.

497. Document A78, pp 494–496.

498. Document A78, p 499.

quickly abandoned its predecessor's decision to complete the railway through Mōkau and Taranaki.<sup>499</sup>

The new Native Minister was John Bryce. Apart from a brief period in 1881 (discussed below), Bryce held the position until August 1884. He was at various times described as strong-willed, stubborn, and narrow-minded, but also exceptionally honest. Like many of his cabinet colleagues, he had a long-standing political career, having first entered local politics twenty years earlier. But in other ways he had quite a different background from most of them. He had grown up with few opportunities for formal education and identified politically most closely with those with small farming interests, whereas the new ministry mainly comprised a mix of experienced politicians who had close associations with wealthy investors and entrepreneurs, and others who identified with more recently arrived settlers.<sup>500</sup>

#### 7.4.3.1 *The policies of the Hall Ministry*

Bryce's approach – some would say his personal style – towards Māori policy was impatient and forceful. He wanted to end what he described as policies of 'personal government' through which Government Ministers and Premiers had distributed a range of gifts to certain Māori.<sup>501</sup> Yet the new Government did ensure the Kihikihi home that Grey had promised to Rewi was finished to completion, including furnishings. Indeed, Bryce hoped Rewi would spend more time there if not relocate permanently, which would better position him to maintain close contacts with officials while also putting some distance between him and Tāwhiao.<sup>502</sup>

Bryce particularly wanted to revise the Government's land purchasing system and theorised that land speculators delayed the opening up of Māori land for Pākehā settlement because they held on to the lands till they could make a profit, usually from the Government. He also wanted to rid Crown land acquisitions of waste and political abuse, and look for ways that Māori could be encouraged to make more lands available. A review he conducted of Government land purchasing aimed at rationalising the system, including abandoning unrealistic purchases in favour of completing those deemed most important. Throughout the early 1880s he became more and more persuaded that a return to Crown pre-emption – first proposed by Julius Vogel in the mid-1870s (see also chapters 8 and 11) – was the most effective means of extending Pākehā settlement in line with Government policy. Bryce argued against special consideration for Māori who resisted surveying, public works, or purchasing, and in favour of enforcing assimilation, even by coercive means. His colleagues had little difficulty accepting the principles of assimilation, but there was still a strong vein of support for the gradualist approach

499. Document A20, p 44.

500. Document A78, pp 497–499; Hazel Riseborough, 'John Bryce', in *1870–1900*, vol 2 of *The Dictionary of New Zealand Biography*, pp 61–62; WJ Gardner, 'John Hall', in *1769–1869*, vol 1 of *The Dictionary of New Zealand Biography*, pp 172–174.

501. AJHR, 1879, G-1, p 2; doc A78, p 500.

502. Document A78, p 508.



first introduced by McLean, with few prepared to risk the kinds of hostilities likely to result from taking a more aggressive stance.<sup>503</sup>

One of the main ways Bryce implemented his assimilationist approach to Māori policy was to wind down what was regarded as the separate administration of Native Affairs. For example, oversight of Māori schools transferred from the Native Department to the Education Department, and Public Works took more and more responsibility for public works in Māori districts. The resident magistrates system was down-sized, as were options for official mediation of legal disputes between Māori and Pākehā. During an age when all-Pākehā juries were the norm, and settler authority was expanding into new forms of local government, Māori were left to foot it with their Pākehā counterparts in the mainstream colonial system.<sup>504</sup>

One of the obvious exceptions to Bryce's assimilation and recession-driven rationalisation of Māori affairs was the Native Land Court, the institution that was so integral to the transfer of Māori property to the Crown and Pākehā settlers. Indeed, Bryce significantly strengthened the Court's administration and bolstered its resources. Another exception was Māori parliamentary representation, which the Hall Government resisted changing even when the opportunity to do so presented itself.<sup>505</sup> The subject was thoroughly debated in the House in 1881, and while no change followed, the debate did highlight the reality of a Kīngitanga territory in which the 'Queen's writ' did not and could not run.<sup>506</sup>

The Hall Ministry continued Grey and Sheehan's policy of refusing to deal with Tāwhiao. Nor would it acknowledge the Kīngitanga territory, undertaking just a few low-key interactions with Rewi and Ngāti Maniapoto. For his part, Rewi remained open-minded about engaging with the Government. He and other Kīngitanga chiefs sought to re-establish an amicable relationship with William Mair, who had been dismissed by Grey's administration in 1877, but was re-appointed at the beginning of 1880 as the government agent tasked with reporting on the Kīngitanga.<sup>507</sup>

From late 1879, the ministry also tried to encourage Kīngitanga groups to accept Crown grants of land for 'landless rebels' available beyond the aukati. However, most Kīngitanga communities continued to refuse these and other offers for the piecemeal return of confiscated lands, preferring to wait for an agreement to return all confiscated lands (see chapter 6, section 6.9.6). Mostly, the Hall Government paid very little attention to the Kīngitanga or Te Rohe Pōtae during its first two years.<sup>508</sup>

During that period, the Government's primary focus was in dealing with the Parihaka resistance movement, which had mobilised against the Government's

503. Document A78, pp 500–502.

504. Alan Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand* (Auckland: Auckland University Press, 1995), pp 281–283; doc A78, pp 502–503, 825.

505. Document A78, pp 503–506.

506. 'Representation Bill', 17 August 1881, NZPD, vol 39, pp 591–592, 597; doc A78, pp 506–507.

507. Document A78, pp 508, 514–515.

508. Document A78, pp 508–509.

attempted implementation of the Taranaki confiscation through the survey of the Waimate Plains. Bryce displayed his hard-line style in relation to Taranaki, introducing the contentious legislation that allowed Parihaka activists to be imprisoned without trial for up to two years. He often urged a more heavy-handed approach than his colleagues preferred. He understood that he might provoke Māori but was frustrated by what he regarded as a lack of Government action at a time when it really ought to have been asserting its authority. He particularly wanted to make an example of important chiefs like Te Whiti and Tohu, and to bring in Hiroki, who was wanted for murder but living openly at Parihaka.<sup>509</sup>

In late 1880, after considerable debate about how to deal with the situation in Taranaki and feeling that he had little if any support in Cabinet, Bryce tendered his resignation, which he withdrew after further discussions. But his dissatisfaction continued, and in January 1881 he followed through with his resignation. William Rolleston took over as Native Minister. The Parihaka activists were not deterred, and in October the Government returned Bryce to cabinet. Within weeks of his re-appointment as Native Minister, Bryce led the Government's invasion of Parihaka.<sup>510</sup>

The Crown's treatment of the community at Parihaka was one that Te Rohe Pōtae Māori followed closely, as they considered whether or how they might support the resistance there. Undoubtedly some of their people went to Parihaka – notably, Te Mahuki and his people, who were living there by late 1879 (see sidebar). Rewi's long-held interest in the Taranaki confiscations was well known. Tāwhiao had a strong relationship with Te Whiti and Tohu, and large numbers of Ngāti Maniapoto supported the Parihaka people. But at a hui held at Te Kōpua in February 1880 (prior to the Crown's invasion of Parihaka), the Kīngitanga policy of refraining from joining conflicts outside the aukati was reaffirmed. While the aukati would be defended, even more strictly than previously, the keepers of the aukati would not send support to assist Te Whiti.<sup>511</sup>

### Te Mahuki Manukura (1840s–99)

Te Mahuki was born into Ngāti Kinohaku, a hapū of Ngāti Maniapoto, at Te Kumi in the 1840s. Little is known of his early life, but by the mid-1870s he and much of his hapū lived at Parihaka as followers of the peace prophets Te Whiti o Rongomai and Tohu Kākahi. Te Mahuki played a prominent role in the passive resistance orchestrated by the prophets and in 1879 he was arrested and imprisoned without trial

509. Document A78, pp 510–511.

510. Document A78, pp 511–512.

511. Document A78, pp 513–514.

for his involvement in the land ploughing campaign. He was released two years later and returned to Parihaka shortly before the Crown's November 1881 invasion. During the Crown's occupation of the settlement Te Mahuki was arrested and was again incarcerated without trial.

Upon his release Te Mahuki was forbidden from returning to Parihaka. Instead, he returned to Te Kumi where he established a settlement that imitated Parihaka's layout, social life, customs and rituals. From this base in the heart of Te Rohe Pōtae he came to represent a thorn in the side of Pākehā officialdom. Te Mahuki became a prophet in his own right and alongside his followers – the Tekau-ma-rua – he orchestrated active unarmed resistance against the Crown. In late March 1883, following the agreement that permitted Crown officials to venture beyond the aukati, Te Mahuki intercepted and captured Charles Hursthouse, the Crown surveyor. This action reflected Te Mahuki's opposition to the Crown's presence in the region, as well as his resentment of Hursthouse, who had played a role in the invasion of Parihaka. Hursthouse was held prisoner for two days until a party of Te Rohe Pōtae Māori arrived to free him. A hui was then held at Tokanganui-a-noho to discuss the incident, though Te Mahuki was unrepentant. He accused Te Kooti of being 'humbugged' by a false government pardon and on 26 March he marched to Alexandra to confront the Native Minister, John Bryce. This action was motivated by the same factors that had prompted Hursthouse's abduction, though Te Mahuki was arrested before he had the chance to follow it through.

After serving a sentence of 12 months hard labour, Te Mahuki returned to Te Rohe Pōtae. There, he attracted the support of Rewi Maniapoto and adopted the title Manukura. Although he was a staunch opponent of the Crown, Te Mahuki did not oppose the presence of Pākehā in Te Rohe Pōtae. Indeed, he leased some of his own tribal lands to Pākehā settlers. Rather, his opposition was directed at the Crown, and land speculators specifically, a position informed by his belief that land loss would precipitate the demise of Māori. Te Mahuki continued to act on this belief when, in 1890, he ejected Pākehā shopkeepers from their Te Kūiti stores, citing their lack of land leases. In 1897, meanwhile, he smashed the windows of Green and Colebrooke's general store in Te Kūiti and attempted to burn it down. At his trial for this offence Te Mahuki's defence rested on the storeowner's involvement in land transactions. This latter offence proved to be Te Mahuki's last. After serving 18 months in Mt Eden Prison he was transferred to the Avondale Mental Hospital where he died of pulmonary tuberculosis in August 1899.<sup>1</sup>

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1. *New Zealand Herald*, 25 November 1897, p 6; Binney, *Redemption Songs*, pp 312–313; Mark Derby, 'Mahuki of the Red Plume: The Intersection of Labour and Race Politics in 1890', in *Brief*, 44–45 (2012), pp 137–147; Chris Koroheke, 'Te Mahuki', in 1870–1900, vol 2 of *The Dictionary of New Zealand Biography*, pp 518–519; doc A110, pp 625, 643; doc A78, pp 182, 407.

**7.4.3.2 Areas of concern on the border, 1880–81**

Despite the Government's lack of interest in resuming negotiations, the Kingitanga continued to meet throughout 1880 and 1881 to discuss matters of concern. Wahanui facilitated many of these meetings and during this time became known as Tāwhiao's principal advisor. Their discussions continued to concentrate on the prohibition of surveys, sales, leases, public works, and the Native Land Court. Tensions in border areas, where Pākehā settlement was expanding, remained a concern. The Kingitanga undertook to continue to protest public works in these areas, but it would do so without arms. Tāwhiao also began to encourage Kingitanga Māori who were living in border areas where tensions ran high to relocate to the Hikurangi area, specifically Whatiwhatihoe.

A key area of concern was the fate of lands in the Mōkau district, where the rangatira Wetere Te Rerenga had begun to look to the Native Land Court for confirmation of title to his people's lands. The question of whether Mōkau might become the subject of a Native Land Court hearing had been present since 1877 (see section 7.4.2.1). At that time, Wetere and Rewi had resisted the efforts of local settler Joshua Jones and the chief Epiha to take the land to the court. Jones and Epiha continued to press the issue, however. To this extent, Thomas says, 'Rewi and Wetere saw the survey as a necessary concession to demands from local chiefs, while continuing to preserve unchallenged Māori authority over Mōkau.'<sup>512</sup> This dovetailed into Rewi's broader interest in obtaining a survey of the external boundary, which Thomas says Rewi had under active consideration by May 1879. The Government despatched a surveyor, WH Skinner, to Mōkau. Though the size of Jones's claimed lease was disputed, Skinner was eventually able to survey a small area of land. But by the time the survey had been completed, Grey's Government had been defeated, and the new Government had little appetite to pursue the matter further.<sup>513</sup> Unperturbed by the setback, Jones set out to promote a joint coal extraction arrangement, following new reports of coal deposits in the Mōkau River. However, in September 1880 Rewi ordered them to cease any activity.<sup>514</sup> There the matter rested until 1881, when a number of new factors emerged which compelled Wetere to consider seeking to acquire title through the court once again.

The first cause for concern was Pākehā trespassing into Mōkau territory and claiming rights derived from Crown lands purchased in the 1850s that had never been taken up.<sup>515</sup> In February 1881, a group of Europeans entered the region, without permission, to prospect for gold and coal. Māori mistakenly believed that the group had Government backing. As well as protesting directly to the Government, Māori also asked the group to leave. The prospectors refused to do so, claiming

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512. Document A28, p 212.

513. Document A28, pp 215–216.

514. Document A28, p 220.

515. Document A28, p 223.

that they were 'on Government land' (though it is not clear from the newspaper reports exactly where they were). Wetere Te Rerenga, worried about the potential for violence, told his people that they were 'not to strike or ill-treat the Europeans who persist in prospecting . . . but to take their food away: and then they will be compelled to return for want of sustenance'.<sup>516</sup> The prospectors were undeterred and remained in Mōkau for several more months. Rewi and others chose not to resort to physical force and instead asked the Government to act to remove the intruders.<sup>517</sup> The Government refused to act, and in March 1881, Rewi renewed his call that all prospecting activity in Mōkau cease.<sup>518</sup>

An additional cause for concern soon arose when information suddenly emerged in June 1881 that the northern boundary of the Taranaki confiscation area was much further to the north than previously understood. Mōkau Māori had long considered the Waipingao Stream (just north of the Pukearuhe redoubt) to be the approximate location of the confiscation boundary line. A little further south, very close to the redoubt, the Waikāramuramu Stream was the border established with Ngāti Tama when they returned to the area in the 1840s. However, the Crown had in fact set the boundary as commencing at Parininihi then proceeding in a straight line 20 miles inland. Parininihi was three miles north of the Pukearuhe redoubt.<sup>519</sup>

Wetere had hoped for the confiscation to be reversed and to be granted title for Waipingao, but his hopes would go unanswered.<sup>520</sup> At a meeting between Ngāti Maniapoto chiefs and Robert Parris (on behalf of Native Minister Rolleston) in June 1881, the assembled Māori expressed their opposition to the confiscation. They referred to the setting of the boundary as a theft and called for the Crown to fix the law. Parris, however, said that the Crown could not reconsider the confiscation line.<sup>521</sup>

A third factor soon emerged when it became apparent that Ngāti Tama and other Taranaki chiefs were attempting to initiate dealings with the Crown for Mōkau lands. During 1881, Ngāti Tama chiefs Taringakuri Te Kaeaea Te Reweti and Paiuru Te Rangikatatu contacted the Government, calling for advance payments and hasty settlement of Pākehā on the land. In September 1881, the chiefs wrote to the Government: 'Make haste and contract a marriage with one woman that there may be born unto us a male child. The woman we refer to is land, and the child the Poutama territory. The courting days are over and something definite should be arrived at.'<sup>522</sup>

516. 'Native Meeting at White Cliffs', *Taranaki Herald*, 25 June 1881, p 2; doc A28, pp 223–224.

517. Document A28, p 223.

518. Document A28, p 220.

519. Document A28, p 224.

520. Document A28, p 233.

521. 'Native Meeting at White Cliffs', *Taranaki Herald*, 25 Jun 1881, p 2; doc A28, pp 225–226.

522. 'A New Goldfield', *Wanganui Herald*, 15 Sep 1881, p 3; doc A28, p 228.

There is little evidence of the motivations of the Ngāti Tama chiefs. Dr Thomas considers that in seeking to gain initial payments, ongoing revenue, and joint control over the land, they were attempting to stop Ngāti Maniapoto from doing the same; some also had close ties with European prospectors, who may have been encouraging the dealing.<sup>523</sup> The offer may also have been caught up with Ngāti Tama efforts to engage in land transactions in Taranaki, including for land already confiscated. It is unclear, however, whether any negotiations took place.<sup>524</sup> Either way, Wetere immediately travelled to Wellington in September 1881 to protest the 'sale' to Native Minister Rolleston.<sup>525</sup> Rolleston agreed not to make an advance payment to Ngāti Tama for Poutama, but advised Wetere that if he wanted to secure his lands, he should seek the legal title through the Native Land Court.<sup>526</sup> Wetere made an application to the Court soon after, in November of that year.<sup>527</sup>

In calling for a court sitting, Wetere was clear that he regarded the activities of Europeans, rather than Ngāti Tama, as the main problem. He stated that '[i]t was not to end our dispute [with Ngāti Tama] that I sent in a claim to this Court'.<sup>528</sup> While disputes between Māori could be resolved using traditional forums, the intervention of Europeans complicated the situation. Māori could not control the activities of the Crown, the Native Land Court, or European prospectors. As Dr Thomas put it, '[o]nly the Court had the legal power to say who could, and equally as important, who could not deal with Pakeha over land matters'. Some Māori therefore came to view the court as the forum to resolve what was at heart 'a legal and Pakeha problem'.<sup>529</sup>

Wetere, however, still saw the need to get Rewi's and the King's consent before he could proceed with a court hearing. In September 1881, he wrote to Rewi and Tāwhiao seeking written permission for a Court hearing. Rewi, however, refused to commit himself.<sup>530</sup> This was despite the fact that he had earlier demonstrated his willingness to participate in Court processes over lands in the northeast, in attempts to define the external boundary of land remaining in Māori ownership in areas where the interests of his people interacted with others.<sup>531</sup> Mōkau may have presented as a different case.

#### **7.4.3.3 Tāwhiao's friendship campaign**

With concerns at the border only increasing, the 1881 Maehe – held at Hikurangi – was an opportunity for the Kingitanga to seek a reconfirmation of its existing policies, including a commitment to opposing land transactions. The Maehe also discussed the territories that committed to the Kingitanga when it first formed

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523. Document A28, p 227.

524. Submission 3.4.305, pp 13–14.

525. Document A28, p 233.

526. Document A28, p 233.

527. Document A28, p 233.

528. Mokau-Waitara Native Land Court, minute book 1, 8 June 1882, p 30; doc A28, pp 232–233.

529. Document A28, p 233.

530. Document A28, p 238.

531. Document A79, pp 50–52.

– Karioi, Taranaki, Tongariro, Whanganui, Titiokura (between Taupō and Napier), Piako, Te Aroha and Thames. This was an important reaffirmation of the political and territorial pledges originally made to the first King, Te Wherowhero.<sup>532</sup>

The Maehe was also an opportunity for the Kīngitanga to approve its centre-piece strategy from this time – Tāwhiao's friendship campaign, through which it was hoped better relations would be fostered with the settlers who now lived on lands originally pledged to the King but now under government authority. The goal was to encourage settlers to accept Tāwhiao's underlying authority and see that in doing so the Kīngitanga could be relied on for peaceful dispute resolution. Central to the strategy was a series of visits to Waikato townships beyond the aukati.<sup>533</sup> Ahead of an initial visit to Alexandra, he sent Mair '150 head of Native game' (native birds) he and a party had shot near Harapepe in the confiscated district, which Mair distributed among the Alexandra townspeople.<sup>534</sup> In early June, Tāwhiao – with an entourage that peaked in number at 150 – visited Alexandra, entertaining the settlers just as the settlers entertained them, and taking in the best sights of the town (including the telephone and the train from Auckland), guided by locals. Reported as a successful visit, and a demonstration of friendship and goodwill on both sides, Tāwhiao and his group returned to Hikurangi after three days.<sup>535</sup>

Tāwhiao followed that preliminary visit with a multi-town tour, planned for July and August 1881. He began with an important show of peaceful intent. Accompanied by Wahanui, Manuhiri, other chiefs, and a large party of supporters, he met Mair on 11 July 1881 at the Puniu River bridge. Mair escorted the party to the hotel at Alexandra. There, outside on the road, Tāwhiao laid his gun down in front of Mair. His people followed suit and, according to some reports, laid down a further eighty guns and a revolver. Wahanui interpreted the action for Mair: 'This means peace,' he said. 'There would not be any more trouble.'<sup>536</sup>

The travelling party of about 450 Kīngitanga members visited several towns as far north as Mercer, and east to Cambridge. At Ngaruawahia, Tāwhiao visited the grave of his father, Potatau Te Wherowhero. They returned to Hikurangi via Alexandra, where Mair met them again. This time it was Mair who initiated a peace-making gesture, which he reported on at the end of August 1881.<sup>537</sup> Having first sought Native Minister Rolleston's permission, Mair reciprocated Tāwhiao's earlier laying down of arms, taking the same guns and arranging them on the road

532. Document A78, pp 524, 526, 534.

533. Document A78, p 534.

534. 'Tawhiao's Visit to the Waikato Settlements', AJHR, 1881, G-9, p1; doc A78, p 535. Harapepe was one of the areas McLean had offered for return to Tāwhiao, but which Grey later excluded. Tāwhiao let Mair know he was going to shoot pigeons there. Mair's response, if there was one, is unknown, and nor is it known if there was any special significance attached to pigeon-hunting at Harapepe.

535. Document A78, pp 534–536.

536. Document A78, pp 538–539; doc A110, p 617.

537. 'Tawhiao's Visit to the Waikato Settlements', AJHR, 1881 G-9, pp 3–4; document A78, pp 540–2.

at Alexandra to offer back to Tāwhiao. Mair explained that he had accepted the guns on the Government's behalf and had held onto them so that 'our old people and children should look upon them and be gladdened'. Now he wished to return the guns, keeping only Tāwhiao's, in exchange for which he would give his own gun.<sup>538</sup>

The exchange of his gun for Tāwhiao's was a 'token', Mair said, 'that my side – the Government – also wish that there should not be any more trouble . . . that all fighting should be put away'. He proposed that Tāwhiao take the guns 'to shoot birds for us in the future'. At that point, Tāwhiao conferred with Wahanui, after which Wahanui picked up Mair's gun saying he would only take that one. The rest of the guns, given as evidence of Kingitanga 'sincerity', had to 'follow their head' (that is Tāwhiao's gun). 'It is an offering which you must retain', Wahanui told Mair. Mair agreed and returned the Kingitanga guns 'to the barracks'.<sup>539</sup>

### The Significance of the Laying Down of Guns

The meaning and import of these ceremonial exchanges has endured among claimants and their communities, who shared *kōrero tuku iho* with the Tribunal that acknowledge several symbolic acts of gifting and of offering peace. In his *kōrero*, Tohe Rauputu directly associated Tāwhiao's laying down of guns with the birds he presented to Mair, both symbols of peace, conveyed to Mair together. The 'Native game' presented to Mair included *kākā*, *kereru*, and *kokako*, also *tui*. But in giving the birds to Mair, Tāwhiao kept the *pirairaka*, the fantail, claiming it for himself and saying:

ko tēnei manu, māku ko te *pirairaka*, e tuku ana hoki ngā tapū i ahau ki runga i tēnei manu, me te *kōrero* e muri ake nei, e kore te pakanga i haere mai ki tēnei mōtu . . .

this bird, this fantail, is [here] for me to send the sacredness from myself in to it, with the foretelling that afterwards war will not come here to this land . . .

Though there are slight distinctions in the various tellings of these events, the central image of Te Rohe Pōtae Māori having sought reconciliation, and having committed to a permanent peace, has persisted over time. Indeed, Mair's gun – offered to Tāwhiao and picked up by Wahanui – remains conscientiously cared for

538. 'Tāwhiao's Visit to the Waikato Settlements', AJHR, 1881 G-9, pp 3-4; document A78, p 542.

539. 'Tāwhiao's Visit to the Waikato Settlements', AJHR, 1881 G-9, p 4; document A78, p 542.



among Ngāti Maniapoto, a symbol of Tāwhiao's goodwill and the events of 1881, displayed for the Tribunal at Mōkau.<sup>1</sup>

1. Transcript 4.1.5, p 170 (Tohe Rauputu, Ngā Kōrero Tuku Ihu hui, Maniaroa marae, 18 May 2010), translation by Waitangi Tribunal; see also doc A78, p 542.

Despite their symbolic importance, peace-making gestures could not on their own resolve the outstanding issues between the Kīngitanga and the Crown. Mair acknowledged Tāwhiao's goodwill tour as a show of reconciliation and also observed that Tāwhiao was keen to 'come to terms with the Government'. Mair thought that Wahanui similarly desired terms. He said that at one point he 'hinted to Tāwhiao that if he had any request to make he had better do so frankly'.<sup>540</sup> Mair's apparent openness with Tāwhiao, and his engagement on the Government's behalf, complicated the Hall Government's policy of ignoring Tāwhiao and the Kīngitanga.

In the meantime, Tāwhiao and his people relocated to a new settlement, Whatiwhatihoe, where new buildings were constructed. The settlement was just a mile across the Waipā river from Alexandra, the local site of Crown authority. The relocation was significant because it was a move out of core Ngāti Maniapoto territory onto land that straddled the confiscation line. Part of the settlement was within the aukati and part was on confiscated Ngāti Hikairo land that had been returned to the Hikairo rangatira Hone Te One. Te One and his people offered this area of ancestral land to Tāwhiao as an assurance that Ngāti Hikairo would provide their full support and allegiance to the Kīngitanga.<sup>541</sup> This event is remembered by Ngāti Hikairo, Frank Thorne told us, with the whakatauakī: "ka ora, ka mate ā Ngāti Hikairo i raro i te Kīngitanga [Ngāti Hikairo will live and die under the king movement]".<sup>542</sup> Tāwhiao was also soon reported to be supportive of a project to construct a bridge across the river to Alexandra, a project which the Crown soon commenced.<sup>543</sup>

540. 'Tawhiao's Visit to the Waikato Settlements', AJHR, 1881, G-9, p 4.

541. Document K32, p 28 (Thorne).

542. Document K32, p 28; transcript 4.1.2, p 245 (Frank Thorne, Ngā Kōrero Tuku Ihu hui, Waipapa marae, March 2010).

543. Document A78, p 544.

### Ngāti Hikairo and Whatiwhatihoe

At our Kōrero Tuku Iho hui, Frank Thorne said the following about Ngāti Hikairo's gift of land at Whatiwhatihoe:

Whatiwhatihoe was our land, Ngāti Hikairo land. Half is as Crown Grant and half is in the block of Manguika and that was our lands at the time that they went, taken through the Māori Land Court, the decision was it belonged to Ngāti Puhiawe, Ngāti Te Rahopūwai and Ngāti Purapura. Ngāti Purapura is Hōne Te One's hapū, and these are hapū of Ngāti Hikairo, Whatiwhatihoe. That area was used by the government as a neutral zone, so Tāwhiao was placed, stayed there in order to encourage dialogue and so that the government would not encroach into te Rohe Pōtae because the Pākehā was still apprehensive that they would be killed because just beyond Waipā was the Redoubt. There was a great big cannon aimed, trained directly on our pa night and day and we were scared that we would be killed in time. That is the reason why Ngāti Hikairo wanted to work with the government, lest they be invaded again.

Our ancestor, Hōne Te One, in 1860s and 70s, he was accused of being a kūpapa because he was a staunch supporter of the queen. But in 1870, and Miki has already spoken, it was him who built Mōtakotako Pā. At the time he was a refugee at Mōtakotako. It was because of the sympathy of the local people that they assisted him and the house was built there, Te Tokanganui. Tāwhiao was welcome there but he did not come. He sent his party of women. On arrival Hōne Te One said to them, Hōne Wetere and others, Pikia, they all said Ngāti Hikairo will live and die under the king movement. They will finish being kūpapa. From that time forth they agreed that the king movement stand on Whatiwhatihoe.<sup>1</sup>

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1. Transcript 4.1.2, pp 244–245 (Frank Thorne, Ngā Kōrero Tuku Iho hui, Waipapa Marae, 30 March 2010.)

Tāwhiao extended his goodwill mission with a visit to Auckland in January 1882, attracting Government attention that suggested official engagement with Tāwhiao might be more likely than initially suggested.<sup>544</sup> Tāwhiao's visit occurred only months after the Crown's invasion of Parihaka and exhibited the determination of the Kingitanga to adhere to its policies of peace and goodwill notwithstanding the disquiet of Kingitanga leaders over the events at Parihaka.<sup>545</sup> Tāwhiao arrived in Auckland on 16 January 1882, accompanied by a party of about 40 senior chiefs. They had travelled not only beyond the aukati as it stood in 1882, but

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544. Document A78, pp 550–552.

545. Document A110, p 625.

also beyond the former Kingitanga border at Mangatawhiri. Part of their journey had been by train and, after spending their first night with Ngāti Whātua rangatira Paora Tuhaere at Ōrākei, they travelled by steamer back to Auckland, where they arrived at the wharf to the cheers of a gathering crowd. They reportedly remained in the city until 1 February 1882. During that time, they enjoyed the hospitality of Auckland businessmen, civic leaders and other dignitaries, and accepted invitations to a variety of civic receptions, banquets, luncheons, and garden parties, as well as tours of public buildings, water works, gas works, and factories.<sup>546</sup>

While the invitations and public appreciation of Tāwhiao flowed, some sectors of Pākehā society balked at his enthusiastic treatment. Disapproving newspaper coverage regarded the recognition of the Kingitanga and Tāwhiao's leadership as problematic and warned against accepting Tāwhiao's offers of peace without first of all securing his submission to colonial law and the authority of the Queen. However, other accounts argued that peaceful cooperation – accommodating Tāwhiao and his territory if need be – was the best method of progressing towards an arrangement that would open the King Country to Pākehā settlement.<sup>547</sup>

This division of opinion was reflected in the Hall ministry. Ms Marr describes Bryce as 'coldly angry' about the welcome Tāwhiao received in Auckland.<sup>548</sup> Hall was wary. In a letter to Attorney-General Frederick Whitaker, Bryce expressed concern that public celebration of Tāwhiao might inflate his sense of self-importance and make him more difficult to deal with. Hall hoped to visit Auckland himself before too long but explained that he was reluctant to do so while Tāwhiao was still there. Whitaker had a more relaxed attitude than his colleagues. He had no difficulty joining the entertainments laid on for Tāwhiao and responded positively to a message that Tāwhiao wanted to meet. In informing Hall of his plans to invite Tāwhiao to his office, Whitaker said that any discussions would focus on friendship and goodwill. Political matters were best deferred, and Whitaker suggested he invite Tāwhiao to drive the first pile at the bridge planned to be built at Alexandra. This event would present an opportunity for discussions of a political nature with Bryce and Rolleston present.<sup>549</sup>

Whitaker's ability to steer clear of any public political conversations was unexpectedly tested at a banquet held in Tāwhiao's honour. During a series of toasts that emphasised setting aside the disputes of the past in favour of friendlier relations, Paora Tuhaere proposed a toast to Whitaker. Tuhaere credited Whitaker with making Tāwhiao's visit possible, and praised the hospitality extended to him. He said there was 'no greater peacemaking' than Tāwhiao's visit to Auckland.<sup>550</sup> Whitaker was surprised to be toasted but responded by picking up on the theme of peace and reconciliation. With some pleasure, he also announced that he had

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546. Document A78, pp 551–552, 558.

547. Document A78, pp 556–557.

548. Document A78, p 552.

549. Document A78, pp 553–554.

550. 'King Tawhiao's Visit to Auckland', *Nelson Evening Mail*, 27 January 1882, p 3; doc A78, p 555.

accepted a tender for the building of a bridge that would link Whatiwahitioe and Alexandra, and that Tāwhiao had agreed to drive the first pile.<sup>551</sup>

Whitaker described the bridge as a hopeful symbol that would unite Māori and Pākehā ‘hand in hand in a common prosperity’.<sup>552</sup> Other speakers then made toasts to the new acts of peacemaking. In his toast, Patara Te Tuhi, one of Tāwhiao’s advisers, noted that Whitaker and Tāwhiao now sat side by side. Te Wheoro, who had also come to Auckland with Tāwhiao, paid special tribute to Mair for his work in promoting peace. He acknowledged both the Government and the people of Auckland, and urged that all Members of Parliament demonstrate the same attitudes as Whitaker. Tāwhiao similarly asked that ‘those responsible for making laws should also be of one mind’.<sup>553</sup> Wahanui also spoke, giving a toast to Tāwhiao. A few weeks before, he had told a newspaper reporter that he strongly condemned Bryce’s actions at Parihaka.<sup>554</sup> and now he took the opportunity to contrast those events with Tāwhiao’s offer of friendship (see sidebar).

### Wahanui’s Toast to Tāwhiao

Tāwhiao’s visit to Auckland took place less than two months after the Government’s invasion of Parihaka. At a banquet in Tāwhiao’s honour on 19 January 1882, Wahanui gave a toast highlighting the contrast between the Government’s actions and Tāwhiao’s acts of goodwill:

You have heard what Tawhiao has said; in the first instance his reference to love, and secondly the tramping down of evils (that is, the wars between the races). My question regarding these two points is this – where are they to be recorded; and who shall bring to a conclusion our differences; and who is to carry out the friendly relations referred to? Perhaps it will be Tawhiao alone who will abide in respect to the friendly relations he has spoken of, for in the first place Tawhiao came to Pirongia, in the second place he travelled through the Waikato, and in the third place he has come to Auckland. The basis of these three journeys is of a friendly character – to enable us to meet one another in the broad day-light, the sun shining upon us, dispersing all the evils that came up heretofore. Therefore I consider it is well that Tawhiao’s health should be drunk to-night. He is entitled to praise, on account of these three attempts to bring about kindly relations between the Europeans and Maoris. I look upon you all this night with complacency, and I

551. Document A78, pp 554–555, 587.

552. ‘King Tawhiao’s Visit to Auckland’, *Nelson Evening Mail*, 27 January 1882, p 3; doc A78, p 555.

553. Document A78, p 556.

554. ‘Tawhiao at Orakei – A Council To-Day’, *Auckland Star*, 17 January 1882, p 3; doc A110, p 625.

now say to you, do not permit any evils to arise hereafter, but endeavour to administer affairs rightly, for the benefit of all concerned. I greet you all. I have ended.<sup>1</sup>

1. 'Visit of Tawhiao and His Chiefs', *Auckland Star*, 20 January 1882, p 3.

Whitaker appears to have kept his word to Hall and did not venture into political discussions with Tāwhiao. Nonetheless, Kingitanga leaders appeared to come out of these engagements with the understanding that the Government's representatives – Whitaker and Mair specifically – had accepted Tāwhiao's peacemaking policy, including the possibility of cooperating on certain projects (such as the bridge) in the future.<sup>555</sup>

Premier Hall visited Auckland in late January and early February, arriving while Tāwhiao was still there. The two men met briefly.<sup>556</sup> As earlier proposed, Hall wanted to focus on the goodwill element of Tāwhiao's trip, leaving political discussions for another time. He explained that the economic progress Tāwhiao had witnessed in Auckland was occurring in other parts of the country and could be replicated in Te Rohe Pōtae if circumstances changed. 'Ministers', he was reported as saying, 'wished to live on most friendly terms with the Maoris, and to work with Tāwhiao in promoting the welfare of his followers.'<sup>557</sup> Hall insisted that New Zealand could have only one sovereign and that Māori and Pākehā must live under the law. But he also confirmed the Government's desire to be on friendly terms with Tāwhiao. Tāwhiao did not disagree with anything Hall had to say, but he did maintain his right to decide matters for himself on behalf of his people.<sup>558</sup>

While Hall steered clear of discussing the opening of the King Country for Pākehā settlement with Tāwhiao, he was later drawn into the topic when he met with the Auckland Chamber of Commerce. Pressed on the matter of surveying for the best railway route through the King Country, Hall assured the chamber of the Government's commitment to completing the railway as soon as practicable. But Hall also made clear the need to proceed with care: there were 'other difficulties', he said, which needed to be 'treated with very great caution and judgment'; the Government had to act 'prudently'.<sup>559</sup>

Despite avoiding specific issues relating to the Kingitanga and Te Rohe Pōtae, Hall and Tāwhiao made general commitments to meeting on future occasions to advance the discussions. Hall noted that Native Minister Bryce was expected to make a visit to the north, and assured Tāwhiao that that would present an

555. Document A78, pp 555–556.

556. Document A78, pp 557–558; doc A41, pp 19–20.

557. 'Tawhiao and the Premier', *Hawkes Bay Herald*, 2 February 1882, p 3; doc A78, p 557.

558. 'Tawhiao and the Premier', *Hawkes Bay Herald*, 2 February 1882, p 3; doc A78, p 558.

559. 'Deputation to Ministers', *New Zealand Herald*, 3 February 1882; doc A41, pp 20–21.

opportunity for them to progress discussions. Tāwhiao extended an invitation to Hall, members of his Government, and all Pākehā, to attend the next Maehe, where he would clearly articulate what he sought from the Government.<sup>560</sup>

As it turned out, however, Bryce did not meet with Tāwhiao during his visit to the Waikato region later in February 1882. He did, however, meet with Rewi. The Maehe went ahead as planned in May, immediately preceded by the pile-driving ceremony for the Whatiwhatihoe-Alexandra bridge, but no Ministers of the Crown attended either event.<sup>561</sup> Nevertheless, there were signs that the Crown and the Kingitanga might be ready to restart negotiations.

#### 7.4.4 Negotiations with Bryce, 1882

From early 1882, the Crown increasingly sought to end the stalemate that had developed with the Kingitanga. It did so through Bryce increasingly focusing on the Te Rohe Pōtae Māori leadership. The Crown eyed a significant opportunity to escalate what it saw as increasing divisions between Rewi Maniapoto and Tāwhiao.

These perceptions had only been exacerbated by Weterere's desire to seek the Native Land Court to determine title for the Mōkau lands. In January 1882, following Weterere's letter to Rewi and Tāwhiao seeking permission for the hearing, Tāwhiao sent a letter to Robert Parris expressing his opposition. Weterere responded to Tāwhiao's opposition by stating that 'the work is for us to carry out, that is to say, to bring it before the Court. No one has a right to say leave it alone. Tāwhiao has nothing to do with us – his village is at Waikato, ours is at Mōkau.'<sup>562</sup> These tensions grew further as Weterere continued to vocally pursue a court hearing for Mōkau lands.

The Government was under considerable pressure to accept Weterere's application for a court hearing from politicians, businessmen and the wider settler community. However, Rewi had remained neutral, and now Tāwhiao was expressing his active opposition. Without the support of the Kingitanga and wider Ngāti Maniapoto, the Crown proved reluctant to allow a court hearing to proceed. Bryce did not think that a court hearing would be productive. His goal was to convince Māori to allow the railway through their rohe, and to avoid violence while doing so.<sup>563</sup> By February 1882, the Government had informed Ngāti Maniapoto that a hearing would not go ahead at Mōkau due to Tāwhiao's opposition (which it was authorised to do under section 38 of the Native Land Court Act 1880).<sup>564</sup>

In the meantime, the Kingitanga remained determined to impress its issues upon the Crown, which forced Bryce to once again engage the Kingitanga directly and to make offers addressing their concerns. The Kingitanga, for its part, was insistent that it would settle for nothing less than the settlement of grievances from

560. Document A78, pp 557–558.

561. Document A78, pp 559, 587–588.

562. 'Native Land Court at Mokau', *Taranaki Herald*, 27 January 1882, p 2; doc A28, pp 239–240.

563. Document A28, p 235.

564. Document A28, p 240.

the Waikato war and the guarantee of its authority. The question was how Te Rohe Pōtae Māori would position themselves in these negotiations, given the increasing pressures placed upon their lands at the border, and the Crown's increasing insistence on opening the territory, particularly to allow the construction of a railway.

#### 7.4.4.1 Bryce meets Rewi at Kihikihi, February 1882

Bryce met Rewi at Kihikihi on 22 February, with other chiefs and officials in attendance. Press coverage of the meeting indicates that the two men were civil but direct.<sup>565</sup>

Prior to the hui, Bryce had written to Rewi, referring to the 'tree of peace' planted by Rewi and Grey. According to newspaper reports, Bryce had said that the tree 'had been scorched by fire, and a grub had been at its roots', and Bryce had therefore offered to 'water the roots of the tree, and by that means save it'.<sup>566</sup> During the hui, Bryce also invoked his own metaphor, which he would return to in later engagements: colonisation was a flood that Māori could not control, all they could do was steer their canoe on it. The Government was available to assist, but there was a bottom line: there could be 'only one sovereign and one set of laws . . . to apply to both races'.<sup>567</sup>

Rewi informed Bryce that the one thing preventing him and his people from being subject to the law was the security of their territory. If their remaining lands were secured to them, Rewi said, then 'both races' could 'live under one law'.<sup>568</sup> This was a significant statement, given the previous stance adopted by the Kīngitanga in respect of the application of colonial law to Te Rohe Pōtae. Now Rewi was suggesting that Te Rohe Pōtae Māori would be willing to consider the application of colonial law so long as it was used to secure their existing rights, rather than to undermine those rights. As noted in section 7.4.2.5, he intended that the lands secured to Māori would remain self-governing, but was now suggesting that colonial law might guarantee that right.

Rewi also described the district he wanted 'secured': all the lands contained within the boundaries formed by Pirongia, Kakepuku, Puniu River, Tongariro and Parininihi ('White Cliffs'). These boundaries approximated those of the aukati. Rewi clarified that he was referring only to the lands which had not yet been dealt with by Pākehā and predicted that once Te Rohe Pōtae lands were secured it would take no longer than two years before Māori and Pākehā were 'under one law'. He said there was no obstacle to this course of action ('the people are with me') unless it came from 'Government natives' and he was not yet aware of it.<sup>569</sup>

However, Rewi also raised his long-held concern that in hearing the claims of neighbouring iwi, the Native Land Court had eroded the interests of Te Rohe Pōtae Māori in lands adjoining the aukati (and within the former northeastern

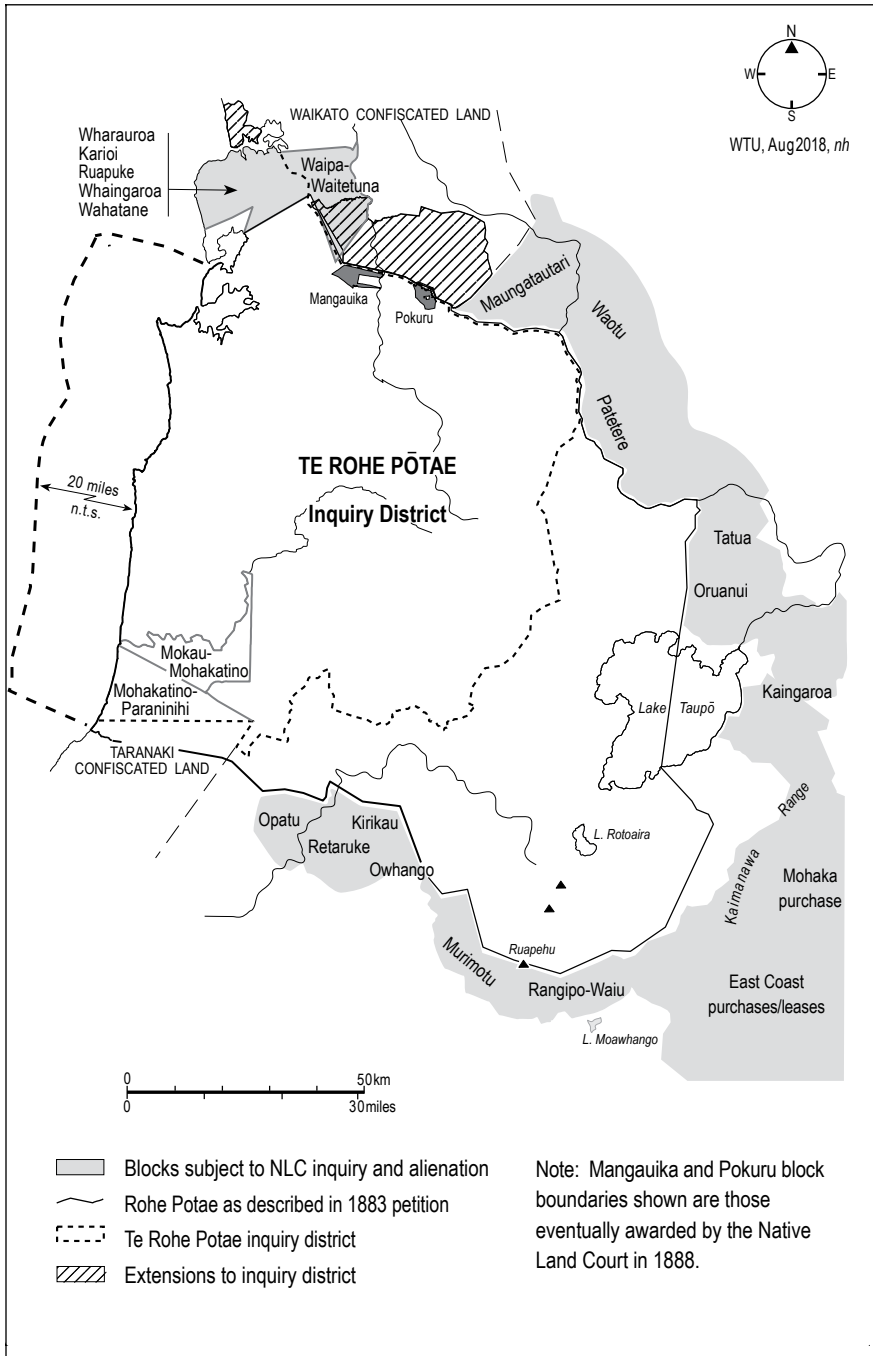
565. Document A41, pp 22–23; doc A78, pp 559, 561–564.

566. These words are Rewi's explanation of what Bryce had told him in the letter: 'The Native Minister in Waikato', *New Zealand Herald*, 23 February 1882, p 2.

567. 'The Native Minister in Waikato', *New Zealand Herald*, 23 February 1882, p 2; doc A41, p 22.

568. 'The Native Minister in Waikato', *New Zealand Herald*, 23 February 1882, p 2; doc A41, p 22.

569. 'The Native Minister in Waikato', *New Zealand Herald*, 23 February 1882, p 2; doc A41, p 22.



Map 7.2: Leases, purchases and Native Land Court activity encircling the aukati



aukati zones), such as those in the Tokoroa area. He said that Māori who were friendly to the Government had sold their own lands and now wanted to sell his. He had tried to persuade Grey to save Tokoroa as ‘a dwelling place for the natives’, but had now let that go.<sup>570</sup>

Bryce responded that the problem had been caused by Te Rohe Pōtae Māori abstaining from the Native Land Court’s investigations of title (and had therefore not had their names included in the titles). He proposed that there was only one way to avoid similar problems arising in the future: ‘to ascertain the title to the land, and have it fixed by the Native Land Court’. He emphasised that the purpose of utilizing the Court was to determine ownership of the land and ‘not for purposes of sale necessarily.’<sup>571</sup> Bryce further reassured Rewi, saying that there was no danger of losing land later and that Māori could lease their lands rather than selling. The Government, he said, ‘will not be the cause of your disposing of your land.’<sup>572</sup>

Rewi’s response to Bryce confirmed that he was prepared to go the Court ‘in respect of lands adjacent to his boundary’. He would attend ‘to have the boundary of his country fixed.’<sup>573</sup> This was another significant statement on Rewi’s part. Although he continued to oppose the operation of the court in his own territory, he increasingly looked for ways of reinforcing protection for the aukati as he now defined it, and began contemplating how this might be achieved through the use of the court.<sup>574</sup> By this time, Thomas says, the court and land agents were ‘encircling the aukati from Waikato in the north, to Taupō in the east, and to Whanganui and Mōkau-Taranaki in the south.’<sup>575</sup> Up until that time, Rewi had refused to make a decision on whether Wetere could proceed with a court hearing for the Mōkau lands. Now he appeared to be signalling that he would be prepared to allow the court to proceed.

Bryce asserted that once the Court issued title, the problems Rewi outlined would cease to exist, and assured Rewi ‘you need never fear’: no Māori would be ‘compelled to part with their land’. If they parted with their land it would be ‘at their own instance, and not from any pressure from the Government’. Bryce went on to recommend that once titles had been settled, Te Rohe Pōtae Māori should look to lease, rather than sell, their land ‘under proper conditions’. He again emphasised that such an undertaking would come, ‘if it comes at all’, from Te Rohe Pōtae Māori themselves, and that the Government would not urge them to either lease or sell.<sup>576</sup> Rewi concluded by returning to his favoured tree of peace

570. ‘The Native Minister at Kihikihi’, *Waikato Times*, 25 February 1882, p 3; doc A41, pp 22–23; doc A78, p 561.

571. ‘The Native Minister in Waikato’, *New Zealand Herald*, 23 February 1882, p 2; doc A41, p 23.

572. Document A41, p 23.

573. Document A78, p 563.

574. Document A78, pp 562–563.

575. Document A28, p 243.

576. ‘The Native Minister in Waikato’, *New Zealand Herald*, 23 February 1882, p 5; doc A41, p 23.

metaphor, noting his hope that ‘we will be successful in nourishing the tree, so that it may flourish.’<sup>577</sup>

The day after the meeting, Bryce took Rewi to meet Premier Hall in Hamilton. Ms Marr suggests that Bryce wanted to show Hall that negotiations were operating through Rewi and not Tāwhiao.<sup>578</sup> Certainly Bryce was pleased with Rewi’s decision to utilise the Native Land Court, and negotiating with Rewi did seem to be preferable to him than negotiating with Tāwhiao.<sup>579</sup> Whatever the case, clearly the three men agreed it was time to progress matters.

While Rewi’s announcement took on some significance at the time, it was no great departure from the position he and Te Rohe Pōtae Māori had held in previous negotiations with the Crown. It seems clear that agreeing to go to the court was a defensive measure to protect the land at Mōkau as well as the aukati. He also ‘seems to have seen this as a method . . . to help mark out clearly in practice and in law the boundaries of Te Rohe Pōtae as a whole, which would remain under Māori authority.’<sup>580</sup> Securing his territory had consistently been foundational to Rewi’s proposals. However, Rewi’s decision was significant in that it represented the first occasion where the Ngāti Maniapoto leadership had decided to take a different position from that publicly announced by Tāwhiao. The significance of this was not lost on the Crown.

#### **7.4.4.2 Rewi advances plans for making use of the Native Land Court**

After meeting with Bryce in February 1882, Rewi moved to secure a court hearing for the Mōkau-Mōhakatino and Mōhakatino-Parininihi blocks, which were collectively referred to as the Poutama blocks. Following a further meeting with Wetere and William Grace, Rewi wrote to Bryce on 14 March concerning Mōkau. He claimed authority over the land, which was directly controlled by Wetere, and urged the Government to stop negotiating with Ngāti Tama. Instead, the Government should ‘support and further the work of Wetere.’ Although it was not explicitly stated, Wetere and the Crown interpreted his comments as meaning that he would not prevent a court sitting from going ahead.<sup>581</sup>

Wetere then wrote to Bryce renewing his call for a court hearing. He noted Rewi’s request ‘to consent to my work, my work about Mōkau’ as well as Rewi’s opinions on the Native Land Court. He asked the Government to ‘not disappoint our tribes at Mōkau about the Native Land Court, but rather, friend, consent to our requests often made about lands at Mōkau, that it may be adjudicated upon.’<sup>582</sup>

Bryce responded to Rewi’s letter within a week. He promised that the Government would not make advances on Mōkau land, nor would it ‘take a course underg[roun]d but above ground where everyone can see’. In addition, the

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577. ‘The Native Minister in Waikato’, *New Zealand Herald*, 23 February 1882, p 5; doc A41, p 24.

578. Document A78, p 564.

579. Document A41, pp 24–25; doc A78, p 560.

580. Document A28, p 246.

581. ‘Rewi and the Opening of Mokau’, *Taranaki Herald*, 25 April 1882, p 2; doc A28, p 247.

582. ‘Rewi and the Opening of Mokau’, *Taranaki Herald*, 25 April 1882, p 2; doc A28, p 248.

Government would not prevent a court sitting.<sup>583</sup> Assured by Bryce that it would be ‘improbable in a high degree’ for the Government to stop a hearing, the chief judge announced that the court would sit ‘shortly’ and called for further applications.<sup>584</sup> The hearing was set down for June at Waitara.<sup>585</sup>

The Government saw a Native Land Court hearing as an opportunity to weaken the influence of the Kingitanga and sow divisions between the Kingitanga and Ngāti Maniapoto. A cabinet minute from the time called the hearing of Mōkau a chance to ‘break up Tāwhiao’s power in the future and assert rights of other Natives to deal with their lands.’<sup>586</sup> The settler press echoed this view: the *New Zealand Herald* described the hearing as ‘a matter of great importance, as breaking up the King’s authority within the district which he has hitherto regarded as particularly his own.’<sup>587</sup>

Following the February 1882 meetings, the relationship between Tāwhiao and Rewi – and the Kingitanga and Ngāti Maniapoto – came under further public scrutiny. While it is unclear whether a rift was developing, it is certain that internal tensions arose as Te Rohe Pōtae leaders debated turning to the court to resolve disputes over lands adjacent to or even inside the aukati.

Speculation of a rift within the Kingitanga was nothing new, as already described. In this instance, it was probably fuelled by the fact that Bryce had chosen to meet with Rewi but not Tāwhiao. Privately, Hall said he was confident that he and Bryce had further encouraged the rift between Rewi and Tāwhiao, and he expected that before long a row would develop between the King and the chief.<sup>588</sup> Meanwhile, Bryce seemed unfazed by criticisms that he had intentionally snubbed Tāwhiao and likely created a problem for the Government. According to the Crown’s historian, Dr Loveridge, Bryce did not visit Tāwhiao because he was not invited to do so. That was not the case: during his visit to Auckland, Tāwhiao had invited Hall and other members of his Government, and indeed all Pākehā, to attend the forthcoming Maehe, where he would set out what he wanted from the Government.<sup>589</sup> Hall had indicated to Tāwhiao when they met in Auckland that Bryce would soon seek out a meeting. Ms Marr noted that during his visit to Kihikihi Bryce had made no attempt visit Tāwhiao.<sup>590</sup>

Addressing questions about the supposed rift between Rewi and Tāwhiao, which the Government was keen to encourage, the *New Zealand Herald* in April reminded readers of Tāwhiao’s descent from Maniapoto and therefore of the intricate connections between Waikato and Ngāti Maniapoto peoples. Rewi, answering the newspaper’s questions, denied that there was any rift. He said that Kingitanga Māori, himself included, were spending the month determining what Tāwhiao

583. Grace to J Jones, Kihikihi, 20 March 1882 (doc A28, p 248).

584. Document A28, p 250.

585. Document A28, p 251.

586. Document A28, p 249.

587. Editorial, *New Zealand Herald*, 28 March 1882, p 4; doc A41, p 27.

588. Document A78, p 565.

589. Document A78, pp 557–558.

590. Document A41, p 24; doc A78, pp 576, 586, 589–590.

would announce at the Maehe, but he continued to hold to ‘the old Maori policy’ of the Kingitanga. He was ‘an elder’, he said, who had ‘adhered continuously’ to the cause of Te Wherowhero during his lifetime, ‘and I do not intend now to change my thoughts by forsaking Potatau’s son’. If he had any intention of doing that, he said, ‘you would hear of my advocating the selling of land, which, of course, would mean the breaking up of the old compact, and the dismemberment of our present association’. But no-one could accuse him of that:

who will say that I have any other idea in my mind than that of preserving the whole territory of the Maori Kingship—of making the whole of the territory a reserve under my own, that is, the Maori mana: and your English laws, I expect, will aid me in carrying out this long-wished-for project.

Rewi said he had discussed this subject with Bryce at Kihikihi (section 7.4.4.1), ‘when I mentioned certain boundaries as those of the proposed Maori reserve’. During his lifetime, Rewi said, nothing would move him from the policy ‘enunciated at the beginning, which means my holding intact all our Maori territory’.<sup>591</sup>

Two days later, the *Herald* reported Rewi explaining how Kingitanga decisions were made. Tāwhiao had a Council of rangatira, he said, and could not act independently of it. For that reason, he acted with great caution: ‘[W]hen his advisers act independently of him they are censured . . . Tawhiao does not act without first consulting his Council, nor the members of his Council without consulting him.’<sup>592</sup>

#### **7.4.4.3 The pile-driving ceremony and the fall of the Hall Ministry**

The idea that Bryce had deliberately avoided the King might have passed if not for the absence of the Crown’s Ministers from both the pile-driving ceremony (for the new bridge that was to cross the Puniu between Alexandra and Whatiwhatiho) in April 1882, and the annual Maehe in May.

At the pile-driving ceremony, Tāwhiao named the bridge Tawhara Kai Atua. He explained that the name – ‘the first fruits’ – was a symbol of the fruits of his new policy of goodwill and improved relations with Pākehā and the Crown. About 300 Māori attended the ceremony, alongside a group of civic leaders, local Pākehā, and some government officials, but no Ministers.<sup>593</sup> Nor did any Government Ministers attend the eight-day Maehe which began at Whatiwhatiho on 11 May, though clearly both they and the general Pākehā public had been invited. Resident Magistrate Bush was among the few government officials who attended; he reported to the Government on proceedings but otherwise kept a low profile.<sup>594</sup>

It appears that the Government was preoccupied by a period of political instability within the Hall ministry. This ‘crisis’, as Ms Marr describes it, featured several

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591. ‘The Present Position of the King Party’, *New Zealand Herald*, 8 April 1882, p 5.

592. ‘The Position of the King Party’, *New Zealand Herald*, 10 April 1882, p 5.

593. ‘The Native Minister’s visit to Tawhiao’, *Waikato Times*, 31 October 1882, p 2; doc A78, pp 587–589.

594. Document A78, pp 589–590.

different points of conflict, of which the situation with the Kingitanga was one. Bryce was a central figure – Hall regarded him as abrasive and difficult, but there were also various policy differences. With respect to Tāwhiao, some Ministers were willing to negotiate, but Bryce was opposed to any Government recognition of or publicity for Tāwhiao.<sup>595</sup> By this time the Government – responding to pressure from settlers – was determined not only to open Te Rohe Pōtae, but also to resume efforts to complete the North Island Main Trunk Railway through the district. This was a course of action that would only be possible with the consent of Tāwhiao and tribal leaders.<sup>596</sup> One report went so far as to suggest that Bryce wanted to deal with the Kingitanga as he had Parihaka, which, in the newspaper's view, would lead to 'simply the most serious struggle the colony has yet seen'.<sup>597</sup> Newspapers predicted that Bryce would force a crisis in the Ministry by threatening to resign his portfolio, and in April he did resign following a personal insult from Hall. Hall, who was suffering from ill health, took the opportunity to quit as Premier, but stayed on as a member of the House of Representatives until the next parliamentary session. Whitaker became Premier in Hall's place, while keeping his position as Attorney-General and his membership of the Legislative Council. Bryce stayed on as Native Minister.<sup>598</sup>

By the time of the pile-driving ceremony, the post-crisis Government was in place, including Whitaker in his new role as Premier. Whereas just a few months earlier he had encouraged Tāwhiao's role in the ceremony and had promoted the bridge as a beacon of Māori-Pākehā unity, Whitaker did not attend. The *Waikato Times* gave the Ministerial crisis as the reason for his absence, but it appears Whitaker gave no explanation to Tāwhiao at the time. As for Bryce, he was busy with matters at Parihaka, where some 500 Māori continued to live while the trials of Te Whiti and Tohu were still pending. However, the Native Minister did take the time to send messages to armed constabulary in the area, noting his concern that Māori should not be allowed to abuse liquor at the ceremony.<sup>599</sup> By the time of the Whatiwhatihoe Maehe, it appears that Bryce's opinion prevailed – neither the Governor nor any Government Ministers would attend, and Tāwhiao would be told they were unavailable due to other business.<sup>600</sup>

#### **7.4.4.4 The Whatiwhatihoe Maehe, 11–17 May 1882, and Tāwhiao's proposals**

Fewer people – Māori and Pākehā – attended the Whatiwhatihoe Maehe than in previous years, which the media presented as evidence that support for Tāwhiao was waning.<sup>601</sup> Certainly Pākehā attendance was noticeably lower, even though Tāwhiao had extended an open invitation to the settler public. But other factors

595. Document A78, pp 589–590.

596. Document A41, pp 20–21; doc A78, p 582.

597. 'Another Sensational Canard', *Evening Post*, 20 March 1882, p 2; doc A78, p 580.

598. Document A78, pp 582–585.

599. Document A78, pp 588–589.

600. Document A78, p 590.

601. Marr pointed to the following examples: *Waikato Times*, 6, 11, and 13 May 1882; and *Evening Post*, 6 May 1882, p 2; doc A78, p 592.

also accounted for the decline in attendance, such as inclement weather, which in turn delayed the beginning of the hui. The number of Māori in attendance may have also been lower, with Bush reporting an estimate of 3000.<sup>602</sup> Turnout from Kīngitanga communities was strong. Ngāti Maniapoto and Waikato were well represented. Large numbers of Ngāti Raukawa and Ngāti Tūwharetoa were said to have travelled to the hui, as did members of Muaupoko, Ngāti Apa, and Rangitane, and people from the Hawke's Bay and Whanganui. There were fewer than usual, according to Bush, from the Thames, East Coast, Rotorua, and the north. Among those named as being present were Paora Tuhaere, Te Heuheu, Te Ngakau, Hitiri Te Paerata, Wahanui, Rewi, Wetere, and Te Wheoro.<sup>603</sup>

Central to the Maehe was a set of proposals that the Kīngitanga intended to submit to the Government. Tāwhiao put the proposals to those who had assembled at the hui for their confirmation. The proposals included a reconfirmation of the existing Kīngitanga policy that there should be no sales, leases, surveys or road-building; gold-prospecting would be considered on request. Tāwhiao spoke about the challenges confronting these policies. Kāwhia (where a request had come from a Pākehā to occupy an area for which he said he had acquired a lease<sup>604</sup>) and Mōkau, where the Native Land Court was about to commence its hearing. He said that no claims should be made to Kāwhia, and no one should interfere in Mōkau, where matters were to be managed by Wetere. This was an important compromise by Tāwhiao, apparently in recognition of the view of Wetere and Rewi that the Court could be used to protect the borders of the Kīngitanga territory but should not be used within it. Tāwhiao also said that the settler parliament should sit at Auckland so that he could attend. He charged Major Te Wheoro, who had been MHR for Western Māori since 1879, with the task of presenting his proposals to Parliament.<sup>605</sup> Te Wheoro expressed his support for Tāwhiao and urged everyone to refrain from all land activities; to continue would render his forthcoming presentation to Parliament pointless.<sup>606</sup>

When his turn came to speak, Rewi maintained that there was a crucial difference between the surveys he wanted to commission at the borders and those Tāwhiao wanted to stop.<sup>607</sup> His goal was to protect his 'porotaka', his core lands, which he wanted to reserve. He regarded the Mōkau application as fitting that category of action, a strategic part of his plan to protect Te Rohe Pōtae. Like the others gathered, he was opposed to surveys for sale and lease. Protecting his boundary was his well-known and long-established objective, from which he had never wavered. He understood that some at the hui wanted him to hold out for a return of the confiscated territory even as far north as Manukau. But in his view,

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602. In private correspondence, Hall claimed Māori in attendance numbered no more than 1,500, half the number Bush had estimated: doc A78, p 592.

603. Document A78, p 592.

604. Document A78, p 596.

605. 'Letter from Major Te Wheoro, MHR, to the Speaker, forwarding proposals from Tawhiao', AJHR, 1882, G-4, pp 1, 7; doc A78, pp 592-593.

606. Document A78, p 595.

607. Document A78, p 595.

that could be settled later. His focus was now on ‘this boundary line of mine that I have been trying to carry out for so long.’<sup>608</sup> As he had in his interview with the *New Zealand Herald* (section 7.4.4.2), Rewi here appeared to be using ‘mine’ to refer to all the people of the Kingitanga.

In response to Tāwhiao’s proposals and the debates at the hui, Wetere agreed to seek a deferral of the court hearing at Mōkau. But both Rewi and Wetere argued that the Mōkau investigation could not be abandoned completely. Wetere explained that the situation remained urgent because of the range of pressures they faced, including the possibility that land might be sold without their permission. He also had to deal with the complication of not knowing which lands north of Mōkau had been dealt with already and were subject to claims by the Crown or settlers. The situation was compounded by gold prospecting and other activities, which Wetere was struggling to control. Prospectors claimed they had a right because they were on government land or they had permission from Ngāti Tama.<sup>609</sup>

The suggested solution was for immediate engagement with the Government on the issues that were under discussion. Wahanui proposed that they request the Government to agree to having one representative lead them all in negotiating and managing their engagements with Government. That person, Wahanui proposed, should be Tāwhiao.<sup>610</sup> This provoked much debate, some of it heated and some of it critical of Tāwhiao. But Wahanui, playing the role of peacemaker, insisted the hui consider the proposals Tāwhiao had put to them. He suggested that they introduce a system of appointing small groups of chiefs among the various iwi to consult each other and raise points of discussion with Tāwhiao, who should lead consultations with the Government. Wahanui also suggested that the Kingitanga establish a Māori-owned and operated printing press for the publication of their own ideas, information, and views.<sup>611</sup> He also expanded on the proposals of Tāwhiao by specifically ruling out any prospect of the construction of the railway until the Crown took formal action to offer them the protection they sought. He was reported as saying that ‘no railway via Mokau or elsewhere through the Ngatimaniapoto country will be allowed during his life-time or until Parliament, sitting at Auckland, shall have passed laws to ensure the maintenance of the Maori authority over the King Country.’<sup>612</sup>

Ultimately a consensus was reached agreeing that any actions involving land that would potentially breach Kingitanga policies would be postponed. This included Wetere’s plan to pursue a court hearing in Mōkau. Te Wheoro could therefore proceed to Parliament with Tāwhiao’s proposals having been approved.

The reports of the hui showed that the Kingitanga, and especially Te Rohe Pōtae Māori, faced challenges that were increasingly coming to bear on the borders of

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608. AJHR, 1882, G-4A, p 10; doc A78, pp 596–599.

609. Document A78, pp 595–596.

610. Document A78, p 596.

611. Document A78, p 596.

612. ‘The Trunk Railway’, *Waikato Times*, 29 June 1882, p 3; doc A78, p 604.

the territory. Te Rohe Pōtae Māori now had to face the serious prospect that the strict maintenance of Kīngitanga policies might endanger their land further. Rewi's strategy was to engage with the Crown to the extent that was required to protect their remaining territories. While there were clearly differences of approach, they ultimately shared the same policies in respect of their core lands. Where at all possible, the hapū and iwi that had committed to the Kīngitanga would seek that their policies be represented through the leadership of Tāwhiao.

Nevertheless, the hui demonstrated that there was an increasing focus on how the customary land owners of Te Rohe Pōtae might look to protect their land, especially as the Native Land Court increasingly came to advance on those lands. As such, one of the critical side discussions at the Maehe concerned the boundaries of Ngāti Maniapoto, Ngāti Raukawa, Ngāti Tūwharetoa, and the people of Tūhua-Upper Whanganui. Although the report of the hui says that representatives focused on the boundaries between the iwi, Ms Marr suggests they may have also been discussing their external boundary, much as they had done at the Government's insistence following the hui at Te Kōpua in 1879.<sup>613</sup> This was a crucial development, one that likely fed into later discussions among these iwi about how best to represent their issues to the Government. Wahanui was now also signalling that his people required the Government to pass a law that ensured the maintenance of Māori authority.

Te Wheoro presented the written form of 'Tawhiao's Proposals' – 'Nga Kupu a Tawhiao' – on 26 May 1882, just nine days after the Maehe ended.<sup>614</sup> The proposals reiterated Tāwhiao's call for all surveys, leasing, land sales, road-making and the Native Land Court to cease ('taihoa ano e mahi'). While there was no specific reference to Kāwhia and Mōkau, the proposals stated that those activities could resume when Parliament and the Kīngitanga chiefs had reached some agreement on 'some mutual basis of settlement' ('etahi tikanga hei whakahaere'). There was also to be a special sitting of Parliament in Auckland closer to the Kīngitanga, so that they could discuss their differences. In conclusion, the proposal noted that Tāwhiao's words were agreed to by the chiefs and everyone at the Maehe ('nga Rangatira me te Hui katoa').<sup>615</sup>

Accompanying the proposals was a covering letter from Te Wheoro in which he urged Parliament against dismissing them too lightly.

Kaua e taimaha rawa te peehi i a Tawhiao me tona iwi no te mea kua rite noa atu i o ratou whenua te utu to ratou hara. Mehemea e haere ana te tika me te aroha i roto i nga whakahaere e whakahaerea atu ana mo te taha ki a ia katahi ka taea te mutunga pai e whai katoa nei tatou.

613. Document A78, p 599.

614. 'Letter from Major Te Wheoro', AJHR, 1882, G-4; doc A78, pp 592–593.

615. 'Letter from Major Te Wheoro', AJHR, 1882, G-4, p 2.



Do not press too heavily upon Tawhiao and his people. Their land long ago paid the penalty for their sin. By meeting him frankly and in a generous spirit the good work for which we are all striving will be accomplished.<sup>616</sup>

Tāwhiao's proposals were not well received in Wellington.<sup>617</sup> In mid-June, when Te Wheoro asked what consideration the Government had given them, Bryce said that Tāwhiao had not made any proposals: he had merely asked for certain activities to stop while his proposals were considered or some arrangement was reached. Tāwhiao was 'careful', Bryce argued, 'to conceal what those propositions were'. Bryce could only say that it was 'impossible' to suspend 'surveys and road-making' until further notice, and that the Government would now devise its own offer.<sup>618</sup>

#### **7.4.4.5 The Mōkau Native Land Court hearing, June 1882**

In June 1882, the Native Land Court commenced a sitting in Waitara to determine title to two blocks – Mōkau-Mōhakatino and Mōhakatino-Parininihi – located to the south of the Mōkau River.

Only weeks earlier at the Maehe, Wetere had agreed to Tāwhiao's pleas to postpone the court application, though he had noted the urgency with which the Mōkau lands and boundaries needed securing. As it turned out, Chief Judge Fenton, realising the chiefs would be attending the hui in May, had already adjourned the hearings until June.<sup>619</sup> Following the Maehe, Rewi had decided to act in accord with Tāwhiao's urging to postpone court applications, and, along with other rangatira, wrote to Fenton seeking further adjournments. However, Rewi's position on the court hearing at this point is somewhat unclear: he also appears to have sought the withdrawal of his requests for adjournments in May and early June, and yet in late May he apparently instructed Mōkau Māori to attend court to 'fight Ngāti Tama to the end.'<sup>620</sup> In the event, no response from the Court to these requests has been found. With Fenton evidently reluctant to grant further adjournments, the Land Court hearing went ahead.

The court sitting at Waitara began in early June 1882 and was largely complete by the end of the month. The hearing was eventually confined, after the withdrawal of some applications, to the area that was of most concern to Wetere – the Poutama area, later divided by the court into the Mōkau Mōhakatino and Mōhakatino Parininihi blocks. This indicated the determination of the tribal leadership to limit their engagement with the court.

Ngāti Tama were also wary of the court. Though some prominent chiefs attended, there were notable Ngāti Tama absences from the court process. As

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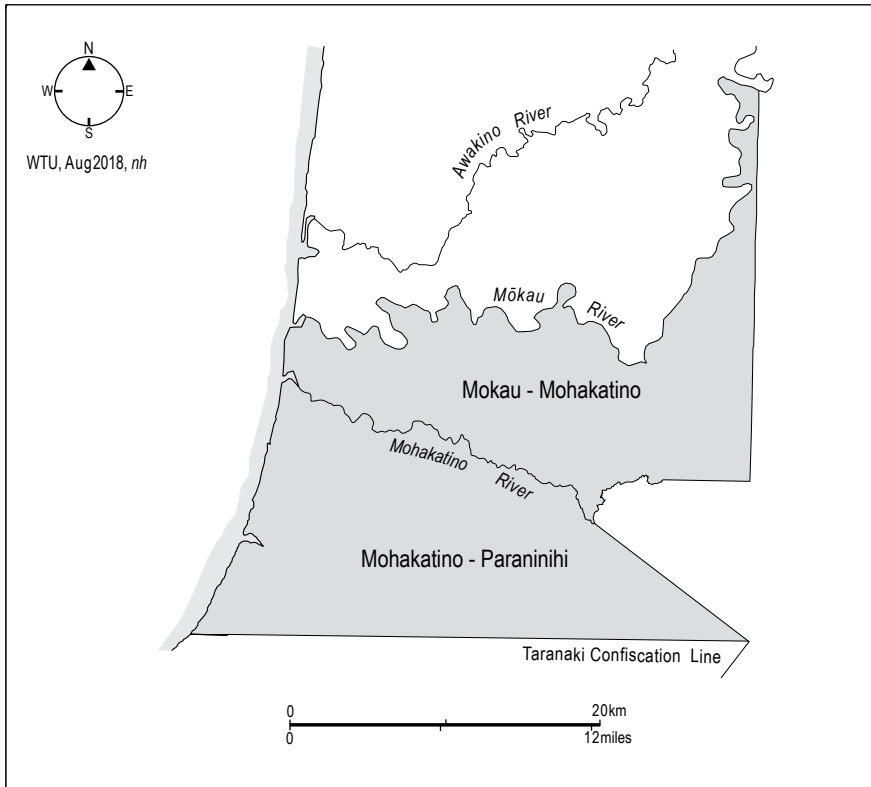
616. 'Letter from Major Te Wheoro', AJHR, 1882, G-4, p 1.

617. Document A41, p 42.

618. NZPD, 1882, vol 41, p 645; doc A41, p 42.

619. Document A78, p 608.

620. Document A78, p 608; doc A28, p 256.



Map 7.3: The Mōkau blocks

Thomas points out, many Ngāti Tama lived at Parihaka and therefore, as a matter of policy, did not attend the Court.<sup>621</sup> The absences may have been the result of a general hostility toward the Crown after the 1881 invasion.<sup>622</sup> One leader, Tupoki Te Herewini Ngapiko, had to be subpoenaed to give evidence. After asserting Ngāti Tama's connections to Poutama, he told the judges 'I will have nothing more to do with you.'<sup>623</sup>

Though the case was not without nuance and complexity, Thomas summarised the general arguments presented at the hearings:

Ngāti Maniapoto claimants tended to emphasise that they had conquered and utterly defeated Ngāti Tama by the 1830s, and had occupied and controlled Poutama since. There had been, they generally argued, no subsequent agreement allowing Ngāti Tama to return to Poutama. The few who did reside in Poutama had less than

621. Waitangi Tribunal, *The Taranaki Report*, p 224.

622. Document A28, p 258.

623. Document A28, p 258.

full rights, and had come without permission from the local Ngāti Maniapoto people who quickly forced them out. The Ngāti Tama claimants, in turn, emphasised that they were the undoubted 'original' owners of the land, denied the claimed extent of their military defeat and its consequences, and emphasised that they returned in some numbers and with their full rights restored and acknowledged.<sup>624</sup>

The court ultimately upheld the claims of Wetere and Ngāti Maniapoto to the Poutama lands, which held off their immediate concerns – the potential sale of the land by other parties, and other potential encroachments. In respect of this decision, the Taranaki Tribunal commented that the Native Land Court judges were also the judges of the Compensation Court, and had earlier excluded absentees (that is, Ngāti Tama) from compensation for Taranaki confiscations. To find Ngāti Tama had interests north of the confiscation line would have contradicted their Compensation Court settlement.<sup>625</sup> Yet, in the view of the Taranaki Tribunal, '[t]hese were Ngāti Tama lands. They had been their lands for centuries, and by Māori custom, the Ngāti Tama ancestral interests were not so readily extinguishable.'<sup>626</sup>

In many respects, the nature of the court process constrained the extent of control Māori could exert. Notably, Pākehā agents played a prominent role in the proceedings, with William Grace presenting the case for Ngāti Maniapoto, and HR Richmond and Major Charles Brown representing Ngāti Tama. These men had their own ambitions for Mōkau that were at odds with those of Māori.<sup>627</sup> Grace, for example, acquired the 682-acre Mohakatino Parininihi 2 as payment for debts incurred during the hearings. After survey and title problems, he sold the land to a European in 1889.<sup>628</sup>

As Dr Thomas described, the consequences of the hearing were 'far-reaching and generally disastrous.'<sup>629</sup> Despite the hopes of Wetere and other Māori, their interactions with the Crown and Europeans did not ultimately prove to their benefit. In particular, an agreement was reached with Joshua Jones shortly after the court's hearing to lease a large part of Mokau Mohakatino 1. As we discuss in chapter 11, this quickly fell apart. Understood by Māori to be a joint venture, the Government eventually stepped in to give Jones legal tenure over the land concerned, resulting in a significant land loss for Mōkau Māori.<sup>630</sup>

The hearing at Mōkau was significant for reasons beyond being the first time the Native Land Court sat to determine title for land behind the aukati: the lease of Joshua Jones, a drawn-out saga involving multiple inquiries and special legislation, and ultimately the alienation of a significant part of the land in question (see chapter 11). The experience of Mōkau Māori starkly illustrated the dangers that could accompany the court, particularly once title had been awarded and the

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624. Document A28, p 263.

625. Waitangi Tribunal, *The Taranaki Report*, p 281.

626. Waitangi Tribunal, *The Taranaki Report*, p 281.

627. Document A28, pp 259–261.

628. Document A28, pp 284–285.

629. Document A28, pp 285–286.

630. Document A78, p 609; doc A28, pp 287–288.

land was exposed to alienation. Furthermore, many of the same pressures that had driven Mōkau Māori to apply for a court hearing would soon be repeated in other parts of Te Rohe Pōtae.

#### 7.4.4.6 *The Government's legislative measures, 1882*

During the winter and spring of 1882, the Government enacted a series of measures that were designed either in part or in whole to address the situation in Te Rohe Pōtae. These included the Native Reserves Act 1882, the Amnesty Act 1882, and legislation allocating funding for the construction of the North Island Main Trunk Railway through the district. In addition, to these matters, the Government extended efforts to entice former 'rebels' to give up their affiliation to the Kingitanga and take up land in the confiscation area. While this was targeted more at Waikato than Maniapoto (partly because it was presumed that no Maniapoto interests had been confiscated), it also affected Ngāti Apakura and the Ngāti Paretekawa hapū of Ngāti Maniapoto (as discussed in chapter 6).

While engaged in these efforts, however, Bryce also sought to oppose the Native Committees Empowering Bill – a piece of legislation introduced to Parliament by Henare Tomoana, member for Eastern Māori. The purpose of the Bill was to enable Māori committees to resolve any differences concerning applications for title determination before bringing the matter before the Native Land Court. The draft legislation was reminiscent of Donald McLean's bills of the early 1870s, which McLean himself had withdrawn from Parliament before they could be fully tested. It was also reminiscent of the calls Māori had made during the 1871 Haultain inquiry for their rūnanga to be empowered to determine title subject to ratification by the Native Land Court (as discussed in section 7.3.5.2).

Similar Bills had been put up by Māori members in 1880 and 1881 but had been defeated. Hone Mohi Tawhai, the member for Northern Māori, wrote in respect of the 1880 Bill that the committees were 'to have authority to enquire into disputes arising in the district in connection with the surveying of land, application for the investigation of title to lands, and the sale of lands upon the application of the persons interested in the land under dispute.'<sup>631</sup> Bryce had promised to have the Bill translated and printed by the time of the next session, but by then Bryce had resigned as Native Minister, and the printed version of the legislation that came before the House that year had removed the committees' ability to have control over surveys and sales. In addition, the Native Land Court would first have to be satisfied that the parties agreed to the committee's jurisdiction, though the court had to take 'judicial notice' of any decision arising.<sup>632</sup> Tomoana put the revised Bill before the house in July 1881, but again it appeared too late in the session.<sup>633</sup>

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631. Enclosure in Tawhai to Native Under-Secretary, 21 January 1881 (Vincent O'Malley, *Agents of Autonomy: Maori Committees in the Nineteenth Century* (Wellington: Huia Publishers, 1998), pp137–138).

632. O'Malley, *Agents of Autonomy*, p138.

633. O'Malley, *Agents of Autonomy*, pp138–139.

When Bryce resumed the office of Native Minister in October 1881, he indicated he would be prepared to consider the measure. But by May 1882, he had change his mind. During the Bill's second reading, Bryce advised members against voting for it, particularly because of the 'most inadvisable' clause which required the Native Land Court to take judicial notice of a committee's decision.<sup>634</sup> However, the Bill received a significant amount of support from Pākehā members because such committees would help facilitate the work of the court. Bryce opposed the Bill because he considered that Māori should be assimilated into the European population and should not be provided with separate institutions. Those who supported the Bill pointed out that the committees would in fact assist the process of breaking down differences between Māori and Pākehā, by incorporating Māori institutions into the machinery of the State. In the end, the Bill was defeated, but only very narrowly; indeed, it almost passed, despite the opposition of the Native Minister.<sup>635</sup>

Three other pieces of legislation, however, were passed in September 1882 that laid the groundwork for fulfilling Bryce's suggestion that he would soon return to Te Rohe Pōtae with his own proposal.

#### 7.4.4.6.1 THE NATIVE RESERVES ACT 1882

The Native Reserves Act 1882 introduced provisions for Māori to apply to the Court to ascertain title with a view to reserving their land subject to specific conditions. For land over which customary title had not yet been extinguished, Māori could apply to the Court to transfer 'all their estate and interest' to the Public Trustee in trust and for purposes declared to the Court. In theory, these provisions meant customary land could be protected from sale by reserving it immediately after the Court investigated it, without being exposed to alienation in the process. Bryce considered the proposed legislation to be an encouraging response to the kind of requests both Rewi and Tāwhiao had made for the protection of their territory, and said that 'it was hoped that it might lead to a considerable portion of the Waikato, known as the King Country, being converted into reserves.'<sup>636</sup>

Te Wheoro criticised the Bill because it did not leave the 'full control' of the reserved land in the hands of Māori, which was key to the terms Te Rohe Pōtae Māori had so far attempted to negotiate.<sup>637</sup> Nonetheless, it seemed at this stage that the Government was prepared to consider a measure by which 'the King Country' could be made inalienable and reserved for its owners. Leaving aside the measure's limitations, it was still a promising sign.

Following protest about the Bill from Māori members of Parliament, the Native Reserves Act (as it was passed) included provisions for Māori representation on the board of management of the Public Trust. However, the representation was

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634. O'Malley, *Agents of Autonomy*, p 139.

635. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 312–316

636. Bryce, 6 June 1882, NZPD, vol 41, p 306.

637. Te Wheoro, 16 June 1882, NZPD, vol 41, p 526; doc A41, pp 38–39.

essentially token and Māori were not included in the board after 1894.<sup>638</sup> (In 1913 a commission of inquiry described the board as ‘a farce’.) The Te Tau Ihu Tribunal, echoing Te Wheoro’s criticism, called the legislation ‘no real substitute for committees of owners managing their own inalienable estate, and distributing the income as they saw fit.’<sup>639</sup>

#### 7.4.4.6.2 THE NORTH ISLAND MAIN TRUNK RAILWAY LOAN ACT 1882

The second legislative measure was the North Island Main Trunk Railway Loan Act 1882. This Act authorised the Government to raise a loan of a million pounds for construction of a North Island main trunk railway.<sup>640</sup> Plans to extend the railway, which had reached Te Awamutu in 1880, seemed to be underway.

#### 7.4.4.6.3 THE AMNESTY ACT 1882

The third piece of legislation was the Amnesty Act 1882.<sup>641</sup> The Act allowed the governor, on the advice of the Executive Council, to declare an amnesty for offences ‘more or less of a political character’ that were in connection with insurrections or had occurred subsequent to them. These declarations of amnesty could be made in respect of individuals or groups of Māori as the Government wished.<sup>642</sup>

The prospect of the Government introducing some form of amnesty had been raised on a number of occasions during negotiations in the 1870s and had been contemplated by McLean as far back as 1872.<sup>643</sup> More recently the issue had been raised by Te Wheoro, who in May 1882 asked Bryce whether he intended to pardon Te Kooti and Purukutu (who killed Sullivan). At the time, Bryce appeared reluctant to be drawn on the issue but admitted that some form of amnesty was possible.<sup>644</sup>

The immediate catalyst for the Act, however, was an incident involving Weterer, who in the winter of 1882, visited Wellington seeking the return of confiscated lands south of Parininihi and to build a relationship with the Government.<sup>645</sup> His visit was curtailed when a nephew of Reverend Whiteley – Whiteley King – attempted to have Weterer placed under private arrest for his uncle’s 1869 murder.<sup>646</sup> Assisted by Government officials, Weterer hurried home to Mōkau. Hoax telegrams claimed Weterer had confessed to the crime, and many of Weterer’s people were furious about rumours he had been arrested.<sup>647</sup> Government officials were also displeased, as Thomas states, because Weterer’s support was now viewed as an essential part of

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638. Waitangi Tribunal, *Te Tau Ihu o te Ika a Maui: Report on Northern South Island Claims*, 3 vols (Wellington: Legislation Direct, 2008), vol 2, p 819.

639. Waitangi Tribunal, *Te Tau Ihu o te Ika a Maui*, vol 2, p 819.

640. Document A41, pp 40–41.

641. Document A41, pp 39–40.

642. Document A78, p 641.

643. Document A78, pp 333–334.

644. Document A78, p 625.

645. Document A28, p 303.

646. Document A78, pp 636–639.

647. Document A28, pp 303–305.

the plan to construct the railway through to Mōkau. However, newspaper reporters reprinted earlier reports identifying Wetere as one of Whiteley's murderers.<sup>648</sup>

Dr Thomas also argues that Pākehā calls to punish Māori for 'crimes' committed inside the aukati and during the wars were heightened during the 1880s, particularly in the wake of the Government's invasion of Parihaka.<sup>649</sup> However, the Government saw the need to find a resolution and increasingly turned to the idea of offering an amnesty to those it perceived had committed crimes of a political nature during the wars, including Te Kooti.<sup>650</sup> Wetere was another who could benefit from the amnesty; he had never been found guilty of the killing of Reverend Whiteley, although he did not deny that he led the attack.<sup>651</sup> At this stage, the Government had not yet indicated whether it was to offer a partial or full amnesty but the event prompted several members of the Legislative Council to call for an amnesty for all Māori accused of war 'crimes'.<sup>652</sup> This situation highlighted the difference in opinion between the Government and the Pākehā public about whether the Māori 'crimes' should be punished. As Ms Marr notes, some sections of the Pākehā community were so aghast at Te Kooti's inclusion in the amnesty that there were reports of Bryce being burned in effigy.<sup>653</sup>

Bryce introduced the legislation relatively late in the session on 28 August 1882. In doing so, he said that it was targeted at addressing the situation in Te Rohe Pōtae, commenting that it would facilitate negotiations there. However, Bryce was also insistent that members avoid asking about how the Act might be applied in practice.<sup>654</sup> As it turned out, the Government made no immediate declarations of amnesty under the Act. Bryce had only just demonstrated that he would show no leniency for crimes that were not considered of a political nature with the capture, trial and execution of Winiata, who had been suspected of killing Edwin Packer (see sidebar).

### The Capture of Winiata

Winiata was suspected of killing Edwin Packer in 1876. It was not until 1882 that the Government came to pursue Winiata's arrest seriously. Grey had earlier offered a reward of £100 for Winiata's capture, but he had avoided arrest and found his way to safety behind the aukati. Reports at the time suggested that had Winiata been caught, the Kingitanga would have left the matter to be managed by the colonial justice system. On the other hand, once inside the aukati any prospect of handing

648. Document A28, p 163.

649. Document A28, p 303.

650. Document A78, p 722.

651. Document A28, p 163.

652. Document A78, pp 638–640.

653. Document A78, pp 736–737.

654. Document A78, p 641.

him over would be negotiable. Bryce, by contrast, managed to pursue and capture Winiata without the constabulary having to cross the aukati line. He did so by persuading Robert Barlow – son of a Ngāti Apakura woman and Pākehā storekeeper, then living at Mohaonui near Ōtorohanga – to essentially dupe Winiata on the pretence of buying pigs and corn. Barlow invited Winiata into his home and, after a few failed attempts, managed to manhandle him to Te Awamutu, where the local constabulary effected the arrest.<sup>1</sup>

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1. Document A78, pp 626–628.

Winiata was found guilty of wilful murder, despite several Pākehā supporters arguing the evidence was too weak to convict. The governor declined his prerogative to allow a pardon, and Winiata was hanged on 4 August 1882, still protesting his innocence.<sup>655</sup> Bryce achieved this outcome without violating the aukati, but unlike McLean's gentler approach, he risked raising tensions with the Kīngitanga, whose members were concerned at the nature of Winiata's capture and arrest, particularly the treachery of Barlow in conspiring with the constabulary. Bryce, on the other hand, was demonstrating that he could respond to public demand to have wanted criminals caught while also drawing a distinction between criminal acts and offences of a political nature to which amnesties might apply.

#### 7.4.4.6.4 THE 1882 LEGISLATION AS A FOUNDATION FOR RENEWED NEGOTIATIONS

Dr Loveridge described these three pieces of legislation as 'anticipatory', noting that 'they did not create reserves in the King Country, or declare an amnesty for the people there, or initiate the construction of a railway through it'. Rather, they 'provided a mechanism' for those things to happen if needed.<sup>656</sup>

In early September 1882, Bryce prepared a memo to the Governor in which he claimed that the long-standing isolation of the King Country had completely broken down, and the 'prospect of a final settlement' seemed likely during the next summer, particularly given the Amnesty Act, which Bryce considered would 'conduce to this end.'<sup>657</sup> Bryce was so confident that he reportedly expected surveyors to begin work on the railway route south of Te Awamutu during the summer. Little else was known about Bryce's specific intentions. In early August, Bryce had informed Tāwhiao that he would 'come to Waikato soon after Parliament has

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655. Document A78, p 631.

656. Document A41, p 41.

657. Bryce to governor, 9 September 1882, BPP, 1883, vol 47 [3689], pp 19–20 (IUP, vol 17, pp 33–34; doc A41, p 41.



risen, which may perhaps be in one month or two months.’<sup>658</sup> This was the first indication that Bryce would break with his policy of no engagement.

#### **7.4.4.7 Bryce’s meeting with Tāwhiao at Whatiwhatihoe, October–November 1882**

The Crown’s final attempt to negotiate a settlement with Tāwhiao took place over the course of a week at the Kingitanga’s main place of residence, Whatiwhatihoe. Bryce arrived there on 30 October 1882, though he announced he would not stay for long. Four hundred Māori were in attendance, including Wahanui, Rewi, Te Ngakau, and Te Wheoro, as well as visiting Pākehā.<sup>659</sup>

Tāwhiao commenced proceedings, addressing Bryce by referring to McLean’s earlier proposals, and restating the position of the Kingitanga: he sought a guarantee from the Crown that the administration of his land and people would be left to him, and that this would extend as far as the Mangatawhiri.<sup>660</sup>

Bryce, however, told Tāwhiao that the Government would never meet these terms, and that the offers of previous governments had been withdrawn. He was willing to outline the Government’s position, but details would need to be worked out with Kingitanga leaders in private. He returned to the metaphor of a flood to illustrate the choice he considered confronted Tāwhiao. ‘The flood of European civilisation and occupation’ had been ‘rising’, he said, adding: ‘There is no use in saying that the flood is bitter, roll back its waters. Bitter or sweet, the waters are not waters that will roll back.’<sup>661</sup> Turning to the question of sovereignty, Bryce said that the land was not ‘large enough for two separate independent authorities’. He explained: ‘Chiefs may have authority in their tribe, and may still remain great chiefs, but the sovereignty of the Queen must prevail over this island from end to end. . . . it cannot be helped.’ He said that while the law might be bad in some respects, the chiefs should work to amend it, not resist it.<sup>662</sup>

In a new development, Bryce now also pressed Ngāti Maniapoto specifically to assist Waikato, because Ngāti Maniapoto had joined the cause which had brought such great trouble to Waikato – Tāwhiao and his people therefore had claims against them.<sup>663</sup> This suggested, initially, that the Government was not prepared to return any of the confiscated land and would instead look to Ngāti Maniapoto to provide for Waikato on a permanent basis. However, it soon became apparent that the Government was willing to return some confiscated land, though how much remained unclear.

The assembled leaders then entered discussions about the general terms outlined by Bryce. Meanwhile, officials formulated Bryce’s terms into a series of written points, which were given to Tāwhiao on 31 October 1882, with Te Wheoro acting

658. ‘Mr Bryce’s Reply to Tawhiao’, *NZ Herald*, 4 August 1882, p 5; doc A78, pp 645–646.

659. Document A78, p 652.

660. Document A78, p 653.

661. ‘The Kingite Meeting’, *New Zealand Herald*, 31 October 1882, p 5.

662. ‘The Kingite Meeting’, *New Zealand Herald*, 31 October 1882, p 5; doc A78, pp 654–655.

663. Document A78, p 655.

as an intermediary.<sup>664</sup> What appears as the finalised terms were dated 4 November, the day they were due to be publicly discussed. They contained a description that they were proposals from Bryce to Tāwhiao ‘to settle and put an end to the trouble which has existed between certain native tribes and the European Government’. The terms were:

1. The Government will return to Tawhiao and his tribe the bulk of the unsold confiscated land west of the Waipa and Waikato formerly belonging to them, and returned rebels of other tribes will also receive portions of land west of the Waikato under the Waikato Confiscated Lands Act.
2. Will give him the section of land at Kaipara<sup>665</sup> which he asked Sir John Hall for.
3. Will urge Ngāti Maniapoto to give Tawhiao and his people a piece of their country.
4. Government will build and furnish a house for Tawhiao.
5. Will give him a pension of £400 a year.
6. Will make him an assessor of the Resident Magistrates Court.
7. An assessor of the Native Lands Court.
8. A Justice of the Peace.
9. Will advise His Excellency to call him to the Legislative Council.

These proposals now made are contingent on Tawhiao accepting the sovereignty of the Queen and her laws and signifying such acceptance immediately, and are not to be considered as remaining over.<sup>666</sup>

A space was then indicated for Bryce’s signature, and for Tāwhiao’s, underneath the statement: ‘And I Tawhiao accept them on behalf of myself and my people.’

While the offer of the ‘bulk’ of unsold confiscated lands appeared substantial, it was not precise about how much land was being offered. The offer of the return of land under the Waikato Confiscated Lands legislation also required compromises: grantees would need to accept they had acted in rebellion, and as individuals rather than communities, both of which would have been unacceptable to the Kīngitanga.<sup>667</sup> And though Ngāti Maniapoto would not be required to surrender some of their land to Waikato, the suggestion that they would be urged to do so would have only raised questions. No mention was made of any authority Tāwhiao and the chiefs might have over a recognised territory – in this respect Bryce was offering considerably less than McLean or Grey had. Instead, Bryce offered Tāwhiao several official positions, including a seat on the Legislative Council, a position also offered to Rewi in earlier negotiations but never accepted.

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664. Document A78, p 658; ‘The Kingite Meeting, *New Zealand Herald*, 31 October 1882, p 5.

665. According to Ms Marr, during his visit to Auckland, Tāwhiao had told Premier Hall ‘that he used to live at Kaipara for a while as a boy, and he had fond memories of it and would like to live there occasionally again’. Hall undertook to find ‘an acre or two of Crown land there’ where a house could be built for Tāwhiao: doc A78, p 558.

666. Document A78, p 659; doc A78(a) (Marr document bank), vol 1, pp 365–367, 457–460.

667. Document A78, p 659.

Instead, Tāwhiao was asked to accept the sovereignty of the Queen and her laws, upon which all the offers were conditional.<sup>668</sup>

Bryce and Tāwhiao met for discussions on 2 November. Tāwhiao said he was willing to accept those parts of the proposals that appeared to be for him personally, but that the decision in respect of broader issues lay with all of the Kingitanga tribes.<sup>669</sup> In response, Bryce said that he was willing to discuss the offers in more detail, but not until the question of sovereignty was settled – ‘a divided sovereignty in this Island was not possible.’<sup>670</sup> The offers had to be accepted or declined as a whole – nothing could be left for future discussion.<sup>671</sup> The parties agreed that they would return on 4 November, when Tāwhiao would give his response.<sup>672</sup>

Tāwhiao began proceedings on the appointed day by reaffirming the fundamental position of the Kingitanga: while he accepted the Government’s right to administer affairs in other parts of the country, he intended to maintain the authority of the Kingitanga. Frustrated, Bryce insisted on ‘a plain answer – yes or no.’<sup>673</sup> The Native Minister also asked whether there was another leader present who might advise Tāwhiao to accept the proposals; if not, Bryce would leave.<sup>674</sup>

At that point, Tāwhiao (according to the account in the *New Zealand Herald*) went over to Wahanui and spoke to him quietly. Exactly what they discussed is unclear and was the subject of conjecture at the time. After conferring with Tāwhiao, Wahanui rose and spoke. Rather than accepting Bryce’s proposals, however, Wahanui essentially rejected them. He said that the ‘eye’ of the problem was how the Kingitanga’s authority was to be respected: ‘What you want to do is to take the authority from your friend Tawhiao.’<sup>675</sup>

Bryce agreed that the main point at issue was ‘the question of mana or sovereignty’. Only the Queen, he said, held sovereignty in New Zealand; the most he would concede was that Māori held a ‘shadow of an authority’, which was gradually falling away, though it would be appropriate for the Government to recognise the position of chiefs. Bryce informed Wahanui that it was now his responsibility to complete the negotiations.<sup>676</sup>

More exchanges followed in which Wahanui continued to press the case of the Kingitanga. Referring to Bryce’s flood metaphor, Wahanui said that there was always a fixed place where the tide ceased to flow: tides have peaks, they reach a

668. Document A41, p 48; doc A78, pp 659, 664, 667.

669. Document A78, p 663.

670. ‘Conclusion of the Native Meeting’, *New Zealand Herald*, 3 November 1882, p 5; doc A78, p 664.

671. ‘Conclusion of the Native Meeting’, *New Zealand Herald*, 3 November 1882, p 5; doc A78, p 664.

672. Document A78, p 665.

673. ‘Conclusion of the Native Meeting’, *New Zealand Herald*, 6 November 1882, p 5; doc A78, p 667.

674. ‘Conclusion of the Native Meeting’, *New Zealand Herald*, p 5; doc A78, pp 666–667.

675. ‘Conclusion of the Native Meeting’, *New Zealand Herald*, 6 November 1882, p 5; doc A78, p 668.

676. ‘Conclusion of the Native Meeting’, *New Zealand Herald*, p 5; doc A78, pp 668–669; doc A41, p 50.

high mark and recede. As he understood it, the tide could not continue beyond the aukati. He maintained that the Kingitanga had never been opposed to the Queen and asked why there could only be one head in the potae.<sup>677</sup>

When Bryce continued to press for a decision, Wahanui reportedly said that Bryce's words were 'angry-angry-angry' and that he was 'unable to bear' the burden that had been placed on him. Bryce asked Tāwhiao if there was any further reply, but Tāwhiao said that 'Wahanui has taken it out of my hands, and it now rests with him.'<sup>678</sup>

The hui ended with Bryce leaving abruptly. It was to be the last time the Government would negotiate with Tāwhiao.

On 15 November 1882, 11 days after leaving the hui, Bryce wrote to Wahanui, advising he would 'do well' to regard the letter 'as one of great importance'. Taking the view that it was Wahanui, 'speaking for Ngatimaniapoto', who prevented Tāwhiao from accepting the terms offered, Bryce said 'the responsibility of that now rests with you, and whatever the consequences may be, you will have to bear them.'<sup>679</sup> The *Evening Post* described the letter as Bryce 'very clearly and forcibly' placing the responsibility of the negotiations on Wahanui's shoulders, to the complete exclusion of Tāwhiao.<sup>680</sup> Mr Meredith suggested that Bryce's letter was threatening.<sup>681</sup>

Bryce noted the passage of legislation to proclaim amnesties for the 'criminals in your district' but asked how such a proclamation could be made while Tāwhiao claimed sovereignty, 'setting himself outside the Queen's law'. Furthermore, Bryce assured Wahanui that if 'the hand of the law descends upon the culprits . . . They will blame you'. He also argued that Ngāti Maniapoto had been 'as deep' in the Waikato War as the Waikato people, but had not received the same punishment. Though willing to talk about the wars, it was not a discussion Bryce would commence. Rather it was up to Wahanui 'to say whether these things are to be dragged back from the darkness where they are now hidden.'<sup>682</sup>

Bryce then gave Wahanui three reasons why Te Rohe Pōtae could not remain closed to 'travellers', and 'should be opened by roads and railways':

First, all the rest of New Zealand is open to the public by roads and railways. Your conduct in keeping this part of the country closed is a sign of enmity to the colony. If, indeed, you and your people were enemies of the Government and the colony it might be right, but if we are to continue friends as we are now, what reason can you give for it? That is one strong reason.

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677. Document A78, p 669.

678. 'Conclusion of the Native Meeting', *New Zealand Herald*, 6 November 1882, p 5; doc A78, p 671.

679. 'Mr Bryce and the Kingites', *New Zealand Herald*, 2 December 1882, p 5; doc A78, p 700.

680. 'Mr Bryce's Letter to Wahanui', *Evening Post*, 5 December 1882, p 2; doc A78, p 702.

681. Document A110, p 626.

682. 'Mr Bryce and the Kingites', *New Zealand Herald*, 2 December 1882, p 5; doc A78, p 700.

Another is that the Government own large blocks of land near Mokau, and it is unreasonable to suppose that they will consent to being denied access to their own lands.

The third reason is that the construction of such public works will greatly enhance the value of everybody's land through which they pass, as well as benefit others, both Maori and Europeans.<sup>683</sup>

While pitching his reasons as 'strong', Bryce warned Wahanui that his current course of action was 'injurious alike to others and yourself'. He urged Wahanui to reflect on matters and reiterated his willingness to work towards 'making proper arrangements'. Bryce finished his letter to Wahanui by saying he wanted its contents to 'be communicated to the people, so that they may know with whom the fault lies if troubles hereafter come upon us'.<sup>684</sup>

Commentary at the time reflected considerable support for Bryce's clear and forceful approach. Newspapers, briefed by Whitaker, took Bryce's letter as a much-needed warning to Wahanui and others. The Crown would grant an amnesty for political offences and protect land interests. However, King Country Māori would need to stop harbouring those wanted for criminal offences and stop hampering the advancement of the railway. Bryce's letter generated a confidence among the settler public that Ngāti Maniapoto had little choice but to see the sense of what he had said and break away from the Kingitanga.<sup>685</sup>

Not everyone agreed with what Bryce had done. William Grace, the government agent living at Alexandra, described Bryce's letter as 'not worthy of a man who calls himself Native Minister'.<sup>686</sup> He worried that the chiefs would now be less rather than more inclined to cooperate. The *Evening Star* asserted that Bryce's demand for an immediate answer from those gathered at the hui was 'neither judicious nor fair'.<sup>687</sup> Having 'got their backs up', Bryce would then have to deal with the refusal of his terms. In that context, the *Evening Star* suggested, Bryce's letter to Wahanui 'may be regarded as a masterly retreat from a difficult position'.<sup>688</sup> Possibly Bryce was angry because he had expected that Tāwhiao would accept the terms he offered.<sup>689</sup> Newspapers at the time similarly reported the likelihood of Tāwhiao accepting terms, although it is difficult to determine the basis of those expectations.<sup>690</sup>

Although it was not apparent to everyone at the time, this was the last occasion Tāwhiao engaged in sustained negotiations with the Crown. Future negotiations

683. 'Mr Bryce and the Kingites', *New Zealand Herald*, 2 December 1882, p 5; doc A78, p 701.

684. 'Mr Bryce and the Kingites', *New Zealand Herald*, 2 December 1882, p 5; doc A78, p 701.

685. See, for example, 'The Maori Difficulty', *Grey River Argus*, 25 November 1882, p 2; 'Mr Bryce's Letter to Wahanui', *Evening Post*, 5 December 1882, p 2; doc A78, pp 702–703.

686. W H Grace to Joshua Jones, 10 December 1882 (doc A78, p 703).

687. *Evening Star*, 5 December 1882, p 2; doc A78, p 703.

688. *Evening Star*, 5 December 1882, p 2; doc A78, p 703.

689. Document A78, pp 670–671.

690. Document A78, pp 665–666.

would be conducted with Wahanui and Te Rohe Pōtae leaders, as discussed in the next chapter.

#### **7.4.5 Treaty analysis and findings: negotiations, 1875–82**

Bryce's ultimatum to Tāwhiao, and his subsequent letter to Wahanui, were major developments in the negotiations between the Kīngitanga and the Crown that had stopped and started again from 1875. We pause here to consider what these developments represent in terms of the Treaty. We consider, in particular, the questions put to us by the claimants about whether the Crown could have done more to recognise and provide for the Kīngitanga's authority and resolve its grievances arising from the Waikato war; and whether, in its efforts to resolve the situation, it placed undue pressure on those Te Rohe Pōtae Māori who had committed to the Kīngitanga and its cause.

##### **7.4.5.1 *The approach of the parties to the negotiations***

The negotiations that began in 1875 constituted a significant development from the previous state of affairs. Prior to that time, the Crown had hoped (as McLean put it) to 'glide into a state of peace' without offering specific terms.<sup>691</sup> But following Tāwhiao's approach to meet with him directly in early 1875, McLean recognised that the stalemate that had emerged would only be overcome through direct negotiations with the Kīngitanga leadership. To successfully resolve the stalemate, an arrangement with King Tāwhiao would be required. As this was the very issue over which the Crown and the Kīngitanga had become divided in the lead-up to the Waikato war, any resolution would require considerable effort. Not only had there been war in the intervening period, but the Crown had also confiscated the bulk of the Waikato lands, as well as some Ngāti Maniapoto lands north of the Puniu, leaving the Waikato people essentially landless and reliant on their Ngāti Maniapoto hosts.

The sticking points in the negotiations were how the Crown might accommodate the authority of the Kīngitanga and whether it would be prepared to return all of the confiscated lands. Ultimately, each phase of the negotiations from 1875 to the hui at Whatiwhatihoe in November 1882 came unstuck on these points. The question for us to consider is whether the Crown approached the negotiations in good faith, and whether it could have done more to overcome the obstacles that prevented a settlement from being achieved at that juncture.

The Crown considers that it did approach the negotiations in good faith: the proposals that were made were genuine and reflective of the Crown's intent to exercise sovereignty within the district.<sup>692</sup> In particular, the Crown submitted, the decisions of Grey and Bryce to withdraw the terms on offer to the Kīngitanga at the Te Kōpua and Whatiwhatihoe hui respectively were practical responses to the position adopted by the Kīngitanga.<sup>693</sup> Ultimately, the Crown considers, it

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691. McLean memorandum, MS Papers-0032-0030, pp 16–21, object #1007778, ATL.

692. Submission 3.4.301, pp 8, 15–16.

693. Submission 3.4.301, pp 6, 15.

was Tāwhiao who chose not to compromise, which led the Crown to adopt the approach that it did.<sup>694</sup> The Crown also denies that it sought to undertake a ‘divide and conquer’ approach to the negotiations.<sup>695</sup>

The Crown’s submission invites us to consider what would have been an appropriate compromise for the Kīngitanga to have contemplated in the circumstances it faced after the war and confiscation. Essentially, the dialogue that commenced from 1875 was the first attempt to work out how the terms and guarantees of the Treaty would be brought into practical effect in the district. As we discussed earlier (see section 7.3.6.1), the Crown acknowledged in our inquiry that further discussions and negotiations were needed to establish the necessary institutional structures. Although – at the time – the Crown may not have viewed the discussions as means by which the terms of the Treaty could be given proper effect, this was the first opportunity where the Crown and the Kīngitanga discussed face to face how their respective authorities might work together in any detailed way. Whether they proceeded in a manner that was consistent with the principles of the Treaty is a matter we will consider below.

The position maintained by the Kīngitanga and its constituent iwi, including those of Te Rohe Pōtae, had not changed in the ten years since the end of the Waikato war. By 1875, the Kīngitanga had amply demonstrated that it was determined to maintain tino rangatiratanga within remaining territories: even though the aukati was increasingly subject to adjustment at the edges, it remained an enforced boundary. The question was whether the Crown, in its engagements with the Kīngitanga and in the content of its offers, provided enough of a guarantee that the Kīngitanga’s authority would be recognised while also remedying the worst of the effects of the Waikato war. So long as Te Rohe Pōtae Māori continued to support the Kīngitanga, this was what was required to bring the Treaty relationship into practical effect in Te Rohe Pōtae.

#### **7.4.5.2 *Did the Crown place undue pressure on Ngāti Maniapoto to separate from the Kīngitanga?***

A key claimant contention was that the Crown placed considerable pressure on Ngāti Maniapoto lands and leadership to undermine their authority and separate them from the Kīngitanga. Claimant counsel depicted this as the Crown’s ‘relentless’ interest in breaking the aukati.<sup>696</sup> The Crown disagreed, submitting that its concurrent discussions with Tāwhiao and Ngāti Maniapoto leaders, particularly Rewi, were done at the initiation of the leaders themselves and not in the hope of forcing Ngāti Maniapoto apart from the Kīngitanga.<sup>697</sup> Further, the Crown submitted that it maintained a policy of non-interference by not directly challenging the aukati.<sup>698</sup>

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694. Submission 3.4.301, pp 7, 15.

695. Submission 3.4.301, p 9.

696. Submission 3.4.122, p 7.

697. Submission 3.4.301, p 9.

698. Submission 3.4.299, p 18.

**7.4.5.2.1 THE CROWN'S POLICY OF NON-INTERFERENCE**

We agree with the Crown's contention that in many respects there were no direct attempts to challenge the aukati during this period. Evidence of the Crown's 'non-interference' policy can be seen in several of its responses to issues raised by Te Rohe Pōtae Māori throughout the negotiations. When concerns were raised about the construction of roads with Pollen and Grey, for example, the response was that roads would not be constructed through Kīngitanga territories. Instead, the roads would stop at the end of lands owned by the Crown. Premier Grey emphasised that the road would be built on land the Government had already acquired by fair means and would benefit Māori and Pākehā alike. In addition, as Crown counsel observed, in response to concerns about whether the main trunk railway might be forced through the district, Grey assured Māori that the Crown would not push the railway through their territory and would not proceed without the chiefs' agreement.<sup>699</sup> Finally, when an application was put in for title determination of Mōkau lands in the early 1880s, the Crown agreed to utilise its powers under legislation to withhold a court hearing – no hearing would be granted until Rewi had consented.<sup>700</sup>

We also agree with the Crown that for the most part it was Te Rohe Pōtae Māori leaders who sought out discussions with the Government from the mid-1870s, not vice versa. But we note that they generally did this to raise concerns about matters over which the Crown had control, including the incursions of the Court and land agents into Kīngitanga territories. More generally, Māori leaders also sought to secure peace by establishing improved relationships with communities beyond the aukati. Mōkau was one place where a renewed sense of openness was present, after the damage caused by the Pukearuhe attack in 1869. Local Māori communities hoped to put to rest any preconceptions about them by welcoming back Ngāti Tama to settle in their midst, and to re-establish trading relationships that had been so successful prior to the war. This included approaches to the Government for support. From the perspective of the Kīngitanga leadership, especially Rewi, such openness was possible – and in fact desirable – so long as core Kīngitanga policies were maintained and Māori communities were in control.

Such openness and optimism was perhaps prompted by the fact that by 1875 the Crown had come around to the idea that it needed to engage in negotiations and to recognise Kīngitanga authority in some form. McLean had previously supported a policy that looked to provide for the authority of chiefs, even though it was not adopted; but now the Government had acknowledged the need to negotiate directly with the Kīngitanga. Ngāti Maniapoto traditions of a 'covenant' being established suggest that the beginning of negotiations with McLean were seen by Māori as being of some significance.

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699. Submission 3.4.301, p 25.

700. Native Land Act 1873, s 20; Native Land Court Act 1880, s 38.



**7.4.5.2.2 THE EFFECT OF THE NATIVE LAND SYSTEM AND REWI'S RESPONSE**

Underlying the Crown's non-interference policy, however, was the operation of a native land system that gradually came to threaten the viability of the aukati. Although the Crown had the power to withhold applications from the court<sup>701</sup>, it used this power selectively. When the prospect was raised of lands in the border zones of the Kingitanga territories coming before the court, the Crown offered no such protections. The encroachment of the Court in the northeast of the district caused Rewi especial concern, and he sought out engagement with the Crown to find a solution that would ensure that the Kingitanga territory could be protected. Rewi presented the key issues in his discussions with Crown representatives, first with McLean and Pollen, then with Grey and Sheehan.

Representing the interests of owners in certain areas, Rewi took issue with the operation of the Native Land Court, Crown and private land purchasing, and the initiation of public works. Rewi repeatedly explained how and why those activities prevented Te Rohe Pōtae Māori from protecting their land interests outside the aukati, which had only served to put pressure on the aukati and increase tensions in border areas. This was the case in respect of lands to the north and east, in which Ngāti Raukawa and Ngāti Tūwharetoa held interests, among others. In those areas, Rewi observed what could happen when hapū and iwi with different layers of interest had not had the opportunity to make joint decisions about how those interests could be recognised, as well as who would be able to make decisions about the land in the future, including whether to allow settlement or other activities. As early as 1876, not long after the negotiations with McLean began, this same set of circumstances began to present itself in Mōkau, within the core Ngāti Maniapoto territory.

The range of issues that were arising in these areas was perhaps unsurprising, given the extent of colonising activity promoted by successive ministries following the initiation of Vogel's public works policy, and as the central government increasingly took control of public works and settlement following the abolition of the provinces. The Crown's policies and legislation in respect of Māori land supported this renewed focus on colonisation, particularly the Native Land Act 1873 and Native Land Court Act 1880, under which there were few mechanisms to prevent land going before the Court. This meant that more land could be converted into individualised titles and, in turn, rendered vulnerable to private or Crown purchasing.

One of the key issues was that the Native Land Court did not enable the determination of tribal boundaries. Hapū and iwi who had committed to the Kingitanga demanded the right that they be able to settle their boundaries by their own methods, rather than having them be determined piecemeal, in blocks that were not of their choosing. Previously their boundaries had been more fluid and were subject to change over time and according to circumstance. But increasingly

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701. Native Land Act 1873, s37.

they recognised that they would need to decide on hard, formalised boundaries to accommodate the new order. They were prepared to do this, so long as they retained control of the process. In 1879, Rewi orchestrated an occasion to demonstrate to the Native Minister, John Sheehan, how Māori control of the title determination process could work. He and other rangatira from Ngāti Maniapoto, Ngāti Raukawa and Ngāti Tūwharetoa set out their joint boundaries around the entire rohe (see section 7.4.2.5). Rewi's purpose in bringing these boundaries to the attention of Sheehan was to demonstrate that they had the capacity to work in concert to decide on matters of importance to themselves. It also indicated the extent of the territory that he expected to be protected from the native land system.

Rewi's focus was increasingly on securing the integrity of the aukati in the face of uncontrolled settlement. In the absence of specific action by the Crown, Rewi recognised that the only mechanism available was to use the Crown's own institution: the Native Land Court. He acknowledged the Native Land Court as a reality on the ground and was willing to attend its proceedings (first in 1879) and to seek adjournments or rehearings of cases. However, this would only be for land outside of the aukati. In this way, as Ms Marr described, he looked to use the court for the purposes of defining a boundary that the Crown had to recognise through its own system.<sup>702</sup> Once this boundary was defined, Rewi's hope was that the Crown would recognise Tāwhiao's authority within the territories it enclosed.

#### 7.4.5.2.3 THE GOVERNMENT'S RESPONSE TO REWI'S CONCERNS

The Crown gave few assurances to Rewi that his concerns would not eventuate in the long term. Although the Crown agreed not to allow certain activities in the district for the time being, there was an underlying assumption that this position could only be maintained for so long. Pollen responded to Rewi's criticisms of the native land system by urging the chiefs to use the colonial courts to address their issues, which he believed was the best means of protecting their property rights. He assured them, when he met Rewi in 1877, that the Government would not purchase any more land, but only complete purchases that had already begun, and that road-building would only go as far as the aukati. However, Pollen maintained that it could or would not hold back the Native Land Court forever, which meant that land could continue to be brought before the court so long as there were some applicants willing to do so. Sheehan, equally encouraged Rewi to make use of the court.

And while Grey's responses to the issues raised at the hui at Te Kōpua may have gone some way towards assuaging their immediate concerns, the general problem remained. That is, the Crown had created a native land system which was now pressing up against the borders of Te Rohe Pōtae and threatening to penetrate the aukati. Groups inside the aukati faced the extremely difficult choice of recognising and participating in the court to secure their interests in land adjacent to the district, or foregoing those interests forever. But acceptance and use of the court posed its own dangers for the lands still withheld from the native land system. All

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702. Document A78, pp 454, 496.

this meant that Te Rohe Pōtae Māori faced a situation that increasingly differed from what it had been at the end of the wars, which created new risks and, in turn, had a significant effect on the negotiations.

The fact that the Crown appeared willing to withhold its authority from the district only temporarily was underlined by the Crown's invasion of Parihaka in November 1881. Although the circumstances differed, in that the Crown recognised the right of customary ownership that Te Rohe Pōtae Māori held in respect of their lands, it was a show of force that loomed in the background when the Government came to re-engage in direct negotiations the following year.

It was in this context that Rewi accepted Bryce's invitation to use the land court in March 1882. On the face of it, Rewi's announcement that he would use the court was to fulfil the various purposes he had been outlining to the Government's representatives during negotiations over the preceding years: to define the external boundary of the core Kīngitanga territory, so that the Kīngitanga could exercise authority within the remaining lands.

#### **7.4.5.2.4 THE DECISION TO ALLOW THE NATIVE LAND COURT AT MŌKAU**

The decision to allow the Court at Mōkau in 1882 was in a different category, however, because it was land that was both within the aukati and part of the core lands of Ngāti Maniapoto. For this reason, it was a decision that had significant ramifications for Te Rohe Pōtae Māori and the Kīngitanga more broadly.

Mōkau had been a site of both productive engagement and tension since 1840, led by a range of leaders who had spearheaded efforts from the local hapū to engage in trade and seek settlement. Mōkau Māori had looked to both re-establish their standing in the wider Pākehā community and re-engage in the coastal shipping trade that had been so successful prior to the war, while also incorporating the returning Ngāti Tama into their midst. While the support of Mōkau Māori for the Kīngitanga had been hesitant prior to the war, they now looked to the Kīngitanga for protection, so long as it was able to deliver them substantive control over their affairs. This job mainly fell to Rewi, who maintained the relationship between the local leaders and the King.

This attempt by the Mōkau people at a degree of openness, including with the Government, gave rise to some immediate tensions – the local settlers had become insistent that a lease had been established, which they then sought to have transformed into a Crown title through the Native Land Court. This initiative came to be supported by the local chiefs, including Epiha and Wetere. The Government initially acknowledged that the decision as to whether the court should proceed lay with Rewi. So too did Wetere Te Rerenga, who at first acknowledged that the agreement of both Rewi and the King was necessary. Their response was to refuse entrance to the court.

Three factors emerged during 1881, however, that prompted Wetere once again to seek a court hearing: the arrival of prospectors who breached the aukati without permission; the sudden revelation that the boundary of the confiscated lands was further north than they had thought; and reports that Ngāti Tama were seeking to sell portions of the Poutama land to the Crown.

On the first issue, the Crown submitted that Rewi's effort to seek cooperation with the Crown was a sign that 'Te Rohe Pōtae Māori were starting to seek formal recognition by the Government of their district in collaboration in stopping lawbreakers'. The Crown also considered that Rewi's approach 'corresponds with the proposals of a number of Ministers, particularly McLean, during attempts to achieve a formal establishment of peace during the previous decade'.<sup>703</sup> However, there is a considerable difference between McLean's approach, who was only interested in bringing Māori offenders to justice, and what Rewi had been trying to achieve. Rewi's interest was in seeking cooperation with the Crown over settlers who had breached the aukati without permission, before resorting to violence. The Crown showed that it was in no mood to cooperate or assist in any way.

On the second issue, we agree with the Crown that there is no evidence to support the suggestion that it was engaged with Ngāti Tama over a sale – the only evidence we received concerns a Ngāti Tama offer to sell.<sup>704</sup> The Crown also said that it is unclear what land within the inquiry district might have been involved. On this point, the evidence would seem to suggest that Ngāti Tama were attempting to engage in Poutama lands, which Mōkau Māori understood and reacted to strongly. The point was not that the Crown was in fact in negotiations, but that – at least initially – Mōkau Māori thought that this was what was happening, which posed a threat to their interests.

The greater fact was that this threat coincided with the sudden revelation that the Taranaki confiscation boundary was much further to the north than they previously anticipated, including some of the lands that Ngāti Tama were supposedly offering to the Crown. Thus, it appeared to Mōkau Māori that the Crown had suddenly taken on the appearance of seeking to take control of Poutama, and potentially further to the north. The Crown refused to consider changing the boundary or returning any of the confiscated land. Wetere met with Rolleston to raise his concerns. Crucially, Rolleston said that the Government would refrain from purchasing, but that the only way to guarantee their rights was to go to the court. This was in keeping with the way other Ministers presented the Crown's non-interference policy in this period: while it committed to the idea that it would not purchase the land, there was an implied threat that the situation could not last forever, and the only solution was to go to the court to secure their interests.

From this point on, Wetere was set on a court hearing. He had been opposed to the return of Ngāti Tama to the region earlier in the 1870s; now he was going to oppose them in the court.

Rewi, looking at the situation across the territory, and the circumstances that had suddenly presented themselves in Mōkau, agreed to allow Wetere to pursue this course. In doing so, he appeared compelled by the same motivation to preserve the core territory, by defining an external boundary, though he also knew that it meant that the court would enter that territory and transform the basis of tenure. This revealed the difficult balancing act of respecting the right of chiefs in

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703. Submission 3.4.299, p10.

704. Submission 3.4.305, p14.

communities to decide on the fate of their lands, while maintaining Kīngitanga policies.

However, there remained some uncertainty about whether permission was granted for the hearing to proceed. A request was made for an adjournment of the hearing at the annual Maehe in May 1882. But Rewi also subsequently sought to withdraw some of his requested adjournments, and advised Mōkau Māori to ‘fight Ngati Tama to the end’ in court.<sup>705</sup> Either way, the Judge granted no further adjournments for the hearing, and it went ahead in June 1882. As time went on, it appeared that Ngāti Maniapoto continued to consider that the Poutama lands remained inside the ‘external boundary’ of Te Rohe Pōtae, as it came to be defined in 1883. This itself became a source of contention when the external boundary came to be surveyed in 1884 (see chapter 8).

For these reasons, we disagree with the Crown’s submission that:

Rewi’s involvement with Wetere in going to the Native Land Court, and arranging a lease at Mokau indicate that senior leaders of the Kīngitanga were taking steps to use the Native Land Court to protect their lands, and seeking more lucrative joint ventures with settlers to pay for that process, and raise funds.<sup>706</sup>

Ultimately, what compelled Māori to go to the court in Mōkau were factors caused by uncertainty of ownership, and the fact that the only way they could secure immediate guarantee of their title was through the Native Land Court, even if they might have disagreed with the process.

#### 7.4.5.2.5 FINDING ON CROWN PRESSURES

The Crown submitted that the ‘desire of many Rohe Pōtae Māori to open up the district in the early 1880s strongly suggests that they thought they could do better by improving access to the rest of the colony.’<sup>707</sup> The Crown further submitted that ‘[t]ensions did emerge as the different groups adopted different policies in respect of their territories.’<sup>708</sup>

Rewi’s actions, as we have seen, were often interpreted at the time by the media and even the Crown as signalling a departure from the Kīngitanga. However, Rewi never confirmed what many suspected – that there was a growing divide between Ngāti Maniapoto and Waikato. Rather, on every occasion where people thought he was departing from Tāwhiao, Rewi reaffirmed his commitment – as symbolised at the hui at Te Kōpua in 1879, when Rewi moved to sit next to Tāwhiao having initially sat next to Grey. Expecting some truth in the rumours of Rewi breaking from Tāwhiao, the Crown hoped that Rewi would relocate to Kihikihiki after Bryce finished the house that Grey had promised him. Rewi did use the house,

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705. Document A78, p 608; doc A28, p 256.

706. Submission 3.4.299, p 30.

707. Submission 3.4.299, pp 28–29.

708. Submission 3.4.299, p 29.

and allowed others to use it too, but he did not relocate to Kihikihi as officials hoped, choosing instead to maintain his permanent residence inside the aukati.

However, a new dynamic within the Kīngitanga emerged in 1881 and 1882, when the concerns that had been expressed by Te Rohe Pōtae leaders about activities affecting the encircling lands suddenly became apparent in their core territory. This meant that in addition to trying to negotiate for the recognition of the Kīngitanga and the return of the confiscated lands, Te Rohe Pōtae Māori also soon had to seek to protect their remaining lands. This placed Te Rohe Pōtae hapū and iwi in a difficult bind. If the Kīngitanga was unable to act to protect their lands at the borders, then Te Rohe Pōtae Māori would need to seek other avenues, including direct engagement with the Crown. However, to do so would risk giving the appearance that they were acting separately from the Kīngitanga.

Separate meetings, internal debates, and occasional tense moments were not a measure of division within the Kīngitanga. Differences were an inevitable reality among such diverse groups of people who – though sharing common ancestral origins and a common purpose – were autonomous peoples with their own mana to uphold. More importantly, Kīngitanga leaders demonstrated their cooperation by upholding the aukati, despite external pressures and internal debates, for some years. But it is also the case that the decision to allow the Native Land Court to determine title in Te Rohe Pōtae at Mōkau had a substantial effect on the Kīngitanga alliance, which in turn influenced the outcome of the discussions with Bryce in November 1882.

In short, during the period of the negotiations through the late 1870s, the Crown did little to ease the concerns of Te Rohe Pōtae Māori in respect of the potential effect of the native land system on their interests. This continued to be the case into the period of the Hall and Whitaker ministries, and Bryce's tenure as Native Minister. Although the new Government promised a retrenchment of Crown purchasing, little was offered to Te Rohe Pōtae Māori to assuage their concerns about their ability to protect their lands and the potential effects of the Native Land Court. Rather, in the early 1880s, the Government – and Bryce in particular – acted to block legislative measures such as the native committees Bills proposed by the Māori MHRs, which could have gone some way to providing Māori generally with greater control over the titling process. At the same time, the Government moved to pass measures such as the Railway Act, which indicated that the Government's primary motivation was the opening of Te Rohe Pōtae. Although the extent of the Government's settlement intentions may have remained unclear, there was little in the Government's legislative programme that suggested to Te Rohe Pōtae Māori that their land would remain under Te Rohe Pōtae Māori's absolute control.

For these reasons, we find that the Crown's failure to address the specific concerns they raised in respect of their lands were in breach of the Treaty principle of partnership and the duty of active protection. This was not simply the ongoing prejudice these groups continued to suffer from the Crown's acts in the Waikato war and confiscation, but fresh sources of grievance. This resulted in increasing pressure on Te Rohe Pōtae lands and leaders, which was most keenly felt in the

decision to allow the Native Land Court into Te Rohe Pōtae for the first time in 1882.

### **7.4.5.3 *Did the Crown make sufficient efforts to accommodate the Kingitanga***

It is in this context that we seek to understand the offers that the Crown made to the Kingitanga in the period of negotiations. We begin by reiterating that this Tribunal did not hear evidence or submissions from Waikato Tainui and that our analysis and findings about the Kingitanga apply only to the claims made in this inquiry by Te Rohe Pōtae Māori, who were members of (and leaders in) the Kingitanga and profoundly affected by the events which occurred.

In our inquiry, the Crown gave two key reasons for the failure of the negotiations. First, the Crown considered that any recognition of the Kingitanga was made ‘more difficult’ by the abandonment of the provincial system in the mid-1870s, because ‘there was considerably less scope for institutions that held some measure of independent authority within the New Zealand Constitution.’<sup>709</sup> Secondly, it considered that it was Tāwhiao who chose not to compromise, which led the Crown to adopt the approach that it did.<sup>710</sup> The offers the Crown made were made in good faith, because they represented the Government’s ‘serious intentions about asserting the Crown’s sovereignty, and to exercise the authority of the Crown and Parliament inside the aukati.’<sup>711</sup>

This approach, of course, assumes that the Crown had the right to exercise unfettered and unconditional sovereignty, which this Tribunal has noted in many reports, was not the case. As discussed in chapter 3, the Crown through the Treaty acquired a right to exercise kāwanatanga which was conditional on its recognition of tino rangatiratanga. That was the essential exchange in the Treaty. The right to govern and make law at a local level already existed in New Zealand prior to the Treaty, and was affirmed by it. It was not a constitutional challenge to the rights acquired by the Crown – in practical terms, we see no reason why the two could not co-exist, with negotiation and goodwill on both sides.

Nor was the abolition of the provinces necessarily any impediment to the Crown putting in place measures to provide for Te Rohe Pōtae Māori self-government under the King. Section 71 was still available to the Crown, and if not that, the colonial Government could have found an alternative legislative method. If the Crown could put a new system of local government in place of the provincial system, it was also capable of providing for the self-government Treaty rights of the Kingitanga and its constituent tribes. As Crown counsel acknowledged, ‘legislation was the likely mechanism used to implement any negotiated agreement.’<sup>712</sup> Instead, the county councils scheme that was established in 1876 was suspended in Te Rohe Pōtae, and the Crown was not prepared to put in a Māori equivalent that

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709. Submission 3.4.301, p 21.

710. Submission 3.4.301, pp 7, 15.

711. Submission 3.4.301, p 15.

712. Submission 3.4.301, p 16.

recognised and provided for the authority of King Tāwhiao and the rangatira of Te Rohe Pōtae.

This was because, as Crown counsel acknowledged, the Crown ‘perceived the Kingitanga as a challenge to the Queen’s sovereignty and it sought to persuade all Rohe Pōtae Māori to place themselves under the authority of the Crown. As such, it did not recognise the Māori King as having any kind of sovereign authority.’<sup>713</sup> However, the Crown also submitted that this ‘did not constitute the undermining of the traditional authority of Ngāti Maniapoto and Kingitanga leaders’, as it sought to recognise ‘their authority as influential chiefs.’<sup>714</sup> The question in Treaty terms is not whether the Kingitanga was a challenge to the Queen’s sovereignty, if sovereignty is understood as the supreme and unfettered right to govern, since that is not what Te Rohe Pōtae Māori consented to through the Treaty. The question is whether it was possible for the King’s authority to coexist with the Crown’s power to govern and make law, which had been granted for the purposes of controlling settlers and settlement and protecting Māori rights and interests. As discussed above, we see no reason why such an accommodation could not have been reached.

Indeed, the offers made by McLean and Grey showed that this was the case. The Crown’s initial position, as set out in the respective proposals of McLean and Grey in 1876 and 1878, went a considerable distance towards recognising the role and status of King Tāwhiao and Te Rohe Pōtae chiefs – and, it seems, further than McLean had been prepared to acknowledge in his 1870 proposal to cabinet.

McLean’s offer in 1876 was that Tāwhiao could continue to exercise his authority within the lands remaining in Māori ownership. In addition, he and chiefs of his choosing would be responsible for maintaining law and order, for which the Government said it would provide appropriate support. In 1878, Grey essentially repeated McLean’s offer: Tāwhiao would manage affairs in his district, and the Government would assist in the administration of affairs. We acknowledge that these were significant offers and potentially Treaty compliant, although that would have depended on the negotiation of the detail and its acceptability to Kingitanga and Te Rohe Pōtae leaders. The negotiations never got that far. To a significant extent, that was due to the question of confiscated lands.

McLean offered the return of certain lands about the Waipā and Waikato Rivers (which later included land at Ngaruawahia near Te Wherowhero’s resting place). Grey’s terms were similar: the Government would return lands it had not already disposed of to Europeans, west of the Waipā and Waikato rivers, and promised to return other lands repurchased by McLean for the purpose (though Sheehan later revealed the Government did not in fact intend to return these lands); and the Government would also give Tāwhiao land at Ngaruawahia, as well as a house at Kāwhia.

Under these offers, there was no guarantee of a restoration of the Kingitanga’s authority over the original boundary line at the Mangatawhiri Stream. Tāwhiao

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713. Submission 3.4.301, p 23.

714. Submission 3.4.301, pp 23–24.



did not resile from this position, which McLean equally insisted was impossible. Tāwhiao's position was understandable, given that Waikato held the burden of the grievance for the land that had been taken.

Questions of relative authority may also have been a factor in Tāwhiao's decision not to take up Grey's offer – as discussed in section 7.4.2.4, he may have been reluctant to accept an offer that placed him in an inferior position to the colonial government. And he and other leaders may also have been frustrated by the continued activities of the Native Land Court and Crown purchasing agents in the border zones of the Kīngitanga territories. Nonetheless, the offers made by McLean and Grey were promising and, with further negotiation, might have been brought to a mutually satisfactory conclusion. Rewi indicated as much in his response to Grey's proposal. But further negotiation was precluded by McLean's death and by Grey's ultimatum to take or leave his offer without further discussion.

Bryce's offer – though perhaps more specific in its terms – represented a backwards step and did little to overcome the concerns held by the Kīngitanga. There was no longer any offer to recognise and provide for the authority of the Kīngitanga and rangatira over their own people and affairs in their district. Instead, Bryce proposed to provide for the exercise of Tāwhiao's authority in a series of roles: an assessor of the Resident Magistrates Court, an assessor of the Native Lands Court, a Justice of the Peace, and with advice to the governor to call him to the Legislative Council. The legislative reforms made in 1882 did little to assuage Māori concerns: they still required the Native Land Court to determine title to their land first, and once title was issued they would not be in full control of that land. The inalienability offered by the Native Reserves Act came with serious strings attached. Although Bryce envisaged much of the 'King Country' becoming inalienable reserves under the Public Trustee, the discussions never got that far. In short, Bryce's offer fell far short of what the Kīngitanga was willing to contemplate in exchange for the opening of their territory. There was no longer an offer to recognise Māori authority in the district. In return for posts in the Government, Tāwhiao was required to recognise Crown sovereignty and full authority over the lands and people. As Mr Meredith put it, 'Tāwhiao would have been a mere officer of the Queen's Government and as an assessor, sanction the activity of the Native Land Court.'<sup>715</sup>

In addition, while Bryce offered to return the 'bulk' of unused confiscated in the land, he also sought to impose on Ngāti Maniapoto to provide for Waikato on a more permanent basis. Meanwhile, the Government was offering land to former rebels in the confiscation district to persuade them away from the Kīngitanga. While this aspect of the offer to the Kīngitanga was not stipulated as an explicit requirement of the terms, it represented a potential additional barrier to the Kīngitanga ever accepting the terms offered – and only highlighted the existing pressures the Crown was placing on Te Rohe Pōtae Māori.

Ngāti Tūwharetoa claimants put it to us that the Crown's failure to recognise or provide for the authority of the Kīngitanga during this period was a breach of 'the

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715. Document A110, p 624.

Treaty's guarantee of Māori authority', one which they felt as an iwi that had committed to its cause. Counsel submitted that the Crown missed a significant opportunity in 1882, when Tāwhiao 'appeared willing to compromise in accepting the Crown's sovereignty, provided that Māori tino rangatiratanga would be provided for in the form of self-governance.'<sup>716</sup>

The Crown's refusal – in Bryce's 1882 offer – to recognise or provide for Kingitanga authority, through a freely negotiated mechanism (such as section 71 of the 1852 Constitution Act), constituted a breach of the principle of autonomy and the duty to actively protect the tino rangatiratanga of the hapū and iwi of Te Rohe Pōtae.

The Crown's recognition of and provision for Kingitanga authority at this point would have gone much of the way towards overcoming the issues confronting the iwi of Te Rohe Pōtae in this period. They would have been able to decide their tribal boundaries. And they would have been able to seek out ways of working with the Crown on issues of concern, such as controlling trade and settlement, as well as issues of justice.

Insofar as the Crown refused to consider the return of the land confiscated from Ngāti Maniapoto, particularly the lands north of the Pūniu in which Ngāti Apakura and Ngāti Paretekawa claimed interests, the Crown breached the Treaty principle of redress, which required the Crown to remedy Treaty breaches in a timely and appropriate fashion. We make no finding, however, on the question of restoring Kingitanga authority as far as the Mangatawhiri, as that was not a matter with which Te Rohe Pōtae peoples were primarily concerned.

The Crown's failure to recognise or provide for the authority of the Kingitanga and Te Rohe Pōtae hapū and iwi in any significant way, including the return of confiscated lands, had a significant effect on the claimants in our inquiry. Te Rohe Pōtae Māori had committed to the Kingitanga and its cause. Through the 1870s and into the early 1880s, they were increasingly required to navigate between this commitment and the protection of their customary lands, due to increasing pressures at the borders which resulted from the activities of the Native Land Court and purchasing. It was considered merely a matter of time before Te Rohe Pōtae Māori would no longer be able to resist these pressures, as Bryce suggested in offering his metaphor of the unstoppable flood of colonisation.

We will consider the prejudice arising from the Crown's Treaty breaches in respect of the issues considered in this chapter in detail in chapter 8.

#### **7.4.5.4 Outcome of negotiations to 1882**

The immediate outcome of the negotiations was that Tāwhiao would no longer be directly involved, as symbolised when Tāwhiao turned to Wahanui to seek a response to Bryce's invocations to break the deadlock that had emerged. This was different in order from previous breakdowns in negotiations, as Bryce's letter to Wahanui later indicated.

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716. Submission 3.4.281, p 25.

We do not consider that Wahanui's response represented a severing of relationships between Waikato and Ngāti Maniapoto, or a complete breakdown in the Kīngitanga alliance. It was not, as Dr Loveridge suggested, a decision on the part of 'former King supporters who chose to break away from Tāwhiao . . . in order to negotiate directly with the Crown.'<sup>717</sup> As Wahanui himself explained, in his response to Bryce, the circumstances that now presented themselves – including their refusal to accept Bryce's offer – were not of their doing:

Mo to kupu kii nei naku na Maniapoto i kore ai a Tawhiao e whakaae ki o hamumu, ko taku kupu whakahoki tenei. E hara i ahau. E hara i a Ngati Maniapoto i kore ai a Tawhiao e whakapai ki o kii. Mo etahi o o kupu, waiho kia kororerotia e matou ko te iwi nui.

Concerning your words when you say it was because of I, because of Maniapoto that Tawhiao did not agree to your proposals, my reply is this. It was not because of me. It was not because of Ngati Maniapoto that Tawhiao did not approve of what you suggested. As to your other matters, leave these until myself and the tribe have discussed them.<sup>718</sup>

We note that Wahanui's statement to Bryce was vehemently pro-Kīngitanga – the problem with Bryce's offer, Wahanui said, was that it took away Tāwhiao's authority. This would have been unacceptable to the Kīngitanga under any circumstances, but – because it represented a withdrawal of previous offers to recognise Tāwhiao's authority – was also provocative.

While we cannot tell from the evidence exactly what was occurring within the Kīngitanga at the time, the events indicate that Wahanui and Tāwhiao reached a mutually agreed decision that it was no longer viable for Tāwhiao to head the negotiations – a decision that was forced upon them by Bryce's approach to the negotiations. In coming to that view, we note Rewi's previous insistence that Tāwhiao did not act without consulting his Council and that his Councillors did not act without consulting him.<sup>719</sup>

Following this decision, Te Rohe Pōtae iwi leaders continued to engage in active discussions with Tāwhiao, which was in keeping with their common concerns and the ongoing commitment of Te Rohe Pōtae Māori to the Kīngitanga cause. But Wahanui's decision to rise in response to Tāwhiao's request, along with his subsequent actions, marked a notable change from the previous negotiating position. It meant that Tāwhiao would no longer be regarded as taking the lead in negotiating on behalf of the tribes that had committed to the Kīngitanga. With Tāwhiao no longer directly participating in the negotiations, the Crown and the iwi of Te Rohe Pōtae could negotiate directly on terms that were removed from the debates of the preceding twenty-five years since the Kīngitanga had formed. Although the

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717. Document A41, p 65.

718. Document A110, p 627.

719. 'The Position of the King Party', *New Zealand Herald*, 10 April 1882, p 5.

Crown would still have to deal with the issue of self-government for Te Rohe Pōtae Māori over their territory, it was no longer compelled to make offers in respect of the confiscated Waikato land, and Tāwhiao was able to pursue other avenues of obtaining recognition of his authority.

Perhaps the overriding feature of the negotiations to the end of 1882 was that, despite the foundations for the peace that had been established first at Te Pahiko in 1869, there was little in the circumstances that allowed either party to see eye to eye. Although there was occasional goodwill and meeting of minds, there remained an absence of a mutually agreed platform from which negotiations could proceed. The Crown remained intent on operating as if sovereignty was a *fait accompli* – the Kīngitanga, which included Te Rohe Pōtae Māori, remained staunch in defending their *tino rangatiratanga*. In short, there was little in these discussions that signified a properly functioning Treaty partnership in which a mutual working out of relationships could take place.

In any case, the Crown would need to find a way of engaging with those *iwi* on terms that were satisfactory to them, and properly address their concerns. An opening for this kind of dialogue was soon to emerge in 1883, which we turn to next.

## 7.5 SUMMARY OF FINDINGS

Our key conclusions and findings in this chapter have been:

- ▶ Te Rohe Pōtae Māori enforced and upheld the *aukati* for a period of nearly twenty years (1866–85) after the end of the Waikato war as a legitimate assertion of their right to the exercise of *tino rangatiratanga*, until such a time they could safely engage with the Crown about how to bring the Treaty into effect;
- ▶ The increasing pressure the Crown placed on Te Rohe Pōtae Māori during the period of negotiations from 1875–82, and its failure to address the specific concerns they raised, were in breach of the Treaty principle of partnership and its duty of active protection;
- ▶ The Crown's failure during the 1882 negotiations to recognise the authority and right to self-government of the Kīngitanga and North Island tribes, in so far as it affected Te Rohe Pōtae Māori, including over the return of confiscated land, was a breach of the Treaty principles of partnership, autonomy and redress, and its duty of active protection;
- ▶ These actions and omissions caused serious prejudice to Te Rohe Pōtae Māori, in damage to relationships and to autonomy, which we consider in detail in chapter 8.

## CHAPTER 8

### TE PŪTAKE O TE ŌHĀKĪ TAPU

We are very desirous of obtaining self government. You are anxious for railways; give us what we desire and we will give you what you want.

—Rewi Maniapoto.<sup>1</sup>

#### 8.1 INTRODUCTION

With the breakdown of negotiations between the Kingitanga and the Crown in November 1882, a new phase began in the relationship between the Crown and Māori of this district. The Native Minister, John Bryce, determined that from that point on he would deal only with tribal leaders, and in particular with Wahanui. He immediately pressed Wahanui to open the district to the Crown's laws and public works. In response, Wahanui and other Ngāti Maniapoto leaders developed a plan for their future engagement with the Crown. First, in consultation with neighbouring iwi, they would define the boundary of the territories that remained under Māori control. Secondly, they would petition Parliament seeking laws which recognised and protected their authority and their lands.

Between March 1883 and December 1885, they engaged in a series of negotiations with the Crown concerning land, land laws, the railway, and the respective spheres of Crown and Māori authority within this district. During these negotiations, Te Rohe Pōtae leaders recognised the Crown's right to make laws and govern, and in turn sought Crown recognition of, and statutory provision for, their rights of self-determination and self-government – particularly with respect to land – in accordance with the Treaty guarantee of tino rangatiratanga. The Crown, for its part, continued to press for the opening of the district so as to allow the introduction of Crown institutions and authority, construction of the North Island Main Trunk Railway, and settlement by European farmers.

The negotiations took place in several stages and formed part of an evolving relationship between Te Rohe Pōtae Māori and the Crown during this period. As part of that relationship, significant agreements were reached in March 1883, December 1883, and February 1885, under which Te Rohe Pōtae leaders consented to the Crown taking steps to progress its railway plans in return for law changes to protect their lands and preserve their autonomy. In March 1883, they consented to the Crown undertaking an exploratory survey to determine the best railway

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1. Copy of letter (in English only) from Rewi Maniapoto, 26 January 1884 (doc A78, p 1018).

route, and agreeing to consult and obtain their consent before taking any further steps on the railway – the leaders also signalled their intention to submit a petition about the laws they would seek in exchange for allowing the railway and settlement to go ahead. In June 1883, they submitted their petition, which the Crown responded to in terms that Te Rohe Pōtae Māori considered insufficient to meet their demands. In December 1883, they reached agreement with the Crown for a survey of the external boundary, which they saw as a first step towards recognition of their authority within the boundary. In February 1885, the Crown agreed to several of the demands made by Te Rohe Pōtae leaders, including law changes to give Māori communities greater powers of self-determination with respect to land title determination and land administration. On the basis of these promises, Te Rohe Pōtae leaders consented to the construction of the railway. In December of that year, they lifted the aukati.

Between these negotiations, Te Rohe Pōtae leaders continued to engage with the Crown, pressing it to respect their autonomy and to honour the agreements it had entered. In particular, they sought Crown recognition of their rights to determine ownership of their own lands, and to possess, manage, and use those lands as they wished. As the negotiations evolved, they also sought Crown recognition of their rights to manage social issues for the benefit of their people. Despite their frustrations, they continued to negotiate, and to honour their side of each agreement, in the hope of persuading the Crown to use its powers of *kāwanatanga* to recognise and protect their rights and authority, especially with regard to land.

The Crown, having won consent for the railway in 1885, then sought to increase pressure on the district's leaders to bring their lands before the Native Land Court. As a result, divisions emerged among the *iwi* of Te Rohe Pōtae. By the end of the year, the Crown had succeeded in encouraging Ngāti Tūwharetoa and Whanganui *iwi* to place their lands before the court, partly due to fears that Ngāti Maniapoto intended to claim their land, which the Crown did nothing to dispel. In the face of competing claims, Te Rohe Pōtae Māori leaders lifted the aukati and made their own claims to the court, effectively ending their quest for Crown recognition of their right of self-government. Ultimately, the Crown won all that it had sought from the negotiations. It was able to assert the authority of its law and institutions, begin construction of the railway, and begin the process of opening Te Rohe Pōtae for European settlement. Te Rohe Pōtae Māori, on the other hand, ultimately won very little in the way of statutory protection for their Treaty rights.

We heard from many claimants about these events, and their evidence informs much of this chapter. The chapter also relies heavily on the research reports prepared by Cathy Marr, Donald Loveridge, and Paul Thomas, as well as the traditional history report prepared by Ngāti Maniapoto researchers.<sup>2</sup>

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2. Marr, 'Te Rohe Pōtae Political Engagement 1864–1886' (doc A78); Loveridge, 'The Crown and the Opening of the King Country, 1882–1885' (doc A41); Thomas, 'The Crown and Maori in Mokau 1840–1911' (doc A28); Ngāti Maniapoto researchers, 'Ngāti Maniapoto Mana Motuhake: Report for Ngāti Maniapoto Claimants and the Waitangi Tribunal' (doc A110).

### 8.1.1 The purpose of this chapter

The 1883–85 negotiations, and the agreements that emerged from them, have come to be known by claimants as ‘Te Ōhākī Tapu’. The term Te Ōhākī Tapu is derived from ‘Te Kī Tapu’, or ‘the sacred word’, a phrase used by Ngāti Maniapoto leaders in the 1880s to describe the utmost importance of their negotiations with the Crown. Claimants told us that the word ‘ōhākī’ carries a meaning of a last request or testament that survives long after death.<sup>3</sup> On this basis, we understand Te Ōhākī Tapu to mean a sacred word or utterance – one that is imbued with tapu, and therefore must be honoured and put into effect.

The claimants noted that, for more than four decades after the Treaty, Te Rohe Pōtae Māori had retained their tino rangatiratanga while the Crown exercised no practical authority within the district. Through Te Ōhākī Tapu, the claimants said, Te Rohe Pōtae Māori leaders allowed Crown authority to be exercised in their district for the first time, but they did so in return for Crown recognition and protection of their tino rangatiratanga, in accordance with article 2 of the Treaty.

Therefore, the claimants saw Te Ōhākī Tapu as establishing the basis for an enduring Treaty relationship between Te Rohe Pōtae Māori and the Crown. They argued that it should not be understood narrowly as a series of specific agreements or contracts, but rather as a broader agreement or ‘compact’<sup>4</sup> between the Treaty partners, which therefore carried constitutional significance and was a matter of honour for both parties. They argued that it established the basis for a Treaty partnership in which Te Rohe Pōtae Māori recognised the Crown’s right of kāwanatanga and the Crown in turn recognised and protected Te Rohe Pōtae mana and tino rangatiratanga.

But the claimants also argued that the Crown viewed the negotiations solely as a means to assert its authority and open the district for settlement. They said it had not negotiated in good faith, having never intended to provide for Te Rohe Pōtae self-government. They alleged that the Crown misled Te Rohe Pōtae leaders over its intentions, pressured them into accepting compromises, and broke many of the specific promises it had made. The effect, they said, was that by the end of 1885 the district’s autonomy had been compromised and the ‘flood gates had been opened’<sup>5</sup> for the Crown to assert its authority over Te Rohe Pōtae Māori and begin the process of obtaining Te Rohe Pōtae land for European settlement.

The Crown viewed these events quite differently. From its point of view, the negotiations were limited to particular matters, primarily concerning the construction of the railway. They were of constitutional significance only to the extent that they were negotiations between Treaty partners. The Crown told us that it negotiated with Te Rohe Pōtae Māori in good faith and fulfilled most aspects of the agreements that were made, apart from a handful of promises that the Crown departed from. Yet, the Crown only acknowledged Te Ōhākī Tapu as a matter of importance to the claimants. The Crown conceded that its failure to re-engage

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3. Document H9(c), para 5 (Roā); H17(e), p 12 (Maniapoto); doc 112, p 15 (Te Hiko).

4. Submission 3.4.128, p 2.

5. Submission 3.4.128, p 4.

with Māori before breaking promises was a breach of Treaty principles. Despite its acknowledged Treaty breaches, the Crown considered that it came to exercise its authority in the district in a manner that was consistent with the Treaty.

However we might interpret them, the negotiations and agreements of 1883–85 were of great significance to the history of Te Rohe Pōtae, and to the Treaty relationship between the Crown and Te Rohe Pōtae Māori. They were therefore of central significance to our inquiry. Through these events, the Crown began to exercise its authority within Te Rohe Pōtae, a territory that had previously remained independent, governed according to its own tikanga. In turn, the exercise of Crown authority resulted in the rapid and dramatic transformation of the district's political, economic, and social landscape, with profoundly adverse consequences for Te Rohe Pōtae Māori.

We will begin to see some of these consequences in this chapter, as we consider the unravelling of the 1883–85 agreements after construction of the railway began. And we will continue to examine the consequences in the remaining chapters of our report.

### 8.1.2 How the chapter is structured

We begin this chapter by identifying the issues for our determination. We then address these issues by looking at the key developments that occurred, including our assessment of these developments in light of the Treaty of Waitangi. We will first consider the series of negotiations and agreements between Te Rohe Pōtae leaders and the Crown during 1883–85, culminating in the decisions by Te Rohe Pōtae leaders to allow the railway and lift the aukati. We will then consider the immediate aftermath of the lifting of the aukati, as Te Rohe Pōtae iwi began to face the reality that the Crown would not protect their autonomy as they had wished, and as the district's iwi then began to turn their attention to protecting ancestral lands through the Native Land Court.

The chapter is structured as follows:

- ▶ the March 1883 agreement;
- ▶ the June 1883 petition of Ngāti Maniapoto, Ngāti Raukawa, Ngāti Tūwharetoa, and Whanganui iwi, and the Government's response;
- ▶ the December 1883 external boundary agreement;
- ▶ the implementation of the 1883 agreements to mid-1884;
- ▶ the first land reforms of the Stout–Vogel Government in 1884;
- ▶ the railway agreement of February–April 1885; and
- ▶ land settlement and the end of the aukati in 1885–86.

Finally, we set out our conclusions on the issues, including our conclusions about Te Ōhāki Tapu and what it means in the context of our jurisdiction to make findings on claims of Treaty breach.

## 8.2 ISSUES

The principal question at issue in this chapter is whether the opening of Te Rohe Pōtae, as expressed through the lifting of the aukati at the end of 1885, occurred



in a manner that was consistent with the principles of the Treaty of Waitangi. We must therefore consider the claimants' arguments that, through this period, the Crown failed to take reasonable steps to provide for the tino rangatiratanga of Te Rohe Pōtae Māori, failed to honour the undertakings it made to Te Rohe Pōtae leaders, and failed to negotiate in good faith, giving undertakings that it did not intend to deliver on. We must also consider the claimants' contention that, through this period's negotiations and agreements, the Crown entered into a political and constitutional compact with Te Rohe Pōtae Māori, which has come to be known as Te Ōhāki Tapu, under which the Crown agreed to recognise and protect Te Rohe Pōtae Māori rights to self-government. These are issues that have been considered by a number of other Tribunals, and were the focus of submissions by parties in our inquiry.

### 8.2.1 What other Tribunals have said

Tribunals in four other inquiry districts have considered aspects of the 1883–85 Te Rohe Pōtae negotiations and agreements: Pouakani, National Park, Central North Island, and Whanganui. Those Tribunals primarily considered the claims of Ngāti Tūwharetoa, Ngāti Raukawa, and Whanganui iwi in their respective districts, which required some discussion of the events that are the focus of this chapter. The Central North Island and National Park Tribunals made preliminary findings about the negotiations, while noting that they had not heard evidence from Ngāti Maniapoto and other parties to the 1883–85 negotiations.<sup>6</sup>

The Central North Island Tribunal made the preliminary finding that the commencement of 'an ongoing dialogue . . . to arrange controlled settlement in Taupo and the King Country, on terms satisfactory to both Maori and the Crown' was consistent with the Treaty of Waitangi.<sup>7</sup> However, the Tribunal found that the Crown breached the Treaty 'when it failed to keep either the spirit or the letter of its undertakings'.<sup>8</sup> The Crown failed to provide for the meaningful self-government that Te Rohe Pōtae communities sought in their negotiations, despite the opportunities that existed at the time to do so. This failure, the Central North Island Tribunal found, 'was a serious breach of Treaty principles'.<sup>9</sup> More particularly, the Tribunal found that the Crown could have met the 'reasonable demands' of Te Rohe Pōtae Māori leadership for a survey of the external boundary of Te Rohe Pōtae, followed by the enactment of legal powers for the tribes to decide their own land titles.<sup>10</sup>

The Pouakani and National Park Tribunals found that legislation the Crown enacted in response to its negotiations with Te Rohe Pōtae leaders failed to provide

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6. Waitangi Tribunal, *The Pouakani Report 1993* (Wellington: Brooker's Ltd, 1993), p 111; Waitangi Tribunal, *Te Kāhui Maunga: The National Park District Inquiry Report*, 3 vols (Wellington: Legislation Direct, 2013), vol 1, p 248.

7. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims Stage One*, 4 vols (Wellington: Legislation Direct, 2008), vol 1, p 332.

8. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 332.

9. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 318–319.

10. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 333.

adequately for their self-determination and was not Treaty compliant. Specifically, the Pouakani Tribunal found that the Native Committees Act 1883 (under which district native committees were established) ‘did not provide any real measure of self determination for the tribes’, and provided for committees with ‘no power’ in districts ‘that were too large to be workable.’<sup>11</sup> The National Park Tribunal accepted the finding of the 1891 Native Land Laws Commission that the Native Committees Act 1883 was a ‘hollow shell’ that ‘mocked and still mocks the Natives with a semblance of authority.’<sup>12</sup>

Similarly, the Native Lands Administration Act 1886 did not provide Māori with the level of control over their land that they had demanded. According to the Central North Island Tribunal, the Act was ‘more consistent with the Treaty than anything that had gone before’, but nonetheless fell short of what Te Rohe Pōtae Māori had sought. It concluded that the ‘whole concept of the Act was defeated by not giving proper effect to the tino rangatiratanga of Maori communities.’<sup>13</sup> It found that the Crown had breached the Treaty by failing to enact the laws that Māori had sought.<sup>14</sup>

The Pouakani, Central North Island, and National Park Tribunals all found that the Crown had influenced the 1885 decision by Ngāti Tūwharetoa to apply to the Native Land Court for title to the Taupōnuitia block, by failing to dispel fears that Ngāti Maniapoto intended to claim their lands. As we will see in section 8.11, the Ngāti Tūwharetoa application traversed the 1883 boundary and forced the other Te Rohe Pōtae iwi to engage with the Court despite their long-held opposition.<sup>15</sup>

### 8.2.2 Crown concessions

The Crown made multiple concessions relating to the actions it took after Native Minister John Ballance’s meeting with Te Rohe Pōtae Māori at Kihikihi in February 1885, and after the agreement to construct the railway was concluded in March of that year:

The Crown concedes that it failed to consult or re-engage with Rohe Pōtae Māori when it departed from representations it had made in February 1885 (in negotiations to obtain their consent to construct the North Island Main Trunk Railway through Te Rohe Pōtae) that:

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11. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 316–318; Waitangi Tribunal, *The Pouakani Report*, p 111.

12. ‘Report of the Commission Appointed to Inquire into the Subject of the Native Land Laws’, AJHR, 1891, G-1, p xvi (Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, p 230).

13. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 354–356. Also see Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, pp 232–233.

14. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 354–356. Also see Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 2, pp 760–761; Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, pp 232–233; Waitangi Tribunal, *Tauranga Moana 1886–2006: Report on the Post-Raupatu Claims*, 2 vols (Wellington: Legislation Direct, 2010), vol 1, p 38; Waitangi Tribunal, *The Wairarapa ki Tararua Report*, 3 vols (Wellington: Legislation Direct, 2010), vol 2, p 475.

15. Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, pp 206, 225, 233–236, 240, 287, 289, 340; Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 330, vol 2, p 476; Waitangi Tribunal, *The Pouakani Report*, s 8.2.

- (a) It was planning to provide for Māori District Committees to have a greater role in Native Land Court processes [when Te Rohe Pōtae land came before the court] and to provide a mechanism for a measure of self-government;
- (b) It was planning a new system for the alienation of Māori land with committees of owners controlling alienation, and using boards, or a similar type of agency, to manage alienations; and
- (c) If Māori subsequently decided to sell or lease land they would be able to do so in a competitive market.

The Crown failed to consult or re-engage with Rohe Pōtae Māori when it did not fulfil these representations, and thereby breached the Treaty of Waitangi and its principles by not acting in good faith and by failing to respect their rangātiratanga.<sup>16</sup>

However, the Crown made several qualifications to these concessions, which we discuss further in the next section.

### 8.2.3 Claimant and Crown arguments

Numerous claims in this inquiry contain grievances related to Te Ōhākī Tapu.<sup>17</sup> The parties agreed that the 1883–85 negotiations and their outcomes were central to many of the claims in this inquiry. They also agreed that from 1883, there was a series of agreements between Te Rohe Pōtae leaders and the Crown which led to the opening up of the territory in 1885. The parties differed over the nature and extent of the agreements reached during the course of the 1880s negotiations, and over the extent to which the Crown put those agreements into effect.

#### 8.2.3.1 *Te Ōhākī Tapu as a sacred compact for Te Rohe Pōtae self-government*

The claimants' main contention was that during the period from 1883 to 1885, Te Rohe Pōtae leaders 'entered into a series of agreements with the Crown which together comprised what has come to be known as Te Ohaki Tapu'.<sup>18</sup> Of particular significance were agreements in March 1883, December 1883, and February 1885. The agreements led to Te Rohe Pōtae Māori consenting to the railway in March

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16. Submission 3.4.307, p 25.

17. Wai 440 (submission 3.4.198); Wai 443 (submission 3.4.158); Wai 551, Wai 948 (submission 3.4.250); Wai 784 (submission 3.4.147); Wai 846 (submission 3.4.251); Wai 972 (submission 3.4.134); Wai 472, Wai 847, Wai 986, Wai 993, Wai 1015, Wai 1016, Wai 1054, Wai 1058, Wai 1095, Wai 1115, Wai 1437, Wai 1586, Wai 1608, Wai 1612, Wai 1965, Wai 2120, Wai 2335 (submission 3.4.140); Wai 1099, Wai 1100, Wai 1132, Wai 1133, Wai 1136; Wai 1137, Wai 1138, Wai 1139, Wai 1798 (submission 3.4.189); Wai 1818 (submission 3.4.213); Wai 1428 (submission 3.4.154(a)); Wai 587, Wai 1606 (submission 3.4.169(a)); Wai 586, Wai 753, Wai 1396, Wai 1585, Wai 2020, Wai 290 (submission 3.4.204); Wai 1823 (submission 3.4.178); Wai 1824 (submission 3.4.181); Wai 762 (submission 3.4.170(a)); Wai 928 (submission 3.4.175(b)); Wai 1255 (submission 3.4.199); Wai 1309 (submission 3.4.220); Wai 1480 (submission 3.4.176); Wai 48, Wai 81, Wai 146 (submission 3.4.211); Wai 366, Wai 1064 (submission 3.4.205); Wai 555; Wai 1224 (submission 3.4.163(a)); Wai 575 (submission 3.4.281); Wai 833; Wai 965; Wai 1044; Wai 1605 (submission 3.4.227); Wai 987 (submission 3.4.167); Wai 1147; Wai 1203 (submission 3.4.151); Wai 1197; Wai 1388 (submission 3.4.209); Wai 1230 (submission 3.4.168(a)); Wai 1299 (submission 3.4.234); Wai 1447 (submission 3.4.187); Wai 1594 (submission 3.4.164(a)).

18. Submission 3.4.128, p 2.

1885 and lifting the aukati in December of that year. Counsel for the Maniapoto Māori Trust Board said that Te Ōhākī Tapu ‘sits at the heart of their claims against the Crown.’<sup>19</sup>

In the view of the claimants, the 1883–85 agreements collectively amounted to a ‘compact’ between the Crown and Te Rohe Pōtae Māori, under which Te Rohe Pōtae Māori recognised the Crown’s right to govern and make laws, and in turn sought and received Crown recognition of their rights to autonomy and self-government within their territories.<sup>20</sup> Te Ōhākī Tapu was both ‘a declaration of ongoing autonomy . . . and an assertion of the right to govern within the Rohe Pōtae, and ‘a promise by the Crown that this governing autonomy would be recognised and respected in all respects, including within laws passed by Parliament.’<sup>21</sup> Counsel identified five core elements of Te Ōhākī Tapu:

- ▶ Te Rohe Pōtae Māori would ‘retain full autonomy within their rohe over their own lands, resources and people, including the ability to make their own laws’;
- ▶ the Crown would give effect to this by ‘providing a mechanism through legislation to give effect to that authority’;
- ▶ the district would be kept ‘dry’, with sales of alcohol prohibited;
- ▶ anyone (Māori or European) in the district would be there by permission of Te Rohe Pōtae leaders and subject to Te Rohe Pōtae Māori law and authority;
- ▶ the Crown could conduct an external boundary survey and build a railway through the territory, with land to be gifted comprising one chain along the railway line.<sup>22</sup>

Counsel said that Te Ōhākī Tapu should be seen as part of a long tradition of treaty making and alliance building among Te Rohe Pōtae Māori, aimed at sustaining the communal authority – the mana motuhake or (in Ngāti Maniapoto terms) ‘mana whatu ahuru’<sup>23</sup> of the district’s people.<sup>24</sup> The agreements were reached ‘mana to mana, rangatira to rangatira.’<sup>25</sup> Some claimants argued that because the Treaty ‘guaranteed Maori the right to continue to organise themselves politically’, the Crown was ‘bound to uphold’ Te Ōhākī Tapu.<sup>26</sup>

The claimant Harold Maniapoto (Ngāti Paretekawa, Ngāti Te Kanawa, Ngāti Maniapoto) said Te Ōhākī Tapu had arisen through ‘a series of Crown-Chief hui and inter and intra-iwi/hapū hui’ held during 1883–85, which forged the founding principles for the opening of the district. The agreements were formed on the basis that the word of a chief was binding, and the agreements were therefore ‘couched in the sacredness of . . . tikanga principles.’ Mr Maniapoto described the

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19. Submission 3.4.1, para 5.

20. Submission 3.4.128, p 2.

21. Submission 3.4.1, para 5.

22. Submission 3.4.128, p 2.

23. Document H9(c), paras 7–8, 13–15; doc s19(a) (Te Kanawa), pp 37–39, 48.

24. Submission 3.4.128, p 4.

25. Submission 3.4.128(b), p 2.

26. Submission 3.4.130(e), p 21.

agreements collectively as ‘Te Ohaki Tapu o Te Kīngi Kanatere’, which he translated as ‘The sacred pact of the King’s Country’. The agreements had also been referred to as the ‘Rohe Pōtae Compact’, the ‘King Country Compact’, the ‘Sacred Pact’ or the ‘Sacred Compact’, and possibly also by other names.<sup>27</sup>

Another Ngāti Maniapoto claimant, Tom Roa, preferred the term ‘Te Kī Tapu’ to describe the agreements that were entered into during this period. Te Kī Tapu, he said, was based in the mana whatu ahuru of Ngāti Maniapoto. This was an authority ‘specific to Ngāti Maniapoto’, handed down through generations ‘from Io-the-Parentless . . . to Hoturoa . . . to Maniapoto and his siblings’, and representing Maniapoto’s status as an ariki.<sup>28</sup> Mr Roa translated ‘Te Kī Tapu’ as ‘the word is sacred.’<sup>29</sup> It represented the expectation of Te Rohe Pōtae leaders that they and the Crown would be bound by the agreements they entered. This was because the word of a rangatira was sacrosanct, binding not only the leader but his family and his people. In accordance with tikanga, any breach of a kī tapu would have consequences, which could include redress being sought and blood being spilt.<sup>30</sup> Mr Roa noted that the term ‘Te Kī Tapu’ was used by Ngāti Maniapoto leaders at the time the agreements were being negotiated. The term Te Ōhāki Tapu, he said, emerged later and was more associated with attempts to get the Crown to uphold certain agreements concerning the prohibition of alcohol within Te Rohe Pōtae.<sup>31</sup>

The Ngāti Raukawa claimant Nigel Te Hiko described Te Ōhāki Tapu in this way:

Our people considered that as long-term kaitiaki over several areas within the 1883 petition boundary, their interests would be upheld and respected by the Crown in the wake of this “ki Tapu”. Above all, our people expected that following the lifting of the aukati, and the re-emergence of the Crown in the rohe, the Crown would engage with and treat different people groups in an even-handed manner.<sup>32</sup>

He said the word Ōhāki brought together three concepts – belonging to (ō), breath (hā), which signifies life, and to speak or bequeath (kī) – which together could be understood as referring to a ‘last request’ in which the final breath is instilled into the words ‘giving life to the kupu so that those words survive long after death’. The Ōhāki was ‘significantly enhanced’ when it was tapu:

Tapu is restrictive in nature and distends from the Atua. Consequently, Māori guard jealously their tapu. To offend against tapu would have significant consequences as well as the reduction of personal tapu.

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27. Document A42 (Maniapoto), pp 7–8.

28. Document H9(c), paras 10, 14–15; see also doc 14, para 3.

29. Document H9(c), para 5.

30. Document H9(c), paras 6–7, 89; see also doc 14, para 7.

31. Document H9(c), paras 4–5.

32. Document 17 (Te Hiko), p 3.

As a consequence, when our tūpuna entered into this arrangement they applied their breath and tapu into the agreements. This bound them completely to the agreement (more so, in my view, than the Crown).<sup>33</sup>

Claimant counsel cautioned against the Tribunal approaching Te Ōhāki Tapu as if it were a contract, submitting that it was important to pay attention to Māori objectives, as well as Crown understandings of those objectives.<sup>34</sup> Counsel quoted Tauī Wetere, who said in 1946:

We have never heard it said by our elders that the Pact was written on paper. It was written in the uttered words of men of whom it was said “Their word is their bond.” The fact and substance of the Pact has come down to us through hundreds of channels in oral tradition and their words recorded in Government records about that time speaking of the fact of the Pact.<sup>35</sup>

Counsel also brought to our attention the evidence of the Crown’s historian, Dr Donald Loveridge, who had commented on an earlier assessment by the former parliamentary historian, A H McLintock, concerning whether a ‘sacred pact’ had been entered into in this period. McLintock’s conclusion was that there was no such pact. Loveridge commented:

Yet if there was no single ‘sacred pact’ between the Governments of the day and the Maori concerned, it is abundantly clear that there were a series of agreements and understandings (and disagreements) between the different parties which contributed to and shaped this momentous development. Conspicuous by its absence from McLintock’s discussion is any reference to the Treaty of Waitangi, and the implications of the Crown’s Treaty obligations with respect to the series of events which led to the opening of the King Country. The agreements in question need to be re-evaluated in this light, and to do so it is necessary to have a clear understanding of what the key agreements were – and were not – and of the circumstances in which they were reached.<sup>36</sup>

Counsel emphasised that it was important to focus not just on the content of individual agreements, but also on the relationship between them and their collective effect. This was because each of the individual agreements ‘were regarded by the iwi of the Rohe Potae as reflecting a broader compact with the Crown to recognise and respect their autonomy within the Rohe Potae.’<sup>37</sup>

The Crown had a very different view of the 1883–85 negotiations. It acknowledged and agreed with the claimants that, through these negotiations, Te Rohe

33. Document 112, p 15.

34. Submission 3.4.128, p 8.

35. Submission 3.4.1, para 20.

36. Document A41 (Loveridge), pp 13–14.

37. Submission 3.4.1, para 11.

Pōtae leaders and the Crown ‘shaped an extraordinary set of understandings and agreements.’<sup>38</sup> These involved an attempt to ‘reach agreement’ about how Te Rohe Pōtae Māori demands for recognition of their autonomy ‘could be accommodated within the political and social structures that had developed in New Zealand since the Treaty of Waitangi was signed in 1840.’<sup>39</sup> The Crown’s position was that, through the negotiations, the parties achieved a ‘compromise’, which involved ‘an acceptance by the Rohe Pōtae leadership that, in order to allow their people full access to the colonial economy, some measure of the political autonomy they previously enjoyed had to be sacrificed.’<sup>40</sup>

The Crown acknowledged that the claimants ‘wrap these agreements . . . in the concept [of] Te Ohaki Tapu’, a term that ‘carries with it a sense of looking back to an important series of events in history and symbolises the importance of events and agreements to Rohe Pōtae Māori.’ The Crown did not regard the concept of Te Ōhākī Tapu as having any weight for its own understanding of the 1883–85 negotiations and agreements.<sup>41</sup>

### 8.2.3.2 *Te Ōhākī Tapu as a constitutional agreement*

Counsel for the Maniapoto Māori Trust Board and other claimants submitted that Te Ōhākī Tapu amounted to ‘a constitutional agreement between Te Rohe Pōtae Māori and the Crown’, under which the Crown was able to gain entry to a district where it had formerly had no access and exercised no practical authority.<sup>42</sup> Counsel said the agreement was ‘aimed at retaining and exercising the mana, rangatiratanga, and authority of Te Rohe Pōtae Māori.’<sup>43</sup> It was a constitutional agreement because both parties were exercising sovereign authority at the time it was entered into, and because the Crown recognised that it required the consent of Te Rohe Pōtae Māori in order to gain entry to Te Rohe Pōtae.<sup>44</sup>

The Crown did not regard the 1883–85 negotiations and agreements as being of constitutional significance, except in the sense that they were between Treaty partners.<sup>45</sup> Its view of the constitutional position was that it had acquired *de jure* sovereignty over the entirety of New Zealand in 1840, and therefore was ‘not *legally* obliged to seek further consent of the Rohe Pōtae Māori to the exercise of Crown authority’ after that time. It acknowledged, however, that the practical details of how Crown authority should be exercised, including any institutional arrangements, was a matter ‘for debate and discussion’ between Treaty partners, and that in Te Rohe Pōtae the Crown did not begin to exercise that practical authority until the aukati was lifted at the end of 1885.<sup>46</sup>

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38. Submission 3.4.301, p 1.

39. Submission 3.4.301, p 1.

40. Submission 3.4.301, p 1.

41. Submission 3.4.301, p 1.

42. Submission 3.4.128(b), p 2; submission 3.4.128, pp 2–3.

43. Submission 3.4.128(b), p 2; submission 3.4.128, pp 2–3.

44. Submission 3.4.128(b), p 10.

45. Submission 3.4.312, pp 1, 12.

46. Submission 3.4.312, pp 1, 12.

**8.2.3.3 The 16 March 1883 agreement**

The claimants told us that in March 1883 Te Rohe Pōtae leaders agreed that the Crown could proceed with an exploratory survey for the railway, in exchange for the Crown supporting and recognising the authority of Te Rohe Pōtae Māori within their territory. Claimants said it was agreed that Te Rohe Pōtae leaders would send a petition detailing their expectations, which the Crown was to support.<sup>47</sup>

The Crown submitted that the March 1883 agreement was specific to questions concerning the railway, rather than to more general questions of Te Rohe Pōtae Māori authority. The Crown submitted that it was ‘implicit that further discussions between the Government and the chiefs would be necessary after the exploration survey was completed and before any railway line was built’.<sup>48</sup> The Crown submitted that it upheld all aspects of the agreement, ‘based on its understanding of what they involved’.<sup>49</sup>

**8.2.3.4 The June 1883 petition and the Government’s response**

Te Rohe Pōtae leaders sent the petition to Parliament in June 1883. The Crown responded by enacting two laws, the Native Committees Act 1883 and the Native Land Laws Amendment Act 1883.

Claimants told us that these responses did not give effect to the main elements of the petition and were therefore inadequate. More specifically, claimants said the Crown did not explicitly recognise the boundary of Te Rohe Pōtae, did not protect its land from sale, did not empower Te Rohe Pōtae leaders to determine iwi and hapū land titles among themselves, and did not protect Te Rohe Pōtae Māori from the Native Land Court.<sup>50</sup> The native committees provided for under the Native Committees Act were ‘toothless’ and ‘a sop with no real powers’.<sup>51</sup>

The Crown’s position was that the June 1883 petition of the ‘four tribes’ (Ngāti Maniapoto, Ngāti Raukawa, Ngāti Tūwharetoa, and Whanganui iwi) was ‘an initial step in their approach to an accommodation with the Crown’.<sup>52</sup> Counsel submitted that the Acts that were passed in response to the petition – the Native Land Laws Amendment Act 1883 and the Native Committees Act 1883 – ‘were considered by the Government to be appropriate responses to the requests made in the petition’.<sup>53</sup>

**8.2.3.5 The December 1883 external boundary survey agreement**

In December 1883, following further negotiations, Te Rohe Pōtae leaders filed an application to the Native Land Court. Claimants told us that they made the application for the purpose of confirming and obtaining Crown recognition for the external boundary of their territories, in order to confirm the area over which

47. Submission 3.4.128(b), pp 9–10.

48. Submission 3.4.301, p 27.

49. Submission 3.4.301, p 24.

50. Submission 3.4.128(b), pp 15–16.

51. Submission 3.4.128(b), p 16.

52. Submission 3.4.301, p 38.

53. Submission 3.4.301, p 44.



their mana and rangatiratanga would be exercised. Their expectation was that they would then determine iwi and hapū boundaries among themselves.<sup>54</sup>

Claimant counsel submitted that the Crown misled Te Rohe Pōtae leaders into making the application. The Native Minister, John Bryce, had told them that an application to the Court was the only means by which their external boundary could be secured. He did not inform them of the full effects of applying to the Court for title. And he convinced them to apply on the basis that the Crown would hold back other applications to the Court, but the Crown then went on to promote other Court applications such as those in respect of the Taupouiatia and Waimarino blocks.<sup>55</sup> Despite what Bryce led Te Rohe Pōtae Māori to believe, the Court had no legal power to fix a true tribal boundary, and nor was the Native Land Court able to confirm decisions of native committees as to internal subdivisions.<sup>56</sup>

The Crown, in contrast, considered that Te Rohe Pōtae Māori made the application to the Native Land Court in the hope that ‘the Court would recognise their title.’<sup>57</sup> Crown counsel submitted that Te Rohe Pōtae Māori ‘knew they were taking risks with the application for a survey and title investigation’, but that this was the only way to ‘take control of the title determination process and extract concessions from the government.’<sup>58</sup>

### 8.2.3.6 *The 1885 railway agreement*

Many of the claimants’ submissions on Te Ōhākī Tapu related to the outcome of the agreement that was reached at Kihikihi in February 1885. The agreement reached at that hui was the culmination of a period of negotiations in which, claimants submitted, the Crown agreed to ‘recognise the authority of the Rohe Pōtae leadership, including providing a mechanism through legislation to give effect to that authority.’<sup>59</sup> In exchange, claimants submitted, Te Rohe Pōtae Māori agreed that the Crown could build a railway through the territory, for which they would gift land comprising one chain for the width of the railway line.<sup>60</sup>

The Crown, as we saw in section 8.2.2, acknowledged that the Crown made ‘representations’ in February 1885 that it was planning to ‘provide for Māori District Committees to have a greater role in Native Land Court processes when Te Rohe Pōtae land came before the Court and to provide a mechanism for a measure of self-government’. It also acknowledged that it made representations that it was ‘planning a new system for the alienation of Māori land’ under which owner committees would control alienation, and that it promised that Māori who sold or leased land would do so in a competitive market.<sup>61</sup>

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54. Submission 3.4.128(b), pp 17, 18.

55. Submission 3.4.128(b), pp 18, 20.

56. Submission 3.4.128(b), p 21.

57. Submission 3.4.301, p 55.

58. Submission 3.4.301, p 61.

59. Submission 3.4.128, p 2.

60. Submission 3.4.128, p 2.

61. Submission 3.4.307, para 66.

**8.2.3.7 *The Crown's responses to the 1883–85 agreements***

Claimants submitted that, to meet its obligations under the Treaty, the Crown was required to fulfil the specific commitments it made during the 1883–85 negotiations, and to 'respect the broader desire of Rohe Potae Māori to retain mana and rangatiratanga over their lands and people.'<sup>62</sup> Both were important to the Treaty relationship. Fulfilling the specific commitments was necessary in order to give Te Rohe Pōtae Māori confidence that the Crown would act justly and with integrity. Recognising the broader desire for tino rangatiratanga was important because this was the overarching objective for Te Rohe Pōtae Māori in treating with the Crown.<sup>63</sup>

The claimants submitted that the Crown failed to implement the agreed outcomes, or took actions that were contrary to those outcomes, and that it also failed to give effect to the tino rangatiratanga of Te Rohe Pōtae people.<sup>64</sup> They also submitted that the Crown 'led the Rohe Potae leadership to believe that their right to self government within the Rohe Potae would be respected,'<sup>65</sup> but never intended to honour that commitment.<sup>66</sup> Rather, claimant counsel submitted, the Crown viewed the 1883–85 negotiations solely as a means to assert its authority and open the district for settlement.<sup>67</sup> 'Ultimately,' counsel submitted, 'the agreements served the Crown's purpose.' By the end of 1885, the Native Land Court had entered the district (through the Taupouiatia application) and 'the flood gates had been opened.'<sup>68</sup>

Counsel therefore submitted that the Crown had not negotiated in good faith, had misled Te Rohe Pōtae leaders over its true intentions, had pressured Te Rohe Pōtae Māori into accepting compromises, and had broken many of the specific promises it had made.<sup>69</sup> Counsel submitted that the claimants continued to believe that their 'right to govern their territories arose out of a sacred compact that their tupuna understood had been reached with the Crown . . . [U]ltimately, their tupuna's trust in the Crown was breached – not because there was never such a compact, but because the Crown never intended to honour the promises it had made.'<sup>70</sup>

The Crown, on the other hand, submitted that it upheld all of the agreements that were made with Te Rohe Pōtae Māori during the period in question, 'based on its understanding of what they involved.'<sup>71</sup> It also submitted that it could not have kept the Native Land Court out of the district as Te Rohe Pōtae leaders demanded, because Māori communities had chosen to engage with the Court in

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62. Submission 3.4.128, pp 8–9.

63. Submission 3.4.128, pp 8–9.

64. Submission 3.4.128(b), pp 14, 17; submission 3.4.128, p 9.

65. Submission 3.4.1, para 18.

66. Submission 3.4.128(b), pp 14, 17; submission 3.4.128, p 9.

67. Submission 3.4.1, para 18.

68. Submission 3.4.128, pp 2–3.

69. Submission 3.4.1, para 18.

70. Submission 3.4.1, para 19.

71. Submission 3.4.301, p 24.

order to protect their lands and allow them to engage with the colonial economy.<sup>72</sup> Yet, as we saw in section 8.2.2, the Crown also acknowledged that it had made a series of promises in its February 1885 negotiations, and that it had subsequently failed to keep some of those promises. It conceded that, where it failed to consult Te Rohe Pōtae Māori before breaching a promise, it had breached the Treaty and its principles.

#### 8.2.4 Issues for discussion

Having reviewed the Tribunal Statement of Issues for this inquiry and briefly summarised the parties' arguments, we now identify the issues for us to determine.<sup>73</sup> The differences between the parties are significant, particularly in relation to the nature of the negotiations that took place between 1883 and 1885, and the circumstances in which Te Rohe Pōtae Māori lifted the aukati. In this chapter, we address the following questions:

- ▶ What was the constitutional significance of the negotiations entered into in March 1883, and what effect did those negotiations have on the Treaty relationship between the Crown and Te Rohe Pōtae Māori?
- ▶ What did Te Rohe Pōtae Māori seek from the Crown in exchange for opening their territory to Crown institutions, including the North Island Main Trunk Railway, and were those conditions consistent with the Treaty of Waitangi?
- ▶ What agreements were reached between Te Rohe Pōtae Māori between 1883 and 1885, and to what extent were those agreements consistent with the Treaty of Waitangi?
- ▶ To what extent did the Crown put into effect the agreements that were reached?
- ▶ Did an arrangement known as Te Ōhākī Tapu come into effect through these negotiations, and if so, what was it, and what was its effect in terms of the Treaty of Waitangi?

We will therefore consider each of these issues in the context of the specific negotiations and agreements between Te Rohe Pōtae Māori and the Crown during the years 1883–85, and the Crown and Māori responses to those agreements during 1886.

### 8.3 THE MARCH 1883 AGREEMENT

As discussed in chapter 7, Bryce responded to Tāwhiao's rejection of his terms by blaming Wahanui. He wrote to Wahanui on 15 November 1882 saying that, from then on, the Crown would negotiate with him, rather than with Tāwhiao, and he urged Wahanui to accept the colony's laws and open the district for roads and railways. Bryce's letter was a mixture of admonition and enticement. Keeping Europeans out of the district was a sign of 'enmity to the colony', Bryce wrote,

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72. Submission 3.4.301, p 70.

73. Statement 1.4.3, pp 29–34.

which could not continue if the Crown and Te Rohe Pōtae Māori were to be friends. Furthermore, the Crown owned land in Mōkau – the Mokau-Awakino blocks, which it had purchased in the 1850s against the wishes of some customary owners (see chapter 5) – and it was ‘unreasonable’ for its access to be limited. And the colony could not grant amnesty to Māori living in Te Rohe Pōtae if they would not accept the colony’s laws. On the other hand, accepting roads and railways would enhance the value of the district’s lands and therefore benefit Māori owners.<sup>74</sup>

Wahanui did not immediately reply to Bryce; he was away at his sister’s tangi in Mōkau when the letter arrived and needed to consult with at least the senior chiefs of Ngāti Maniapoto before replying.<sup>75</sup> He responded on 9 December 1882, denying Bryce’s allegation that he (on behalf of Ngāti Maniapoto) had prevented Tāwhiao from accepting Bryce’s terms. Several other chiefs supported him in that denial.<sup>76</sup> As had been made clear to Bryce at the time, the offers were rejected because the Government refused to acknowledge Tāwhiao’s authority. Regarding Bryce’s points on the amnesty and the opening of the district, Wahanui asked for time to discuss matters among his people: ‘waiho kia kororerotia e matou ko te iwi nui’ (‘leave it until I and the wider people have discussed them’).<sup>77</sup> This exchange of letters began a new phase in negotiations over the opening of Te Rohe Pōtae. From this time on, the Crown would negotiate with tribal leaders, and in particular Wahanui, not with the King.

At about this time, Tāwhiao and a group of 60 followers left Whatiwhatihoe on a ‘peace and goodwill’ trip which would encircle much of the lower and central North Island, taking several months. His absence would leave Wahanui and other tribal leaders to deal with Bryce.<sup>78</sup> Wahanui followed his letter by convening a series of hui in which Bryce’s demands were discussed. In these hui, the rangatira had two principal concerns. First, they were concerned with Bryce’s view that no amnesty would be possible unless they recognised the colony’s laws. For both the Crown and Te Rohe Pōtae Māori, amnesty for the likes of Wetere and Te Kooti was an essential precondition to further engagement about opening the territory. Secondly, Te Rohe Pōtae leaders were aware of the loss of land that had occurred in other districts as a result of engagement with the Crown and the Native Land Court; if they were to open their district, they wanted to do so in a manner that protected their lands from this fate.

Therefore, as a first step towards further negotiation, they decided to define an external boundary encompassing Ngāti Maniapoto territories and the territories of neighbouring iwi (notably Ngāti Raukawa, Ngāti Tūwharetoa, and Whanganui) which remained under Māori authority, and whose people were prepared to jointly

74. ‘Mr Bryce and the Kingites’, *New Zealand Herald*, 2 December 1882, p 4 (doc A78 (Marr), pp 700–701).

75. Document A78, pp 703–704.

76. Document A78, pp 704–705.

77. *Te Korimako*, 15 January 1883, p 3 (doc A110 (Meredith), p 627); doc A78, pp 704–705.

78. Document A78, p 687.

petition Parliament for laws that would guarantee their *tino rangatiratanga*.<sup>79</sup> While this work was carried out, Bryce sought to push ahead with the opening of the district – in particular, the Kāwhia and Mōkau lands in which the Crown had already made purchases.

Te Rohe Pōtae leaders planned a major hui in late February 1883, where they intended to discuss proposals to put to Bryce. It was cancelled due to flooding, and before it could be reconvened, Bryce – treating the district as if it had been opened – pushed ahead with a survey of the proposed railway route.<sup>80</sup> When Te Rohe Pōtae communities resisted, Bryce threatened to ‘clear my own path’.<sup>81</sup> Although they wanted more time, Te Rohe Pōtae leaders were effectively forced into negotiations.

On 16 March 1883, an agreement was struck between certain Te Rohe Pōtae Māori leaders and the Native Minister, John Bryce. Under that agreement, the leaders consented to the Crown conducting an exploratory survey to determine the best route for the North Island Main Trunk Railway through Te Rohe Pōtae lands. They also made it clear that no further work could be undertaken until satisfactory laws were put in place to protect their authority and their lands. They told Bryce they would send a petition setting out the conditions on which they would agree to construction of the railway, and they expected the Crown to respond favourably.<sup>82</sup>

What the Crown promised in response was a matter of intense debate at our hearings, both in terms of the detail and nature of the Crown’s promises and their significance for later events. The claimants saw the March 1883 agreement as the foundation of Te Ōhāki Tapu. Counsel for the Maniapoto Māori Trust Board and other claimants submitted that, under the agreement, in return for the right to conduct an exploratory survey, the Crown would ‘support and recognise Te Rohe Pōtae territory and the authority of Te Rohe Pōtae Māori within the territory’.<sup>83</sup> Claimants also saw the March 1883 agreement as being of particular constitutional significance, since it involved Crown acknowledgement that it would be ‘necessary to treat with, and obtain the agreement of, Te Rohe Pōtae rangatira’ in order to open Te Rohe Pōtae for the railway and settlement.<sup>84</sup>

In contrast, the Crown considered that the March 1883 agreement was specific to questions concerning the railway, and that it was ‘implicit that further discussions between the Government and the chiefs would be necessary after the exploration survey was completed and before any railway line was built’.<sup>85</sup> Crown counsel submitted that ‘both parties recognised this was a very significant step to take, and both parties had wider objectives they hoped to achieve in the course

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79. Document A110, p 627.

80. Document A110, pp 629–630.

81. Bryce to Wahanui, 14 March 1883 (doc A110, p 630).

82. Document A78, pp 759–765.

83. Submission 3.4.128(b), p 9.

84. Submission 3.4.128(b), p 10.

85. Submission 3.4.301, p 27.

of ongoing engagement on other issues.’<sup>86</sup> However, counsel submitted, Bryce and his colleagues did not view the March 1883 agreement as a ‘constitutional arrangement’; nor, counsel submitted, was it viewed in that light by Te Rohe Pōtae Māori leaders.<sup>87</sup> The only constitutional aspect was ‘the fact that the Treaty partners were negotiating an agreement, one that allowed a railway exploration survey through the Rohe Pōtae to occur.’<sup>88</sup>

Crown counsel submitted that the permission Te Rohe Pōtae Māori gave for an exploratory railway survey did ‘denote an alteration in the relationship between Rohe Pōtae Māori and the Crown with regard to Rohe Pōtae Māori de facto self-government’, because they had acknowledged that a railway might be constructed in the future.<sup>89</sup> The Crown did not place ‘undue pressure’ on Te Rohe Pōtae leaders; the Government, rather, was ‘under considerable pressure from voters’ to advance the construction of the North Island Main Trunk railway.<sup>90</sup>

In this section we will consider the key events leading to the March 1883 agreement, and the agreement itself. In particular, we are concerned with the question of whether the agreement had constitutional implications in the sense that it provided a basis on which the Crown’s authority might extend into Te Rohe Pōtae for the first time.

### **8.3.1 Amnesty and the external boundary**

Following Bryce’s letter to Wahanui in November 1882, and Wahanui’s reply, Wahanui and other leaders spent time considering their response. One of their main concerns was Bryce’s suggestion that he would not proceed to issue an amnesty, or that he would do so with specific exclusions for the likes of Wetere and Te Kooti, should they continue to require the Crown to acknowledge Tāwhiao’s separate sovereign authority. Their other main concern was Bryce’s advocacy for them to open their district to the colony’s laws and public works.

#### **8.3.1.1 Discussions about amnesty, December 1882 to January 1883**

The prospect of an amnesty was a matter of concern among Te Rohe Pōtae Māori in the period leading up to the hui with Bryce. It had been a matter of deep concern to Wetere, who in August 1882 had rushed back to Mōkau from Wellington upon threat of public arrest (section 7.4.4.6). Rewi was another who paid close attention to the amnesty issue.<sup>91</sup> In his negotiations with colonial secretary Daniel Pollen in 1877, Rewi had suggested that an amnesty was one possible avenue by which the Kīngitanga and the Crown could cooperate on criminal matters, such as theft.<sup>92</sup> In the intervening years, Rewi’s firm priority became protecting Te Rohe Pōtae lands, but in the wake of Bryce’s letter he lent his leadership skills to

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86. Submission 3.4.301, p 29.

87. Submission 3.4.301, p 29.

88. Submission 3.4.301, p 30.

89. Submission 3.4.301, p 30.

90. Submission 3.4.301, p 35.

91. Document A78, pp 636, 733.

92. Document A78, pp 405–409.

the amnesty issue, particularly the question of amnesty for Te Kooti. There was a strong public opinion against Te Kooti receiving an amnesty, despite the fact that he had lived peacefully among his Kingitanga hosts for nearly 10 years. However, to grant amnesties with exceptions might generate a new hostility against the Crown, even more so if Te Kooti were singled out.<sup>93</sup> It probably did not help matters that newspapers reported that Te Kooti responded negatively to the arrest of Winiata, and that he did not want to be taken the way that Winiata had.<sup>94</sup>

The question of how Ngāti Maniapoto would respond to Bryce's letter was discussed at a series of hui held in various locations throughout the district during December 1882 and January 1883. Newspaper accounts from the period suggested that Wahanui, Rewi, Wetere, and Taonui Hikaka II were the principal leaders in determining the Maniapoto response.<sup>95</sup> At one hui, on 2 January 1883, the kōrero included discussion of the amnesty. According to the *Waikato Times*, it was determined that Bryce should be asked to proclaim the amnesties without delay.<sup>96</sup> Another hui took place shortly after this at Rewi's settlement on the Pūniu River. By the time the hui ended on 10 January, the rangatira who had gathered had reached two significant decisions. The first was that they decided that Rewi would send a letter to Mr Bryce indicating that Ngāti Maniapoto would seek the proclamation of an amnesty. The second decision was that they would mark the external boundary of their remaining territories, as a first step towards determining the conditions on which those territories might be opened to public works or settlement.<sup>97</sup> This was a highly significant undertaking, which we will discuss in depth in section 8.3.1.4.

On 11 January, Bryce was reported to have replied to the chiefs, saying that unless he was sure that those involved truly repented they could not be forgiven. He apparently referred to recent threats made by Te Kooti toward Pākehā and half castes after the arrest of Winiata.<sup>98</sup> However, as the *Bay of Plenty Times* reported, Wetere was one of the rangatira seeking amnesty, and given his influence among Ngāti Maniapoto, the granting of amnesty to him could be a fruitful move for Bryce and the Government.<sup>99</sup>

On 18 January, the *Taranaki Herald* published a report by land agent Francis Peacock Corkill, written at Wahanui's request, on a large hui at Te Kūiti held the week beforehand.<sup>100</sup> According to Corkill, Wahanui convened the hui to discuss the 'opening' of the Māori districts, though Marr noted it was likely that it was to discuss the issues raised in Bryce's letter.<sup>101</sup> It soon became evident that this

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93. Document A41, p 62; doc A78, pp 733–735.

94. Document A78, pp 707, 714, 734–735.

95. Document A78, p 707; 'Important Meeting of Ngatimaniapotos', *Waikato Times*, 4 January 1883, p 2; 'Important Meeting of Natives in the King Country', *Waikato Times*, 8 February 1883, p 2.

96. Document A78, p 707.

97. Document A78, pp 709–710.

98. Document A78, p 713.

99. 'The Kingites and Mr Bryce', *Bay of Plenty Times*, 17 January 1883, p 2.

100. Document A78, p 707.

101. Document A78, p 708.

meeting discussed how to better define and strengthen the aukati and protect the external boundary, quite the opposite of what Corkill had reported.<sup>102</sup> Wetere wrote to the *Taranaki Herald*, urging that Europeans coming to Mōkau to seek employment should wait quietly ‘till I have finished my great work for peace; then let them come’; in other words, there could be no settlement until amnesty was declared.<sup>103</sup> The hui did not come to any definitive conclusion, with some debating the level to which they should cooperate with Bryce. The hui was considered to stand adjourned, and it was expected that a further hui would take place in February, to which Bryce would be invited.<sup>104</sup>

Following these hui, on 27 January, Rewi sent a letter to Bryce requesting the proclamation of the amnesty over their district: ‘Ko nga tangata hara kia tino murua’ (Let the wrongdoers be absolutely forgiven).<sup>105</sup> Rewi asked if Bryce meant to single out Te Kooti, and asked that Bryce pardon Wetere and others, because it was unfair that they should suffer on account of Te Kooti. As far as Rewi was concerned, Wetere in particular had truly repented. Rewi said that he wanted the two races to live harmoniously together and a pardon would show Māori that no malice continued from the days of misunderstanding.<sup>106</sup> Referring back to his ‘tree of peace’ metaphor (section 7.3.3.3), Rewi asked for the proclamation to be no longer delayed: ‘Friend, let not this be left as earth to rot the root of the tree you and I have planted, lest this should become a grub and enter into its roots, the result of which the tree will fall down.’<sup>107</sup> For his part, Bryce determined that to proceed with the amnesties he would need Te Kooti to give an assurance of future good conduct.<sup>108</sup>

### 8.3.1.2 Bryce’s arrival in Kāwhia, February 1883

Bryce, by this time, had returned to Te Rohe Pōtae in a further attempt to open its borders. He had sailed from Wellington via New Plymouth aboard the Government steamer *Stella*, anchoring in Kāwhia Harbour on 2 February 1883.<sup>109</sup> Accompanying him were the Minister of Lands William Rolleston, some of Rolleston’s family, a range of officials, a few members of the armed constabulary, and at least four surveyors: Stephenson Percy Smith, Francis Edgecumbe (accompanied by an un-named ‘native assistant’), Laurence Cussen, and Charles Hursthouse.<sup>110</sup>

Bryce’s immediate goal was to assert Crown authority over Pouewe, the 44-acre block that the Crown had acquired from the settler Ann Charleton in 1880. As discussed in chapter 4, the block had been subject to a pre-Treaty transaction

102. Document A78, p708.

103. ‘Te Wetere and Mr Bryce’, *Taranaki Herald*, 19 January 1883, p2; doc A78, p708.

104. Document A78, p628.

105. Document A110, p628.

106. Document A78, p713.

107. ‘Rewi and the Native Amnesty Act’, *Waikato Times*, 30 January 1883, p2.

108. See, for example, doc A78, pp713–715.

109. Document A78, p723.

110. Document A78, pp723–724.



between the trader John Cowell and Kiwi of Ngāti Mahuta, and had since been passed down from settler to settler. We found in chapter 4 that the Old Land Claims commission had failed to examine whether native title had been extinguished, and breached the principles of the Treaty by validating the claim. Bryce was now attempting to benefit from that original Treaty breach.

He was also defying Tāwhiao, who had asked that control of Kāwhia be left to him. Other Māori at Kāwhia had discouraged Bryce's visit, reinforcing the message that the 'regulation of affairs for Kawhia' resided properly with Tāwhiao and that Bryce should at least wait until Tāwhiao returned (he was on a goodwill tour to districts east and south of the aukati).<sup>111</sup> In discussing Bryce's visit to Kāwhia, claimant John Kaati reminded the Tribunal that Kāwhia was 'dearest to the King's heart'; it was where the *Tainui* anchored 'and where it rested'. 'Kāwhia lands were his own and were not only his kingly mana, but his own chiefly authority'. Bryce's dropping anchor there would have been 'an intrusion', one Tāwhiao would have 'never imagined'.<sup>112</sup>

The Māori response to Bryce's arrival was reportedly 'lukewarm' at best. A few local chiefs, together with others from Whāingaroa and Aotea, undertook to ensure the visitors received the appropriate hospitality.<sup>113</sup> On the first morning, when the official party went ashore to inspect the Government's block, they were met by Werawera, one of Tāwhiao's wives, who greeted Bryce and his party, saying she hoped their visit would encourage peace.<sup>114</sup> But, in general, few Māori turned out for the visit,<sup>115</sup> and some were clearly suspicious of his intentions. The wheel and all the machinery of the new flour mill belonging to the Kāwhia chief Hone Wetere (not Wetere Te Rerenga of Mōkau) were hurriedly removed from the Pouewe block, for fear that Bryce would confiscate it.<sup>116</sup>

The day after anchoring, Bryce and the surveyors began the work of laying off the township, and the Government steamer's captain began positioning buoys in the harbour.<sup>117</sup> The next day Bryce and Rolleston rode to Aotea to assess the country there; they were reportedly pleased with what they saw and interested in where a ferry might be established.<sup>118</sup>

In his telegrams to the governor, Bryce sought to present the visit as a great triumph, claiming that Kāwhia 'has been opened' – a township laid out, the channel buoyed, and local Māori acquiescing 'cheerfully'.<sup>119</sup> Pouewe, Bryce claimed, was the 'best place for a town . . . on the whole harbour',<sup>120</sup> and there would be no difficulty

111. 'A Visit to Kawhia', *New Zealand Herald*, 3 January 1883, p 4 (doc A41, p 60).

112. Transcript 4.1.7, p [275]

113. 'The Opening of Kawhia', *New Zealand Herald*, 9 February 1883, p 5 (doc A78, pp 726–727); doc A41, p 60.

114. Document A78, pp 727–728.

115. Document A78, pp 725–729.

116. Document A78, p 726.

117. Document A78, p 728.

118. Document A78, p 729.

119. Bryce to Governor, 13 February 1883, AJHR, 1883, A-8, p 3 (doc A78, p 722).

120. Bryce, telegram, 6 February 1883 (doc A78(a)), vol 1, p 475); doc A78, p 729.

surveying, selling, or occupying the township.<sup>121</sup> A *New Zealand Herald* reporter accompanying Bryce's party was far less enthusiastic, regarding the town's location as 'not the best'<sup>122</sup> and remarking on Bryce's failure to engage with the rangatira Hone Wetere and Te Ngākau (a Treaty signatory), who had been 'anxious' to hold discussions. The reporter summed up the so-called 'opening of Kawhia' as really having 'nothing official about the whole thing'.<sup>123</sup>

Although there are some differences between surviving written descriptions of the visit, it does seem to have been too low-key to be regarded as an act of aggression at the time. However, Bryce did know it was a bold move. He had arrived on Tāwhiao's doorstep while Tāwhiao was absent, to undertake an activity that Tāwhiao had asked him to delay. And the visit followed on from the failed negotiations at Whatiwhatihoe and Bryce's letter to Wahanui effectively laying the blame for that failure at Wahanui's feet. But neither local Māori nor Māori from throughout the district rose to any provocation on this occasion, even though they regarded Bryce as a tough man and eyed him warily.

### 8.3.1.3 Declaration of the amnesty, February 1883

On 5 February 1883, Bryce and his party travelled overland to Alexandra, guided by local Māori. While the Rollestons continued north, Bryce and the surveyors remained at Alexandra for several days, taking advantage of the opportunity to assess the surrounding territories for potential future settlement. Bryce's main concern, however, was to arrange a meeting with Te Kooti and conclude the amnesty.<sup>124</sup>

This meeting – brokered by Rewi – took place on 12 February 1883 at Mangaorongo, east of Ōtorohanga, so Te Kooti would not have to cross the aukati. Rewi himself also attended. The main participants were accompanied by their various parties, as was usual on such occasions. Kingitanga chiefs in Rewi's ope gathered at the Pūniu before joining Bryce's party of officials and local Pākehā and taking them to Mangaorongo. Te Kooti arrived with a party of about 30.<sup>125</sup> It is unclear whether Wahanui was present, but newspaper reports at the time suggested he did not want to see Bryce until Tāwhiao returned from his goodwill trip, which would be in time for the annual Maehe to be held once more at Whatiwhatihoe.<sup>126</sup>

Central to the hui was the exchange between Bryce and Te Kooti, in which Bryce explained that a proclamation under the Amnesty Act could pardon all crimes or pardon some crimes. He said that there was a will among Pākehā (and hopefully Māori also) to bury the troubles of the past. However, some concerns had been raised about Te Kooti specifically, and Bryce was there to ask Te Kooti face to face if he would refrain from committing the crimes of his past. In reply,

121. Document A78, p723.

122. 'The Arrival of Ministers at Alexandra', *New Zealand Herald*, 6 February 1883, p5 (doc A78, p727).

123. 'The Opening of Kawhia', *New Zealand Herald*, 9 February 1883, p5 (doc A78, p728).

124. Document A78, pp730–732.

125. Document A78, p734.

126. Document A78, p733.

Te Kooti was unequivocal. He had been living in peace since he first agreed to live under Tāwhiao's authority in 1874. He had no intention of returning to his former ways.<sup>127</sup>

When Bryce asked to hear from Rewi, Rewi said Te Kooti's word was reliable and that he himself was on good terms with the Government. Satisfied, Bryce undertook to arrange the proclamation immediately, which he said would be a general proclamation, allowing them to go freely anywhere. The discussions concluded with Bryce and Te Kooti shaking hands. Te Kooti sang a waiata before shaking hands with all the officials present and saying that Bryce could arrest him if ever he was caught raising a hand against another person.<sup>128</sup>

The amnesty was proclaimed the very next day, 13 February 1883, by Governor Jervois and published in English and te reo Māori in an extraordinary issue of the *Gazette* that evening. It covered offences 'more or less of a political character' committed during the wars or which arose from the wars. As Bryce had explained, it was a general amnesty.<sup>129</sup>

There was some positive newspaper coverage of the hui and its outcome, including some overstatement of the situation in the interior, which the *New Zealand Herald* described as peaceful and submissive and falling more and more into the grasp of Europeans.<sup>130</sup> However, there was also a significant backlash among some Pākehā. Bryce was reportedly burned in effigy at Napier,<sup>131</sup> and in Parliament he was later condemned for extending his hand to 'the foulest murderer that ever stood on the face of the earth.'<sup>132</sup>

Despite the fact that it was a general amnesty, there was a degree of uncertainty about how it applied and to whom. It was clear that Te Kooti and Wetere were covered (although there had never been an official investigation into the attack on Pukearuhe). It was equally clear that Winiata and Hiroki would not have been included, had they survived their arrests. What was less clear was whether the amnesty applied to those who 'committed crimes' in defence of the aukati, during peace time, such as Purukutu in 1873 and Ngatai Te Mamaku in 1880 (discussed in chapter 7). One clue that those who defended the aukati during peacetime were amnestied was the release from Mount Eden prison of the Kingitanga chief Epiha from Ngāti Hako in the Ohinemuri–Thames district on 14 February. Epiha had been found guilty of wounding with intent for the 1879 shooting of a government surveyor at Te Aroha. After not being pursued for the crime (under Sheehan), his arrest had been ordered by Bryce in 1882, and now Bryce had ordered his release under the amnesty proclamation.<sup>133</sup>

127. Document A78, pp 734–735.

128. Document A41, pp 61–62; doc A78, pp 733–736.

129. Document A78, pp 736–738.

130. Document A78, p 737.

131. Document A78, pp 736–737; doc A41, p 62.

132. McDonald, 9 August 1883, NZPD, vol 45, p 477 (doc A41, p 62).

133. Document A78 (pp 447–450, 624–625) describes the 1879 shooting incident and the arrest of Epiha while he was returning home from the 1882 Maehe.

Although it became generally understood that the amnesty indeed applied to Purukutu, no official written confirmation was discovered by the researchers for this inquiry. However, Kingitanga kōrero tuku iho record that Tāwhiao escorted Purukutu and Wetera to Cambridge and had their amnesties formally recognised by the magistrate there.<sup>134</sup> The same could not be said for Ngatai, whose killing of Moffatt continued to be considered by the Government as a political act. His status was not resolved until negotiations with Bryce in December 1883 (discussed below in section 8.5). Tāwhiao commemorated the amnesty in a line in one of his pepeha:

*Ko Arekehānara tōku hāona kaha  
Ko Kēmureti te oko horoi,  
Ko Ngāruawāhia te tūrangawaewae.*

*Alexandra is my source of strength;  
Cambridge is my washbowl of sorrows;  
Ngāruawāhia is my footstool.*<sup>135</sup>

The ‘washbowl’ metaphor acknowledges the importance of the amnesty to Kingitanga Māori, while also referencing Tāwhiao’s well-known sadness at the tensions that prevailed in the aftermath of war and confiscation, and the weight of the deaths that occurred in defence of the aukati.<sup>136</sup>

Piripi Crown also referred to Tāwhiao’s pātere, ‘E noho ana au’ (see sidebar), which refers to Tāwhiao instructing Wahanui, Taonui, and Manga ‘to seek a pardon for Te Kooti and uphold our ways.’ According to Mr Crown, the pātere described those rangatira looking back from Wellington at Tāwhara-kai-Atua, ‘which was a term used by King Tāwhiao depicting the first ripe fruits reserved for the Gods in one context and at a human level, for someone held in high esteem.’ In this case, Mr Crown said, Tāwhara-kai-atua denoted ‘the first Poukai held at Whatiwhati-hoe pā.’<sup>137</sup>

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134. Tui Adams, Ngahinaturae Te Uira, and Ann Parsonson, “Behold, A Kite Flies Towards You”: The Kingitanga and the “Opening” of the King Country, in *New Zealand Journal of History*, vol 31, no 1, 1997, p 111; doc A78, p 738.

135. Adams, Te Uira, and Parsonson, “Behold, A Kite Flies Towards You”, p 111; doc A78, p 738.

136. Adams, Te Uira, and Parsonson, “Behold, A Kite Flies Towards You”, pp 111–112; doc A78, pp 738–739.

137. Document 12 (Crown), p 7.

## ‘E Noho Ana Au’

*E noho ana i tōkū kainga ki Wai-hāhā  
Whakarongo rua aku taringa  
ki te rongō rā o Hurakia e hau mai nei.  
Tēnā ra e pa ka tae koe  
ki te Pane-o-te-lka  
Ka tāmau i te titiro ki  
Tāwhara-kai-Atua  
Ka tū mai rā i te muri.  
Tēnā rā, e Waha-nui, e Tao-nui  
e te iwi o Mania-poto!  
Hāpainga ake te tikanga  
ki a tārewa ki runga;  
Kei hoki te pōuri ki te aroaro!*

*I sit here at my home in Waihāhā  
By my ears twice heard  
Is the fame of Hurakia  
Greetings o Sir, when you arrive  
at the head of the fish (Wellington),  
gaze at  
Tāwhara-kai-Atua  
established in the northern parts.  
Greetings o Waha-nui, o Tao-nui,  
and the Tribe of Mania-poto  
Uplifted was the cause  
and set on high  
That grief may not beset us again!<sup>1</sup>*

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1. Document 12, p 7.

**8.3.1.4 The marking of the external boundary, January to April 1883**

Buoyed by what he took as an easing of tensions following the amnesty, Bryce determined to proceed with exploratory surveys for roads, railway and ‘the profitable occupation of the land.’<sup>138</sup> However, this was not what the Ngāti Maniapoto leaders had offered. From their point of view, proclaiming the amnesties and accepting Te Kooti’s assurance of good conduct did not mean the aukati had been lifted, nor that Bryce or other Crown agents could now range freely through the territory. An amnesty was a desirable negotiated outcome, but it was distinct from other activities over which Te Rohe Pōtae Māori and the Crown had yet to reach agreement.<sup>139</sup>

As discussed in section 8.3.1.1, during December 1882 and January 1883, Ngāti Maniapoto leaders had held discussions about defining and securing the boundary of their remaining lands, and those of neighbouring iwi which remained under Māori authority. At the 10 January 1883 hui at Rewi’s settlement at Pūniu, they had decided to proceed. It is not clear who was present at the hui. However, Robert Ormsby junior (of Ngāti Maniapoto and brother of the future leader John Ormsby) later described the decision that was reached:

A resolution was proposed and accepted unanimously, that a certain number of reliable men should be sent to define the boundary, and report upon the extent of the

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138. Bryce to Governor, 13 February 1883, AJHR, 1883, A-8, p 3 (doc A41, p 63).

139. Document A41, pp 63–64.

remaining portion of what was termed [the] King country, upon which Europeans had no claim.<sup>140</sup>

Later that year, the petition submitted on behalf of the territory's leaders explained that 'certain persons were selected by the hapus to define the boundaries of our lands'.<sup>141</sup> These people were instructed to mark out the territory with 'pou roherohe'.<sup>142</sup>

The idea of marking the external boundary of Te Rohe Pōtae was not a new one. Rewi had set out the boundaries in response to a request from Pollen in 1877. Then, during the Maehe in May 1882, Ngāti Maniapoto, Ngāti Raukawa and Ngāti Tūwharetoa had spent some time together 'laying down their intertribal boundaries'.<sup>143</sup> The decision taken in January 1883 took this a step further: the external boundaries of their territory would now be physically marked with pou.

The rangatira assigned to lead this process was Taonui Hikaka II, who had assumed leadership of Ngāti Rōrā since his father's death in the 1860s. Taonui was somewhat younger than Wahanui and Rewi, but was nonetheless an important and influential leader. Ormsby reported that Taonui 'and a number of others' began immediately after the 10 January hui, starting at Kihikihi, travelling along the eastern boundary to Taupō, then along the southern boundary to Mōkau, then up to the coast to Kāwhia, and from there back to the Pūniu.<sup>144</sup>

There was more to the task than simply traversing the boundary and conducting hui with the relevant local communities. The innovative but complicated plan sought an appraisal of lands remaining under the authority of Ngāti Maniapoto and neighbouring iwi – notably Ngāti Raukawa, Ngāti Tūwharetoa, hapū and iwi of northern Whanganui, and Ngāti Hikairo – which lay within the so-called 'King country', and on which the Crown and settlers as yet had no claim. A complicating factor was that the boundary did not encompass all of the territories in which these iwi had interests. Even Ngāti Maniapoto claimed lands to the north of the Pūniu, beyond the Waikato confiscation line. The plan required the consent of the people at hapū level within the communities who were willing to agree to the kaupapa. Wahanui later explained that the pou were erected 'with the full consent of the people residing at different places where such posts were erected' ('i whakaae nga hapu i noho tata ki aua wahi i tu ai aua pou').<sup>145</sup>

Settler newspapers interpreted the decision to define the boundary as evidence that Ngāti Maniapoto was breaking from the Kingitanga.<sup>146</sup> The *Waikato Times*

140. 'The Natives and their Lands', *New Zealand Herald*, 12 May 1883, p 5 (doc A41, p 65).

141. 'Petition of the Maniapoto, Raukawa, Tuwharetoa, and Whanganui Tribes', AJHR, 1883, J-1.

142. 'Nga Whakaaro a Wahanui ma mo nga Whenua', *Te Korimako*, 15 August 1883, p 6 (doc A110, p 627).

143. 'Tawhiao's Meeting at Whatiwhatihoe in May, 1882', AJHR, 1882, G-4A, p 11.

144. 'The Natives and Their Lands', *New Zealand Herald*, 12 May 1883, p 6; doc A41, pp 65–66; doc A78, p 711; doc A110, pp 627–628.

145. 'Nga Whakaaro a Wahanui ma mo nga Whenua', *Te Korimako*, 15 August 1883, p 6; translation from *New Zealand Herald*, 23 July 1883, p 5 (doc A110, p 627).

146. Document A41, p 65.

reported that the tribe had ‘determined to take an independent course of their own’, having become discontented under Tāwhiao’s mana, which they no longer recognised any more than Europeans did.<sup>147</sup> Dr Loveridge echoed this view in his evidence, characterising Ngāti Maniapoto and the other tribes involved in determining the boundary as having broken away from the Kingitanga ‘in order to negotiate directly with the Crown concerning the future of the King Country’.<sup>148</sup>

Certainly, Tāwhiao was no longer at the forefront of negotiations – but, as discussed in section 7.4.4.7, that was a result of Bryce’s refusal to recognise the legitimacy of the Kingitanga, and of his determination to deal only with Wahanui and other tribal leaders after November 1883, while also placing pressure on them to open their lands. Had the Crown taken a different approach, Te Rohe Pōtae Māori would have had no reason to waver from their role within the Kingitanga.

The decision to define the external boundary was also significant for other reasons. It set the direction that Te Rohe Pōtae Māori would take under Wahanui’s leadership in respect of their future negotiations with the Crown. As we will see, from this point on their first demand of the Crown was that it recognise and respect the boundary, as a step towards recognising the rights of Māori within that boundary. The decision also marked the beginning of a period in which Ngāti Maniapoto and key rangatira from neighbouring iwi would act together to protect and maintain their traditional lands and authority. To this extent their goals were similar to those of the Kingitanga, though they would differ from the Kingitanga in their willingness to recognise Parliament’s role in protecting and providing for their authority.

Throughout, Wahanui insisted on a policy that all decisions made by the rangatira required discussion and consent from the people, and therefore could not be rushed. At the conclusion of the 10 January hui he told William Grace to tell the ‘pakeha side . . . to give us a little time to breathe and settle matters amongst us’.<sup>149</sup> Wetere expressed similar sentiments soon afterwards (see section 8.3.1.1).<sup>150</sup> In order for the initiative to work, the Ngāti Maniapoto leaders who were instrumental in driving it would have to discuss it widely with all affected hapū and iwi. More particularly, they would have to overcome any impression that it was designed to protect the interests of Ngāti Maniapoto alone, and instead convey that it was designed to protect the interests of all groups with interests in Te Rohe Pōtae. It was a complex and ambitious arrangement that would require judicious management, as all involved would soon discover. While Te Rohe Pōtae leaders needed to proceed slowly and carefully, the Crown wanted to press ahead without delay, as we will see in the next section.

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147. ‘Important Meeting of Natives in the King Country’, *Waikato Times*, 8 February 1883 (doc A41, p 67).

148. Document A41, p 65.

149. ‘The Kingites and Mr Bryce’, *Auckland Star*, 10 January 1883, p 3 (doc A110, p 628).

150. ‘Te Wetere and Mr Bryce’, *Taranaki Herald*, 19 January 1883, p 2 (doc A110, p 629).

**8.3.2 The exploratory railway survey, February–March 1883**

Shortly after proclaiming the general amnesty on 13 February 1883, Bryce decided to proceed with plans to open Te Rohe Pōtae for settlement. He wrote to the governor explaining that exploratory surveys for ‘roads and railways, and surveys for the profitable occupation of the land’ could be ‘safely undertaken at a very early period.’<sup>151</sup>

From the Crown’s point of view, there was a degree of urgency attached to this work. The line south from Auckland had reached as far as Te Awamutu and had opened in May 1880. Following the passing of the North Island Main Trunk Railway Loan Act in August 1882, the Government was authorised to raise a loan to complete construction from Te Awamutu south. The Act’s preamble anticipated that ‘the obstacles in the way of carrying on the extension from Awamutu may be shortly removed’ and that funds were being provided so that construction could begin ‘as soon as circumstances will permit.’<sup>152</sup> Completion of the railway and opening of the King Country would help, it was hoped, to alleviate the effects of recession which had now begun to hit even Auckland’s previously more robust economy.<sup>153</sup>

Before construction could begin, however, the railway route needed to be explored and surveyed. In 1878, Parliament had authorised a line from Te Awamutu via Mōkau to New Plymouth, and then to continue down the west coast to Wellington. But the North Island Main Trunk Railway Loan Act 1882 had not specified a route, and Bryce appeared at that time to have been considering alternatives. His intention to explore more routes seem to have firmed up after his arrival in Kāwhia. By late January, settler newspapers were discussing the need to send out more than one survey party to determine which of the ‘different routes’ would be best for the railway.<sup>154</sup>

The Government also considered that it was necessary to conduct triangulation (trig) surveys in the district, to set the framework for all other surveys both within the King Country and adjoining the district’s boundaries. Bryce’s goal was to complete these preliminary surveys by the next parliamentary session in June, and he dispatched George Wilkinson to Te Kōpua in the hope of organising a meeting with Wahanui to advance the negotiations.<sup>155</sup>

Bryce was eager to begin this work, and telegraphed Wetere immediately after the amnesty was issued announcing his intention to travel from the Waikato to Mōkau, presumably with surveyors in attendance. But the leaders of Ngāti Maniapoto and other tribes in Te Rohe Pōtae wanted more time for discussion among themselves. A major hui was planned for Totoro on the Mōkau River in late February, where the leaders intended to determine their response to Bryce’s letter

151. Bryce to Governor, 13 February 1883, AJHR, 1883, A-8, p 3 (doc A90 (Loveridge), p 9).

152. Document A20 (Cleaver), pp 44, 50.

153. Document A78, p 742.

154. Editorial, *New Zealand Herald*, 26 January 1883, p 4 (doc A41, p 61); doc A41, pp 41–42, 60–61, 63–64; doc A20, pp 37, 76; doc A78, p 855.

155. Document A41, pp 63–64; doc A78, p 746.



asking them to open the district. Bryce left Alexandra and went to Whāingaroa and then Auckland.<sup>156</sup>

When the Totoro hui was postponed because of flooding, Bryce asked the Crown agent George Wilkinson to arrange a meeting with Wahanui.<sup>157</sup> Again, Wahanui emphasised that more time was needed for discussion among the district's hapū and iwi. He agreed to hold a meeting with Bryce on 3 March, in condition that (in Wilkinson's words) the meeting would be 'considered a friendly & not a business one as the time has not yet arrived for him to talk business or disclose his policy'. Wilkinson added that he did not think Wahanui would be prepared to 'commit himself to anything in the absence of Taonui & one or two others.'<sup>158</sup>

Bryce travelled to Alexandra on 7 March and met with Wahanui. There is no direct record of what was discussed. Nonetheless, Loveridge considered that, at this meeting, Wahanui agreed to the Government commencing an exploratory railway survey.<sup>159</sup> Marr disagreed, suggesting that the evidence of events surrounding the meeting shows that Wahanui could not have given Bryce such an assurance.<sup>160</sup> Indeed, while it is unclear what Bryce said at the meeting about the prospect of possible survey activity, Wahanui later reminded Bryce that he told him that the matter 'rested with the whole of the people' and that he should not 'hurry matters as the tribe have not yet discussed this.'<sup>161</sup> Wahanui's position on this was consistent with what he had told Wilkinson prior to the meeting – he was not yet prepared to discuss 'business.'<sup>162</sup>

Despite Wahanui's desire to allow time for Māori to develop their response, Bryce proceeded to issue instructions to Charles Hursthouse the following day (8 March). The instructions stated that Hursthouse was to 'proceed from this place through the Mokau Country to Taranaki and explore the country with a view to ascertain whether it is suitable for a railway'. These instructions were translated into te reo Māori, presumably so that Hursthouse could demonstrate to local communities that he was entering the district on Bryce's instructions. Bryce also added a note to the instructions, saying he hoped that 'the Maoris will assist you in this work if you require assistance.'<sup>163</sup> Bryce also instructed Laurence Cussen to commence work on the trig survey.<sup>164</sup> Bryce then returned to Auckland, announcing that the trig survey had begun and that he hoped to have 'preliminary explorations made of the three proposed routes' before Parliament resumed in June. Bryce

156. Document A110, p 629; doc A41, pp 67–68; doc A78, pp 744–745; 'Mr Bryce's movements', *Waikato Times*, 15 February 1883, p 2.

157. Document A110, p 629; doc A78, p 746.

158. Wilkinson telegram to Bryce, 3 March 1883 (doc A78(a) (Marr document bank), vol 2, pp 487–488); doc A78, p 746.

159. Document A90, p 10.

160. Document A78(i) (Marr), pp 22–29.

161. Wahanui response as reported in Wilkinson telegram, 15 March 1883 (doc A78(i), p 25).

162. Document A78(a) (Marr document bank), vol 2, pp 487–488; doc A78, p 746.

163. Bryce to Hursthouse, 8 March 1883 (doc A78(a), vol 2, p 492).

164. Document A90, p 11; doc A41, p 64. Also see 'The Native Minister', *New Zealand Herald*, 12 March 1883, p 2.

also announced that he intended to travel back to Wellington via Alexandra and Mōkau.<sup>165</sup>

Bryce's precise motivation for ordering the surveys is unclear. On the one hand, he may have been optimistic about the prospect of pressing ahead with the survey work in the wake of the amnesty proclamation. However, he was aware that the aukati remained in place, and had been told by Wahanui that Te Rohe Pōtae Māori needed more time to discuss their position. Bryce may have been acting on the assumption that he could provoke the district's Māori into accepting the Crown's authority in the district, or at least be seen to be acting decisively, and hoping that he could create the impression that Māori agreed with the work that would now be undertaken.

On the other hand, he may have hoped that Hursthouse could slip into the district and carry out the work unnoticed. In any case, it was a provocative act – one that only increased the challenges confronting Wahanui – and he was placing Hursthouse at considerable risk. Bryce soon discovered that the position of Wahanui and other leaders remained unchanged: the aukati had not been lifted, and neither Bryce nor those acting on his instructions could range freely through the district.

### 8.3.2.1 *Te Rohe Pōtae Māori stop the attempted exploratory railway survey*

Having been delayed by two days due to rain, Hursthouse set out from Alexandra on 12 March 1883. He had been unable to obtain the support of Māori guides, but was accompanied by a survey assistant. Having set out, he returned to Alexandra the same day: in Marr's view, the most likely explanation was that he was stopped and turned back at Tāwhiao's bridge or at Whatiwhatihoe. Having discovered the object of Hursthouse's mission, local Māori at Whatiwhatihoe agreed that he should not go on.<sup>166</sup>

The next day, Hursthouse set out again, this time with the guidance of Wilkinson and a Mrs Morgan, who lived in the Pirongia area. Marr argued that they accompanied Hursthouse on the pretext that they were guiding him to visit Te Kōpua, where he could visit Wahanui. By doing so, she suggested, they would be able to bypass Whatiwhatihoe, at which point Hursthouse might be able to slip into the district unnoticed.<sup>167</sup>

At Tāwhiao's bridge, the group was stopped by a party of about 12 Ngāti Maniapoto, who insisted they should not make their trip while the King was still absent. Wilkinson noted that they were not armed, and that their 'show of obstruction' was 'merely part of their tikanga.'<sup>168</sup> The survey party was allowed to proceed on the grounds that Hursthouse would only travel as far as Te Kōpua

165. 'Movements of the Hon Mr Bryce', *Waikato Times*, 13 March 1883, p 2 (doc A41, pp 63–64).

166. Document A78(i), pp 30–31; doc A78, p 748.

167. Document A78(i), p 31.

168. Wilkinson and Hursthouse telegrams to Bryce, 13 March 1883 doc A78, pp 748–750; doc A78(a), vol 2, p 496; doc A110, p 630.

to see Wahanui.<sup>169</sup> However, having arrived at Te Kōpua, Wilkinson and Mrs Morgan turned back, leaving Hursthouse and his assistant to continue on into the territory.<sup>170</sup>

Hursthouse and his assistant made it to Ōtorohanga, where they were stopped again, this time by a much larger party of about 50 Ngāti Maniapoto, among them the chiefs Aporo Taratutu, Te Naunau, Awa, and Rawiri Hauparoa. After identifying Hursthouse as Bryce's surveyor, the group insisted he had to go back to Alexandra. Hursthouse refused, saying he was under orders to continue. They offered him the usual manaakitanga of a meal and a bed for the night, while they continued to debate the situation.<sup>171</sup>

The next morning, Aporo proposed taking Hursthouse to Wahanui to seek permission for the survey work. Hursthouse refused and went to mount his horse to leave. Rawiri then moved in to stop Hursthouse, forcing the horse around by grabbing its bridle. Hursthouse did not run, but instead agreed to be escorted to see Wahanui, who was by then at Whatiwhatihoe.<sup>172</sup> However, Wahanui did not in fact want to speak with Hursthouse privately, instead preferring his usual approach of speaking in a public hui. Once again, their Ngāti Maniapoto hosts treated Hursthouse and his assistant well, but Wahanui continued to refuse Hursthouse's request for a private meeting.<sup>173</sup>

What Hursthouse was experiencing was the aukati in action: a warning, and a forcible removal, without the use of violence but with the very distinct possibility of violence should he persist. Faced with this possibility, Hursthouse relented. He sought further instructions from Bryce and returned to Alexandra.<sup>174</sup>

Upon hearing what had happened, Bryce sent separate telegraphs to Wahanui and Rewi, both containing the same message.<sup>175</sup> Bryce told them firmly: 'He [Hursthouse] went with my full authority and in accordance with law.' In a translation sent with Bryce's original, this was rendered as: 'I haere ia i runga taku tino kupu whakamana i a ia a i runga hoki i te ture.' Bryce expressed his displeasure that Hursthouse had been turned away by members of the Ngāti Maniapoto tribe.<sup>176</sup>

He now called upon Wahanui and Rewi to see to it that Hursthouse could have a clear passage through the territory without being stopped by any of their people. Refusing Hursthouse was 'foolish' and 'likely to lead to confusion and trouble.' It

169. Document A78(i), p 32.

170. Document A78, p 749.

171. Document A78, p 750; doc A110, p 630.

172. Document A78, pp 750–751.

173. Document A78, p 751.

174. Marr set out these events in some detail: doc A78, pp 748–752; see also doc A110, pp 629–630.

175. In evidence presented to us, the version of the message sent to Wahanui is in te reo Māori, and the version sent to Rewi is in English. It is unclear whether these were the only versions sent to the respective chiefs, or whether English and te reo versions were sent to both. Nevertheless, both appear to be faithful translations of each, the only change being the names of Rewi and Wahanui in the respective messages.

176. Bryce telegram to Wahanui, 14 March 1883 (doc A78(a), vol 2, p 512); see also doc A110, p 630; doc A78, pp 753–754.

would be best, he said, for Rewi and Wahanui to remove any resistance and allow Hursthouse a clear path through. He warned that '[i]t is correct that I can clear my own path' ('He tika ka taea e ahau ano te whakawatea toku huarahi (sic)').<sup>177</sup> Bryce apparently hoped this would be enough to force a resolution, without having to leave Auckland again. The claimants pointed to this statement of Bryce as evidence of the pressure he, on behalf of the Crown, was prepared to apply to Te Rohe Pōtae Māori. The significance of this statement, counsel submitted, would not have been lost on Wahanui and other Ngāti Maniapoto, coming from the man who had invaded Parihaka some 16 months earlier.<sup>178</sup>

Wahanui's reply to Bryce the following day (15 March) was measured, however, and reminded Bryce that it was for the people to decide what would happen. Were Bryce to persist, Wahanui said, the people's views might change. This message was sent to Bryce from Wilkinson, who had met Wahanui earlier that day.<sup>179</sup> In his message, Wahanui reminded Bryce of their discussion at Alexandra on 7 March:

I ki atu ahau ki a koe i Areka, kei te iwi nui tonu te tikanga, na i ki atu ano ahau ki a koe, kua e takohetia, kaore ano te iwi kia ata korero e te Paraihe. Waiho ra kia taka hoki te ahuru kei he manawa te iwi.<sup>180</sup>

The Ngāti Maniapoto researcher Paul Meredith translated this as:

I told you at Alexandra, the right is with the wider people, and I also said to you, don't rush as the people have not discussed this, Mr Bryce. Let it be for now lest you upset the people.<sup>181</sup>

Wilkinson sent another message to Bryce saying: 'I understand you want it to be settled if possible without your having to come here but my own opinion is that nothing will be done unless you do come.'<sup>182</sup> In a separate telegram, Hursthouse repeated the same message.<sup>183</sup>

### 8.3.2.2 *The hui at Taonui's house, 15 March 1883*

That same day (15 March), various Ngāti Maniapoto leaders gathered at Taonui's house – named Taupiri – at Te Kūiti to discuss the situation that was now confronting them.<sup>184</sup> Written notes of the meeting were later provided to the Government

177. Bryce telegram to Wahanui, 14 March 1883 (doc A78(a), vol 2, p 518). Translation by Waitangi Tribunal. See also doc A78, pp 753–754; doc A110, p 630.

178. Submission 3.4.128(b), p 12.

179. Document A110, pp 630–631.

180. Wahanui to Bryce, enclosed in Wilkinson to Bryce, 15 March 1883 (doc A78(a), vol 2, pp 522–523); see also doc A110, pp 630–631.

181. Document A110, pp 630–631. Wilkinson, in the original letter, translated the phrase 'kia taka hoki te ahuru kei he manawa te iwi' as 'lest the people should be out of breath (or driven to desperation) by your eagerness': Wilkinson to Bryce, 15 March 1883 (doc A78(a), vol 2, pp 522–523).

182. Wilkinson to Bryce, 15 March 1883 (doc A78(a), vol 2, pp 524–525); doc A78(i), p 35.

183. Hursthouse to Bryce, 15 March 1883 (doc A78(a), vol 2, pp 526–527).

184. Document A78, pp 755–757; doc A110, p 631.

by a chief named Te Reti, who the Ngāti Maniapoto researchers say was possibly Te Reti Ngataki of Waikato.<sup>185</sup>

By this time, it appears that Bryce was proposing to travel through the district himself, accompanied by two others – presumably Hursthouse and his assistant.<sup>186</sup> The first speaker, the Ngāti Maniapoto rangatira Te Wharo (also known as Te Whaaro<sup>187</sup>), introduced the purpose of the hui: ‘Ko te puru i a Paraihe, ko te tuku ranei i te rori.’ (‘To stop Bryce or allow the road to proceed.’) Te Wharo then read out Bryce’s telegrams to Wahanui and Rewi.<sup>188</sup> A number of speakers returned to the question of Bryce’s ‘road’. This appears to have been a reference to the railway: Wahanui later used the term ‘rori’ with this exact meaning when he consented to the railway in 1885.<sup>189</sup>

Te Winitana Tupotahi, of Ngāti Paretekawa and Ngāti Maniapoto, expressed the quandary in which they found themselves. The Ōrākau veteran was recorded as saying:

Taku me puru te rori, me puru te pakeha. Otira kua purua te puru i mua ko Mangatawhiri he puru tera, ka mate Waikato, he puru i Waitara ka mate te tangata. Ka mate te whenua he puru i te Rawhiti, ka mate te tangata te whenua. Ngati Maniapoto, titiro ki enei take, tukua te rori a te Paraihe, engari me te ata whakahaere ano e pai ana hoki tenei.<sup>190</sup>

This was translated at the time (possibly by George Wilkinson) as:

Mine is, the road should be stopped, and the Pakeha should be stopped. But stoppages have been attempted before, a stoppage was attempted at Mangatawhiri, and Waikato suffered. A stoppage was also attempted and people were killed and land suffered. A stoppage was attempted on the East Coast, people were killed there and the land suffered. Ngati Maniapoto consider these things and allow Mr Bryce’s road to go on, but let it be carried out properly.<sup>191</sup>

Tupotahi’s comment suggests that he was genuinely concerned about the possibility of conflict – and even confiscation – if Bryce’s request was refused. Bryce’s threat to clear his own path suggested as much, as did Bryce’s actions at Parihaka sixteen months earlier.

Wahanui then spoke. He agreed with Tupotahi that previous attempts to stand up to the colonial Government had led to suffering. Therefore: ‘waiho a te

185. Document A110, p 631.

186. Document A78(a), vol 2, p 530.

187. Document A28 (Thomas), pp 309, 310, 312; doc A78, p 757.

188. Te Reti, notes, 15 March 1883 (doc A110, p 631; doc A78(a), vol 2, p 534). Also see doc A78(a), vol 2, pp 534–540. The translation is Paul Meredith’s. A contemporary translation, possibly by the Crown’s agent George Wilkinson, can be found in doc A78(a), vol 2, pp 530–533.

189. Document A91 (Archives NZ, document bank), vol 1, pp 9–12.

190. Te Reti, notes, 15 March 1883 (doc A110, p 632; doc A78(a), vol 2, p 535).

191. Document A78(a), vol 2, pp 530–531.

Paraihe kia haere ana' ('allow Mr Bryce to go on') and 'waiho kia haere ana te rori' ('allow the road to go on'). Wahanui appears, here, to have used 'road' to refer to Hursthouse's journey through the district. Once that was completed, Wahanui said, Ngāti Maniapoto should send a petition to Parliament: '[M]a te Paremata e titiro a tatou pitihana kei reira ka mohio tatou ki te ora matou ki te mate ranei otira ki taku ka ora tatou.' ('The Parliament will deal with our petition and then we shall know whether we shall benefit or suffer, but I think we shall benefit.') Here, Wahanui was suggesting that any further opening of Te Rohe Pōtae beyond the initial survey would depend on Parliament making laws that benefited Ngāti Maniapoto.<sup>192</sup>

Wahanui then discussed what he considered should be set out in the petition. There were two key elements – definition and recognition of the external boundary of Te Rohe Pōtae; and recognition of the right of Te Rohe Pōtae Māori to administer their own lands and make laws relating to those lands. Specifically, Wahanui said:

Ko tenei ki taku me tuku te rori ko nga tangata me tuku pitihana ki te Paremata, ka oti tera me kahi etehi tangata hei whiriwhiri ma ratou e whakahaere nga tikanga mo te whenua ka whakamana e te iwi aua tangata ma ratou e tiaki te whenua me nga ture hoki mo te whenua. Ma tenei tatou ka ora ai tetei o aku kupu ko te ruri mo te tatou whenua porotaka ka oti te ruri me tu ano te kairuri, e tatou katahi tatou ka ora ki te korero whakariterite tatou ka mate engari tenei taku me tuku nga pakeha kia haere ana, me tahuri tatou ki te tuku pitihana . . .<sup>193</sup>

I think the road should be allowed to go on and we should petition Parliament, and after that is done, we should select a certain number of people to administer the land, those people should be authorised by the tribes, they to have charge of the land and laws relating to it. By this means we shall derive benefit. Some more of my words concern the survey of our land block; when the survey is finished we should pay the surveyor at once ourselves; then we shall be safe; we will suffer with other arrangements. But I also say, let the Pākeha go [through]; that is, we must turn to [the matter of] sending our petition.<sup>194</sup>

While no final resolution was reached, the hui established general agreement about what they would seek from Bryce when he came to meet with them. Many of the ideas presented were not new. The external boundary of the territory had been discussed on many occasions, and those discussions had included the possibility of obtaining a survey of the boundary. Wahanui had also proposed that the Crown pass legislation providing for the exercise of Māori authority within Te Rohe Pōtae. Petitioning Parliament was a substantial project. The petition he

192. Te Reti, notes, 15 March 1883 (doc A110, pp 632–633; doc A78(a), vol 2, pp 531, 536–537).

193. Te Reti, notes, 15 March 1883 (doc A110, pp 632–633; doc A78(a), vol 2, pp 537–538).

194. Document A78(a), vol 2, p 532 (up to 'derive benefit'). From 'Some more', the translation was by the Waitangi Tribunal.

proposed would not only articulate Te Rohe Pōtae Māori concerns and what they wanted to happen, it would also test the Government's willingness to support their aspirations.

### 8.3.3 The 16 March 1883 agreement

Bryce had returned to Alexandra by early afternoon on 16 March 1883, and proceeded immediately with his officials to Whatiwhatihoe. There, he met with Wahanui, Rewi, and several other rangatira (Tāwhiao was still away on his goodwill tour).<sup>195</sup> There are differing accounts of how the meeting unfolded. Some suggested the discussion was cordial. One account, attributed to the Tūhua rangatira Hataraka,<sup>196</sup> who was present at the meeting, suggested that the encounter was more confrontational before an agreement was achieved.<sup>197</sup> The evidence suggests it was constructive (if firm), but it is possible there were heated moments.

According to Hataraka's account, Bryce signed a document acknowledging that he could not enter Te Rohe Pōtae or carry out any public works there without the consent of the district's leaders. Following the meeting there was an exchange of letters, through which Bryce and the assembled Ngāti Maniapoto leaders made commitments on the course of action to be taken from that point. Bryce's letter contained commitments that the survey would be exploratory only, that some Native Land Court applications would be held back, and that he would consider a petition from Ngāti Maniapoto leaders. It did not contain an explicit commitment to seek their consent for public works, though that was implicit in the circumstances.

The claimants – based largely on Hataraka's account – understood the 16 March 1883 agreement as a 'compact', in which the Crown undertook to respect the authority of Te Rohe Pōtae leaders over their territories.<sup>198</sup> The Crown saw the agreement as being specific to the railway survey.<sup>199</sup>

#### 8.3.3.1 The meeting with Bryce

According to an account in the *Waikato Times*, the 16 March 1883 hui began with Bryce explaining to the chiefs that Hursthouse was not surveying the railway line itself, but simply undertaking 'a work of exploration before actual survey or the laying off of the railway was commenced'. Bryce gave an assurance that Te Rohe Pōtae leaders 'would have plenty of time' to discuss matters further before any actual survey of the railway route or construction of the railway could begin.<sup>200</sup>

The rangatira then asked Bryce to withdraw for a period while they discussed the issues further. They debated for about half an hour before calling Bryce back and informing him that they had agreed to allow Hursthouse to travel through the

195. Document A41, pp 68–71; doc A78, pp 759–781; doc A110, pp 634–640.

196. Document A78, pp 755–756; doc A110, p 634.

197. Document A41, p 70 n; doc A78, pp 759–760; doc A110, pp 634–635.

198. Submission 3.4.128, p 2.

199. Submission 3.4.301, p 27.

200. 'Mr Bryce and Wahanui', *Waikato Times*, 17 March 1883, p 2; doc A41, pp 68–69; doc A110, pp 637–638.

district ‘between Alexandra and Mokau’ but only ‘so as to judge of the suitability of the country for a railway.’<sup>201</sup> Wahanui also asked Bryce not to send Hursthouse ‘until he had sent a messenger to all the up-country settlements to inform them of his (Wahanui’s) consent’. According to the *Times*, ‘Wahanui’s agreement with Mr Bryce was put in writing, and signed by the chiefs present.’ Several rangatira offered to accompany the ‘exploring party.’<sup>202</sup>

Other newspapers also gave accounts of the meeting, but also with very scant details of what was discussed. Typically, they emphasised the agreement for the survey to proceed. The *New Zealand Herald*, for example, reported on 17 March 1883 that Rewi, Wahanui, and other rangatira had ‘signed an agreement to allow the exploration and survey of the railway route to proceed’, and that the exploration would proceed the following week (the meeting had occurred on a Friday), allowing ‘a few days’ for Wahanui to inform those in the interior of Te Rohe Pōtae.<sup>203</sup> Subsequently, the newspaper reported that, in return for consent to the survey, Bryce had ‘agreed to defer some minor claims Wahanui and Rewi are interested in being investigated for the present’. This was apparently a reference to Native Land Court claims to lands within the district.<sup>204</sup> The newspaper described the survey agreement as a ‘written pledge’ by Wahanui and other rangatira.<sup>205</sup>

A much fuller account was published in July in the *Wanganui Herald*. According to the newspaper, it was ‘very carefully interpreted’ from an account given by Hataraka, who ‘bears a high character, both for intelligence and veracity.’<sup>206</sup> Marr identified Hataraka as Hataraka Te Whetū of Ngāti Tama and Ngāti Te Ika, who also had links with Ngāti Tūwharetoa.<sup>207</sup> The key part of Hataraka’s account recorded an exchange between Bryce and Wahanui:

**Mr Bryce:** Are you, Wahanui, willing that the road shall go by way of Mokau?

**Wahanui:** No.

**Mr Bryce:** Why won’t you let it go by that route?

**Wahanui:** Because I do not wish it. This land has not been bought with your money. You can go on with your roads until you come to the boundary of my lands, but you must not come any further: that must be left with me. I am to decide whether these roads shall be made on my land or not; and I wish you to assent to this word of mine.

**Mr Bryce:** Yes, I assent. If you will allow this road to run, it shall be well; and if you don’t allow it to run, it shall be as you say, and it is well.

**Wahanui:** Now, I have written that down in writing, and (handing the pen to Mr Bryce) now you, Bryce, sign your name—

201. ‘Mr Bryce and Wahanui’, *Waikato Times*, 17 March 1883, p 2.

202. ‘Mr Bryce and Wahanui’, *Waikato Times*, 17 March 1883, p 2.

203. ‘Mr Bryce in the Waikato’, *New Zealand Herald*, 17 March 1883, p 5.

204. ‘The Native Minister and the Kingites’, *New Zealand Herald*, 19 March 1883, p 5; doc A41, p 69.

205. *New Zealand Herald*, 22 March 1883, p 4; doc A41, p 69.

206. ‘Mr Bryce in the King Country: A Curious Compact’, *Wanganui Herald*, 12 May 1883, p 2.

207. Document A78, p 756; Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, p 39, vol 2, p 458; Waitangi Tribunal, *He Whiritauonoka: The Whanganui Land Report*, 3 vols (Wellington: Legislation Direct, 2015), vol 1, p 503.



Mr Bryce wrote his name, and then Wahanui wrote his name too.<sup>208</sup>

Bryce then asked whether Wahanui was not willing to have Europeans pass through the district from Alexandra to Mōkau and on into Taranaki. Wahanui asked Bryce to leave the room so that he and other rangatira ('my seven men') could discuss the matter. According to Hataraka, the rangatira present then discussed the matter, forming the view that the survey party should be allowed to travel through the district so long as they confined their activities to the exploratory survey; they could 'simply pass through, and the way close up behind them'. When Bryce returned, there was a further exchange, in which the chiefs gave permission for the survey on certain conditions:

**Wahanui:** Bryce, I consent that your Europeans go through to Mokau and Taranaki, but let the feet only go along the road, and go neither to one side or the other; keep straight on to the end, and look not to the right or to the left.<sup>209</sup>

The exchange then continued:

**Mr Bryce:** Very well; it shall be as you say. My people shall abide by what you have said. I will start them off tomorrow.

**Wahanui:** Stop; I don't assent to that. Wait for two weeks.

**Bryce:** Why?

**Wahanui:** The tribe is absent. I alone am here, and they must assemble and hear what has been said by me, so that it may be understood.

**Mr Bryce:** Very good – let it be so.<sup>210</sup>

As well as offering considerably more detail about what was said, Hataraka's account differed from others on certain key points. First, Hataraka's account referred to Bryce signing an agreement, whereas others suggested that only the rangatira signed (or, in the case of the *Waikato Times*, were ambiguous about whether Bryce also signed<sup>211</sup>). Secondly, Hataraka's account referred to the agreement being signed before Bryce left the room. Thirdly, and most crucially, Hataraka's account suggested that the written agreement did not concern the survey, but rather Bryce's agreement that the Government could not enter Te Rohe Pōtae without the consent of its leaders.

The *Wanganui Herald* described the agreement between Bryce and Wahanui as a 'curious compact', and so far as we are aware this was the first time the term 'compact' was used in a documented source to describe any of the 1883–85 agreements.<sup>212</sup> We have not seen any written agreement signed by both Bryce and

208. 'Mr Bryce in the King Country: A Curious Compact', *Wanganui Herald*, 12 May 1883, p 2; doc A78, pp 764–765.

209. 'Mr Bryce in the King Country: A Curious Compact', *Wanganui Herald*, 12 May 1883, p 2.

210. 'Mr Bryce in the King Country: A Curious Compact', *Wanganui Herald*, 12 May 1883, p 2.

211. 'Mr Bryce and Wahanui', *Waikato Times*, 17 March 1883, p 2.

212. 'Mr Bryce in the King Country: A Curious Compact', *Wanganui Herald*, 12 May 1883, p 2.

the rangatira. Settler media (including the *Wanganui Herald* itself) questioned whether any such agreement existed, and also suggested it was implausible that Bryce would have agreed that Wahanui would decide whether 'roads' would run through Te Rohe Pōtae.<sup>213</sup>

In the view of the *Wanganui Herald* there was 'presumptive evidence' against Bryce having made such a commitment. According to the newspaper, such a commitment would serve no purpose for the colonial Government other than to increase Wahanui's power, since it 'absolutely binds the colony to waive its prerogative of making roads (or railways) . . . under the Public Works Act'. If it had been made, this was an 'outrageous' commitment which tamely surrendered the colony's 'dignity and rights'.<sup>214</sup> Likewise, the requirement that the survey party go 'neither to one side nor the other' further added to the Crown's 'humiliation':

if the impression left on the minds of the Waikato Natives is such as has been conveyed by Hataraka, not only has no progress been made, but the King country is as completely sealed against road-making as at any time since the commencement of the King movement.<sup>215</sup>

While the *Wanganui Herald* doubted that Bryce had made such a commitment, it noted that all other newspaper accounts had come from Bryce and his staff (and therefore, by inference, revealed only what Bryce wanted his parliamentary colleagues and settler constituents to know). Hataraka's was the only account that explained how Māori had understood the meeting. The proof, the newspaper suggested, would be known only if the written agreement was uncovered.<sup>216</sup> In the absence of that agreement, the *Herald* sent its report of Hataraka's account to Wahanui, who confirmed that it was accurate. According to Wahanui:

The words said to Mr Bryce are true (as reported), but no assent was given that the roads should be opened up at present, but perhaps that may be in the future; that is, when we know for truth that the Europeans have really good intentions to the Maoris of this Island, and also towards my own tribe.<sup>217</sup>

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213. 'Opening the King Country', *Wanganui Herald*, 14 May 1883, p 3; 'The King Country', *Hawke's Bay Herald*, 19 May 1883, p 2; 'Opening the King Country: Another Version', *Auckland Star*, 18 May 1883, p 3.

214. 'Opening the King Country', *Wanganui Herald*, 14 May 1883, p 3. Marr discussed this editorial in her evidence: doc A78, pp 771–772.

215. 'Opening the King Country', *Wanganui Herald*, 14 May 1883, p 3.

216. 'Opening the King Country', *Wanganui Herald*, 14 May 1883, p 3. Some other newspapers also acknowledged that Hataraka's account reflected Māori understanding of the meeting. See: 'The King Country', *Hawke's Bay Herald*, 19 May 1883, p 2; 'Opening the King Country: Another Version', *Auckland Star*, 18 May 1883, p 3.

217. 'Wahanui and the Native Minister', *Wanganui Herald*, 11 July 1883, p 2; doc A78, p 770.

**8.3.3.2 The letters between Bryce and the rangatira**

Further details of what was discussed and agreed on 16 March were contained in letters that were exchanged on that day between Bryce and the rangatira. The letters were never released to the public or settler media.<sup>218</sup> The first letter was from Wahanui, Manga (Rewi), Ngatapa, Hari, Tupotahi, and Te Oro – all of Ngāti Maniapoto – to Bryce (‘E hoa E Hone Paraihe’). It read:

Kua tukua e matou to tangata engari kei rara nga ringaringa o to tangata. Kia tika tonu ki te haere i tonoa nei e koe.

He tono hoki tenei na matou ki a koe, kia kaua e whakamana e koe nga tono ruri i roto i ta matou takiwa; waiho kia oti rano te korero a te iwi nui tonu o Ngāti Maniapoto.

Tuarua, ki te oti te korero a Ngāti Maniapoto, tera e tukua atu tetahi pitihana ki a koe mo tetahi ture pai kia whakamana mai e koutou ko to runanga mo te whenua o Ngāti Maniapoto.<sup>219</sup>

We have agreed to allow your man to go, but let not the hands of your man be spread out. Let him proceed on the duty that you have sent him upon.

We request also that you will not grant applications for surveys within our district, defer them until the question has been discussed by the whole tribe of Ngatimaniapoto.

Secondly, when the talk of the Ngatimaniapoto is over, a petition will be addressed to you praying you and your Parliament to pass a satisfactory law for the lands of the Ngatimaniapoto.<sup>220</sup>

Bryce’s letter, written from ‘Areka’ (Alexandra) and addressed to ‘Wahanui, Manga and others’ read:

Friends your words are good both on account of the work to be done and because they show the friendly relations now established between your tribe and me. Listen, my man is only going on one duty, namely the exploration of railway routes. Enough of that. As to surveys, it will be well for the principal men and the Ngatimaniapoto generally to apply to the Court for surveys and determination of title to land; this is the only way to avoid confusion. In the hope that this will be done shortly, I will keep back minor surveys for a time. This does not refer to trig surveys and stations which have nothing to do with title.

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218. Document A78, p 772.

219. Wahanui and others to Bryce, 16 March 1883 (doc A78(a), vol 2, p 543; doc A110, p 635). The versions of the letters that remain on file are regarded as drafts. Bryce instructed his officials to make a copy of the letter from Wahanui and others, in Māori and English, to give to Wahanui; see doc A78, p 773 for an explanation.

220. Document A78(a), vol 2, p 542; see also doc A110, p 636.

## 8.3.3.3

I shall look forward with interest to your petition. Let it state clearly the alteration you want. If it is an improvement in the law I will carefully consider it in your interests.<sup>221</sup>

Bryce signed the Māori language version of the letter ‘Na to koutou hoa aroha, Hone Paraihe’.<sup>222</sup>

### 8.3.3.3 *What did the Crown and the chiefs agree to?*

The nature and extent of the agreement that was reached at this time was heavily disputed between the parties. The historians Marr and Loveridge disagreed in particular over the weight that could be accorded to Hataraka’s account and the conclusions that could be drawn. In essence, they differed over the extent to which Bryce acknowledged the authority of Te Rohe Pōtae leaders and their ongoing right to make decisions about public works within the territory.

#### 8.3.3.3.1 THE VIEWS OF MARR, LOVERIDGE, AND MEREDITH

Marr’s interpretation emphasised Hataraka’s account. She argued that the 16 March agreement involved ‘a much wider and [more] significant understanding than simply obtaining written permission for the railway’. It also covered the railway and ‘the proposed strategy of seeking peaceful recognition of the external boundary and the territory and continued management of its lands through petitioning parliament’.<sup>223</sup> In her view, the rangatira ‘saw the agreement in the nature of a “compact” between themselves and Bryce rather than as a straight one-way agreement to give permission for a trip’.<sup>224</sup> She based this view, in particular, on Bryce’s assurance (as given in Hataraka’s account) that Wahanui would decide whether roads could enter Te Rohe Pōtae or not.<sup>225</sup>

Marr gave several reasons for accepting the veracity of Hataraka’s account, including his presence at the 15 and 16 March meetings, his reputation (according to the *Wanganui Herald*) for truthfulness, and the fact that Wahanui had later confirmed the accuracy of the account. She also referred to a later statement made by Wahanui to then Native Minister John Ballance in February 1885:

When Mr Bryce took office he made a compact with me, which was signed, that a search for the railway was to be made, and, if a suitable line were found, he was to return and let me know. . . .

221. Bryce to Wahanui, Manga, and others, 16 March 1883 (doc A78(a), vol 2, p 544; doc A110, pp 636–637).

222. Wahanui, Manga, and others, 16 March 1883 (doc A78, pp 775–776).

223. Document A78, p 765.

224. Document A78, p 767. For the *Wanganui Herald*’s interpretation of Hataraka’s account, see ‘Opening the King Country’, *Wanganui Herald*, 14 May 1883, p 3.

225. Document A78, pp 764–765.

Mr Bryce asked me, 'What do you want?' I then said, 'I am going to send a petition to the House, and I want you and your Cabinet to back it up'. I went on with the petition at once, but you know yourselves what it is.<sup>226</sup>

Marr took from this that Ngāti Maniapoto understood themselves to have formed a 'compact' with the Crown through this 16 March 1883 agreement, and that the compact was based on Crown recognition of their external boundary and the authority of Māori within the boundary.<sup>227</sup> The term 'compact', she noted, had come into use among settler media within weeks of the 16 March 1883 agreement, had subsequently been used by Wahanui, and had been 'maintained in Rohe Potae oral traditions to this day'.<sup>228</sup>

The Crown relied on the evidence of Loveridge, who dismissed the idea that the March 1883 hui had resulted in a compact between Te Rohe Pōtae Māori and the Crown. Loveridge argued that there was nothing in the letters or the surrounding circumstances to suggest that Te Rohe Pōtae Māori and Bryce had agreed to anything substantive beyond the exploratory railway survey.<sup>229</sup> In particular, Loveridge disputed the reliability of Hataraka's account. He said there was no single written document signed by all parties that was similar to the 'written pledge' described by Hataraka; instead, there were two letters setting out both parties' understanding of the agreements.<sup>230</sup>

Loveridge also argued that the letters between the chiefs and Bryce disproved much of Hataraka's account and the inferences Marr drew from them. He said that the chiefs merely requested that the Native Land Court and associated surveys be withheld from the territory, a condition he said was already being met. He also noted that Bryce's letter did not say anything about agreeing to permanently withhold future surveys unless specific agreement was given.<sup>231</sup> Loveridge also noted that the letter sent by Wahanui and other rangatira did not ask anything specific of Bryce in respect of the petition. According to Loveridge, Bryce's letter to the rangatira 'promised to give careful consideration to its proposals if he considered them to involve "an improvement in the law"'. He could hardly have said more without first seeing the document itself.<sup>232</sup> Loveridge also discussed the statement Wahanui made to Ballance about his exchange with Bryce, where Wahanui said that he wanted Bryce and his Cabinet to back up their petition. In that exchange, Loveridge noted, 'Wahanui did not say what answer, if any, Bryce made to this request'.<sup>233</sup>

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226. 'Notes of a Meeting between the Hon Mr Ballance and the Natives at the Public Hall at Kihikihi, on the 4th February, 1885', AJHR, 1885, G-1, pp 13-14; doc A50 (Marr), p 170.

227. Document A78, pp 769-770.

228. Document A78, pp 769-770.

229. Document A90, pp 5-41; doc A41, pp 68-71.

230. Document A90, pp 31-32.

231. Document A90, pp 24-25.

232. Document A90, p 26.

233. Document A90, p 26.

In reply to Loveridge, Marr emphasised the context in which the letters were made and the conclusions that the chiefs were able to draw from their engagement with Bryce. The real issue, she said, was the extent to which Bryce encouraged the rangatira in their understanding of the agreement, without intending to honour that understanding.<sup>234</sup> She said the evidence showed that Bryce acknowledged he needed chiefly permission for the survey and public works, which the chiefs viewed as an important concession.<sup>235</sup> The newspaper accounts from the time, for example, emphasised that Bryce did discuss the construction of the railway and assured the chiefs there would be more time to discuss it before construction took place. ‘They understood this meant the government would only make a survey and come back to them before any construction went ahead.’<sup>236</sup>

Paul Meredith, in ‘Ngāti Maniapoto Mana Motuhake’, did not accept that Hataraka’s account referred to a single written agreement signed by Bryce and the rangatira. In his view, when Hataraka referred to a written agreement he ‘was most likely referring . . . to [the] reciprocal exchange of letters between Wahanui and the other chiefs and Bryce’, which took place on the same day as the meeting.<sup>237</sup> Meredith noted that Hataraka’s account was consistent with other evidence in key respects. First, the letters specified that the surveyors should confine themselves to their business and not ‘spread out’, and Hataraka’s account had also emphasised this point. Secondly, Hataraka noted that Wahanui asked for two weeks to inform his people of the agreement, and (as we will discuss in section 8.4.1) Wahanui later became angry when Bryce failed to comply with this condition. Meredith noted that both Hataraka’s account and the letters were consistent with the matters that Wahanui and other rangatira had discussed on 15 March and suggested that Hataraka’s account reflected Māori understanding of the outcome of the meeting with Bryce.<sup>238</sup> Meredith summarised that understanding as follows: ‘Wahanui asserted his mana over his lands seeking recognition for the boundary and the authority of chiefs within it to manage the lands.’<sup>239</sup>

#### 8.3.3.3.2 OUR CONCLUSIONS

Before considering the substance of the agreement between Bryce and the rangatira, we must first consider its form. We know that an agreement was reached between Bryce and the rangatira on 16 March, and that it was reached through discussion. Te Rohe Pōtae rangatira had long traditions of oral agreements over questions of mana and regarded the word of a chief as his bond.<sup>240</sup> From their perspective, the agreement would have been enshrined in what was discussed between the parties, and would not have been confined to what was subsequently recorded in

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234. Document A78(i), p 40.

235. Document A78(i), p 41.

236. Document A78(i), p 43.

237. Document A110, p 635.

238. Document A110, pp 635–636, 641.

239. Document A110(b) (Meredith), p 10.

240. Document A42, p 7; doc H9(c), para 9; doc I4, paras 6–8, 10.

writing.<sup>241</sup> In this case, according to Hataraka's account, it was Wahanui who asked for the agreement to be recorded in writing.<sup>242</sup> He may have seen this as a necessary precaution, because the agreement was with Bryce, whom Te Rohe Pōtae leaders did not fully trust.

Hataraka's translated account referred to Wahanui asking Bryce to sign a document, and Bryce complying. In Loveridge's view, Hataraka was saying that there was a single agreement signed by both parties – but Hataraka did not specify that. As we know, Bryce did sign something – a letter. On balance, we agree with Meredith that Hataraka was most likely referring to the letters that were exchanged. Loveridge invited us to dismiss Hataraka's entire account on the basis of this point. We see no reason to do so. If (in translation and as reported by a settler newspaper) Hataraka's account was not absolutely precise on the written form by which key elements the 16 March 1883 agreement were recorded, we do not see this as meaning that the entire account can be dismissed.

On the contrary, there are several reasons to take it seriously. It was the only detailed account of the exchanges between Wahanui and Bryce; according to the *Wanganui Herald*, Hataraka was an intelligent and truthful man and therefore a reliable source; he clearly had the confidence of Wahanui and other rangatira, as reflected in his presence at the 15 March hui; Wahanui later confirmed that his account was correct on the details of the exchanges between himself and Bryce; and some of the details of Hataraka's account are clearly supported by other reports from the time (for example, Bryce being asked to leave the room before the rangatira considered his request for a survey, which was consistent with other newspaper accounts; and the surveyors being asked to look neither left nor right, which was confirmed by the letter to Bryce). For these reasons, we see Hataraka's account as important evidence of what was discussed at the 16 March meeting and of how the rangatira present understood their agreement with Bryce.

We do agree with Loveridge that the 16 March 1883 letters themselves are crucial evidence of what was agreed – and no one in our inquiry disputed this. But they are not the only evidence. While they record specific outcomes of the meeting, they provide very limited information about what was discussed. In our view, the agreement can be understood only by taking account of all the evidence presented to us. This includes the circumstances in which the hui occurred, the parties' motivations and objectives leading into the hui, and the parties' understandings of the outcomes of the hui, which can be found in various sources including the newspaper accounts of the hui by Hataraka and others, in the letters, and in the subsequent explanations by rangatira as to what they had agreed to, and in the parties' actions following the hui.

The circumstances were these. The Crown believed it had a legal right to assert its authority within Te Rohe Pōtae, in particular by requiring Te Rohe Pōtae Māori to submit to its institutions (in particular the Native Land Court) and by building public works in accordance with its economic development goals. However,

241. Submission 3.4.1, para 20.

242. 'Mr Bryce in the King Country', *Wanganui Herald*, 12 May 1883, p 2.

it had no practical authority within the district. Practical authority remained with Te Rohe Pōtae leaders and communities, as it had since the Treaty was signed and for many centuries before. Māori continued to exercise practical authority in the district, irrespective of the Crown's ambitions and beliefs about its legal rights.

As discussed in chapter 7, Te Rohe Pōtae leaders were aware of the Crown's ambitions and were debating among themselves how to respond to growing pressures at the borders of their lands. One of their responses was to send Taonui and others to hold negotiations with border hapū and iwi, and to lay out the external boundary of the lands that remained in Māori possession, in an attempt to protect those lands from the Native Land Court and more generally to define the area in which they retained authority. Te Rohe Pōtae leaders asked the Crown to give them time to complete this work and determine their responses to the pressures they faced.

The Crown instead sought to test its authority by sending surveyors into the district without first consulting or obtaining consent from Te Rohe Pōtae leaders. Ngāti Maniapoto responded by turning the survey party back and insisting that Bryce come and discuss their concerns directly. Bryce, in response, warned that he was prepared to take forcible action, to 'clear' his 'own path'. But he was well aware of all of the attendant costs, risks, and harmful impacts that would arise from such a course, and so took up the invitation to seek a peaceful resolution through dialogue.<sup>243</sup>

By entering the district without consent and then (after Hursthouse had been removed from the district) by threatening to press ahead without that consent, the Crown effectively forced the leaders of Ngāti Maniapoto to the negotiating table before they were fully prepared, and before they had completed their consultations with other iwi or engaged in any detailed discussions with Tāwhiao who was still away on tour. The meeting therefore was not the result of parties coming together to set out their objectives in neutral circumstances; rather, it was the result of Bryce's attempt to advance the Crown's agenda through unilateral action. Bryce's actions meant that those Ngāti Maniapoto leaders who were on the spot had to come to some agreement among themselves about what it was they would seek from the Crown. This required them to consider not only the immediate circumstances that were presented to them – the Crown's insistence on conducting an exploratory survey – but also the Crown's long-term objectives to open the district and construct the railway.

At the hui at Taonui's house at Whatiwhatihoe on 15 March they came to a preliminary agreement on a range of ideas for how they might engage with the Crown:

- ▶ that they would allow the Crown to continue with an exploratory survey for the railway line while they advanced further discussions with the Crown on the particular forms of protection and recognition they would seek for their rights and authority;

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243. Bryce telegram to Rewi Maniapoto, 14 March 1883 (doc A78(a), vol 2, p 518).



- ▶ that a survey of the external boundary of their territories should be made, which they would pay for themselves, in order to protect their lands from the Native Land Court and purchasing, and in order to define the area in which their authority would apply;
- ▶ that a petition should be sent to Parliament outlining the conditions they required to be met or the actions they required from the Crown before they would contemplate authorising construction of the railway;
- ▶ that the district's Māori would select their own people to exercise authority over the land and to make and administer laws over their territory.<sup>244</sup>

The evidence – both newspaper accounts and the letters – shows that the leaders put most or all of these ideas to Bryce the next day. In their letter to Bryce, the rangatira said they would agree to allow the exploratory survey on condition that the surveyors confine themselves to that work, while emphasising that their consent was conditional upon obtaining consent from their people. Bryce, in response, acknowledged their consent and the conditions placed upon it.

There is conflicting evidence about whether the rangatira saw themselves as consenting only to Hursthouse's journey to Mōkau, or more generally to railway surveys. The *Waikato Times* reported that the discussion specifically concerned Hursthouse and that the rangatira consented to 'exploration of the country between Alexandra and Mokau'.<sup>245</sup> Hataraka's account was that the rangatira agreed to a single journey through to Mōkau, with the surveyors looking 'not to the right or to the left'.<sup>246</sup> The letter from the rangatira to Bryce was not specific on this point, but referred to 'te tangata', suggesting that only one surveyor was to go.<sup>247</sup>

On the other hand, settler media had been reporting for several weeks that Bryce intended to consider more than one route. Bryce's letter referred to only one man being sent, with 'one duty . . . the exploration of railway routes'.<sup>248</sup> This, however, could have meant routes through the Mōkau Valley, rather than routes throughout Te Rohe Pōtae. On balance, it seems to us that the rangatira understood the agreement as being confined to exploration of a single route from Te Awamutu to Mōkau, but that Bryce interpreted it differently, and seems to have assumed it gave him a broader right to conduct railway surveys throughout the district. This distinction would become important in a few months, as we will see in section 8.5.2.

As well as consenting to Hursthouse travelling through the district to determine the best route for the railway, the rangatira also asked that the Government refrain from allowing 'surveys' in the district. By this they appear to have meant that they wanted the Government to hold back Native Land Court applications within their territories, and on all survey activity other than the railway exploration through

244. Document A110, pp 632–633.

245. 'Mr Bryce and Wahanui', *Waikato Times*, 17 March 1883, p 2 (doc A41, p 69).

246. 'Mr Bryce in the King Country: A Curious Compact', *Wanganui Herald*, 12 May 1883, p 2.

247. Document A110, pp 635–636.

248. Bryce to Wahanui, Manga, and others, 16 March 1883 (doc A78(a), vol 2, p 544; doc A110, pp 636–637).

to Mōkau. Bryce, in response, promised to ‘keep back minor surveys for a time’ (Under section 38 of the Native Land Court Act 1880, the governor could direct the chief judge of the Native Land Court that a case should not be heard, or that any existing hearing should cease.). But Bryce said this promise did not apply to trig surveys, ‘which have nothing to do with title’. He also urged the rangatira to place their lands before the court, saying that a determination of title by the court was the ‘only way to avoid confusion’.<sup>249</sup>

The rangatira also informed Bryce that, once they had completed discussions among themselves, they intended to submit a petition to Parliament. They would ask for ‘tetahi ture pai’ (a good law) ‘kia whaka mana mai . . . mo te whenua o Ngāti Maniapoto’ (providing Ngāti Maniapoto with authority over their land). In the petition, they would set out in detail what they wanted from Parliament. Once they had seen how Parliament responded, they would decide their next steps. Bryce responded that he would look forward to the petition and give it careful consideration.

Much of the disagreement between the historians turns on the extent to which Bryce committed to implement the content of the petition, or more generally committed to support the continued exercise of Māori authority within Te Rohe Pōtae. Hataraka’s account suggested that Bryce acknowledged the boundary between Crown and Māori spheres of authority, and also acknowledged the Crown’s need to obtain the consent of the district’s leaders for any surveys or public works. We see no reason to doubt that Bryce made these statements. After all, they were no more than statements of fact – as a matter of practical reality, Te Rohe Pōtae Māori exercised authority over the district, and he could not pursue public works without the consent of Te Rohe Pōtae leaders; the ejection of Hursthouse had shown that clearly.

Indeed, even if we were to set aside Hataraka’s account, the remaining evidence makes it quite clear that Bryce acknowledged the need to obtain the chiefs’ consent before proceeding with the exploratory survey. In the *Waikato Times*’ account of the meeting, Bryce specifically acknowledged that the chiefs would have ample opportunities to discuss the railway before any substantive work could begin.<sup>250</sup> And, as Marr noted, Bryce had come to Whatiwhatihoe to obtain consent for the survey because he realised he could not proceed without it.<sup>251</sup> Crown counsel also acknowledged that it was ‘implicit that further discussions between the Government and the chiefs would be necessary after the exploration survey was completed and before any railway line was built’.<sup>252</sup>

If Bryce’s letter did not specifically acknowledge that he required the consent of Te Rohe Pōtae leaders for the survey, that was because that requirement was obvious from the context. The letters did not record the status quo, which was that Te

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249. Bryce to Wahanui, Manga, and others, 16 March 1883 (doc A78(a), vol 2, p 544; doc A110, pp 636–637).

250. ‘Mr Bryce and Wahanui’, *Waikato Times*, 17 March 1883, p 2; doc A41, pp 68–69; doc A110, pp 637–638.

251. Document A78, p 760.

252. Submission 3.4.301, p 27.

Rohe Pōtae Māori possessed the practical authority to determine what was done in their district (including turning away surveyors); the letters recorded what was to change, which was that the leaders of Ngāti Maniapoto would give a very narrow and conditional approval for a railway exploration to proceed. In claiming that Bryce did not acknowledge the authority of the district's leaders, Loveridge, in our view, was dismissing the clear and obvious fact that the aukati remained in force.

There is, furthermore, very clear evidence that the Ngāti Maniapoto rangatira who negotiated this arrangement understood Bryce as having acknowledged their authority within the aukati, at least to the extent that he agreed the Crown could take no action in their rohe without their consent. As noted in section 8.3.3, Wahanui recalled in 1885 that Bryce had agreed to consult before committing to any public works. He also made a similar statement in 1888, recalling that Bryce had promised to 'give due respect to our land'.<sup>253</sup> Taonui, in December 1884, said that Māori agreed only to the 'preliminary survey' and understood that Bryce would then visit again to confer with Te Rohe Pōtae leaders about whether or not the railway would proceed (see section 8.10.1.2).<sup>254</sup> Also in 1884, Whiti Patato of Ngāti Raukawa expressed his understanding that 'Bryce's word at the beginning' was that 'we should have the control over our lands'.<sup>255</sup>

In saying that he would build no roads without Wahanui's consent, Bryce very likely saw himself as doing no more than acknowledging the immediate, practical reality that the survey could not proceed without cooperation from Te Rohe Pōtae Māori, and nor, ultimately, could the railway or the opening of the district. In this sense, he would have seen himself as committing to keep returning to negotiations until his goals had been achieved – that is, until the district had been opened and the Crown could assert its authority without needing consent from Māori leaders. We do not think that he saw himself as binding the Crown for all time to recognise and protect the authority of the district's rangatira and Māori communities. Nonetheless, he would have known that Te Rohe Pōtae leaders were seeking an assurance of that nature, both because his previous discussions with Kingitanga leaders had broken down on this very point, and because Wahanui was now insisting on his right to make decisions about public works in the district. By acknowledging that it was for Wahanui to make such decisions, he created the impression that he would honour the right of the district's Māori to make decisions about their own lands. It is clear from their later comments that Wahanui and other rangatira believed they had won a significant concession which would remain binding in

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253. Document A50, p170; doc A71 (Robinson and Christoffel), p12. In 1888, when discussing the decision by Te Rohe Pōtae leaders to apply to the Native Land Court for title to their lands, Wahanui said they had done so because they 'placed absolute reliance on that word of Mr Bryce, for he personally told us that he would give due respect to our land, and that he would prevent all evil practices from being done in our district': 'Letter from Wahanui', *Wanganui Herald*, 11 June 1888, p2.

254. Taonui to Ballance, 3 December 1884 (doc A20(a) (Clever document bank), pp 49–50). While Taonui was not at the 16 March 1883 meeting, given he was away marking the external boundary at the time, he was briefed on the outcome when he returned.

255. 'The Natives and Mr Bryce's Promises', *Waikato Times*, 10 June 1884, p2.

future. As the claimant Harold Maniapoto put it, that concession meant that ‘any proposed activity by the Crown in Te Rohe Pōtae had to be agreed in advance.’<sup>256</sup> If Bryce did not intend to make this commitment, and therefore to respect the authority of Te Rohe Pōtae leaders on an ongoing basis, he should have said so clearly and forthrightly, both in his discussions with Wahanui and in his letter.

What, then, of the petition? Did Bryce commit to implementing its contents or merely to considering it? In discussing the idea of the petition at the 15 March hui, Wahanui had said that the Government’s intentions towards Te Rohe Pōtae remained unclear, and he had suggested the petition as a means by which the leaders could test those intentions. This would suggest that Wahanui understood that Bryce was limited in the extent to which he could (or would) commit the Government at that point. Te Rohe Pōtae Māori were still developing their ideas about what they would seek from the Government, and this required consultation with the people. As such, the letter from the rangatira was carefully worded to indicate the general direction of what they would seek from Parliament, without giving details. Under those circumstances, we do not think that Bryce could have given a clear commitment to implementing the terms of the petition: neither he nor Te Rohe Pōtae leaders knew in detail what the petition would contain. Indeed, the parties’ stances on the petition were quite clearly spelled out in the letters: rangatira would send the petition asking that Parliament enact satisfactory laws, and the Crown would then consider it. The stance taken by the rangatira in future negotiations would depend on whether satisfactory laws were indeed enacted.

This interpretation is supported by the events of subsequent months, which are discussed in section 8.4. In April 1883, Wahanui made reference to the possibility of the Crown and Te Rohe Pōtae Māori being joined together in ‘te piringa pono’ (which was translated at the time as ‘a bond of faith’, but could also be understood as a close and honest relationship or partnership), but only if the Crown acted in good faith and did not push ahead with public works and settlement plans without the necessary consent.<sup>257</sup> When Te Rohe Pōtae leaders sent the petition in June 1883, they made no reference to any specific promise by Bryce to implement it. Rather, they presented it as an appeal to the Crown to honour its obligations under articles 2 and 3 of the Treaty. And when the Crown responded to the petition by passing the Native Committees Act 1883 in September, Wahanui objected on the grounds that it did not fulfil the petition’s terms, not on the basis of any specific promise that Bryce had made at the 16 March meeting.

We therefore agree with Loveridge that Bryce did not make any promise at the March 1883 meeting to implement the specific terms of the petition. Indeed, he could not have, since neither he nor Te Rohe Pōtae leaders at that time knew what those terms would be. But this does not negate Bryce’s broader acknowledgement of the boundary between Crown and Te Rohe Pōtae Māori spheres of authority at that time, or of the Crown’s need to obtain the consent of Te Rohe Pōtae leaders for surveys or public works within that boundary.

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256. Document A42, p 9.

257. Document A41, pp 72–73; doc A78, pp 826–829; doc A110, pp 643–645.

Another very significant part of the agreement was that it established broad parameters by which further negotiations might proceed from that time onwards. That is, while the parties reached specific agreement on the immediate issue before them (the exploratory railway survey), they did so in a way that identified how that particular agreement might contribute towards fulfilling the ultimate objectives they sought. Bryce's position, while focused on the immediate objective of seeking agreement to initiate the exploratory survey, also referred to the Government's ultimate objective: the opening of Te Rohe Pōtae to Crown institutions, public works, and settlement. Similarly, the chiefs set out their ultimate objective: to retain control of their land, which could happen through the Crown's provision of a 'good law'.

As well as setting out their broad objectives, through the 16 March hui the parties established a process through which further negotiations could occur. Under that process, in order for matters to progress the parties would need to agree on some matters while leaving others for further negotiation. This approach was made necessary by the cultural and political context in which the leaders of the respective parties operated. Te Rohe Pōtae Māori were guided by tikanga. Their leaders could only advance negotiations with the Crown on important proposals such as this if they returned to the people on regular occasions to obtain their agreement. This was the proper – tika – way in which such matters of importance were treated in Te Ao Māori, and it was reflected in Wahanui's request for Bryce to give him time to engage in discussions. Similarly, Bryce needed to obtain agreement from ministerial colleagues and (ultimately) the majority of Parliament in order to secure any necessary legislative reforms.

Above all, the agreement signalled that the relationship between the Crown and Te Rohe Pōtae Māori had been put on a new footing. Bryce's letter to the rangatira emphasised that they had now established 'friendly relations.' This was a very significant step, after decades in which the Crown and Te Rohe Pōtae Māori had either remained aloof from each other or had been at war. It signalled that the relationship between Te Rohe Pōtae Māori and the Crown had entered a new and potentially much more productive phase. The exchange of letters gave the negotiations an added air of formality, providing written confirmation of this new and important stage in the relationship. To this extent, we agree with the Crown that 'both parties recognised this was a very significant step to take, and both parties had wider objectives they hoped to achieve in the course of ongoing engagement on other issues.'<sup>258</sup>

This is not to say that all matters had been resolved. Bryce was clearly of the view that the agreement allowed him to proceed with trig surveys, though he was soon to back down on this. As discussed above, he also appears to have understood the agreement as giving him broad rights to conduct exploratory surveys throughout the district, whereas the rangatira saw it as granting a specific authorisation for Hursthouse to travel to Mōkau. A third area of ambiguity concerned the timing of the exploratory survey. While it is clear that Bryce agreed to delay

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258. Submission 3.4.301, p 29.

Hursthouse's departure so Wahanui could inform Te Rohe Pōtae communities, the evidence is unclear about how long that delay was to be for. Hataraka's account suggested Bryce had agreed to wait two weeks; Bryce's telegram to the Native Department immediately after the hui suggested the survey would be delayed 'for [a] few days';<sup>259</sup> and newspaper accounts reflected that, suggesting that the survey would go ahead the following week, after a delay of 'a few days' to allow consultation.<sup>260</sup> The letters were silent on this matter. Notwithstanding these points, agreement had been achieved on the substantive matters, which would allow negotiations to progress further.

The March 1883 agreement was not simply confined to the matter of the railway, as Dr Loveridge suggested, and to the extent argued by the Crown.<sup>261</sup> It also involved Bryce's implicit acknowledgement of the practical authority that Te Rohe Pōtae leaders continued to exercise. And, as Marr noted, it was the first step in a series of negotiations and agreements, which were 'linked by a number of understood objectives and by a sense that both parties were conducting them within the sense of a solemn, honour-bound, high-level relationship binding (in some respects) both parties.'<sup>262</sup>

In sum, the 16 March 1883 agreement between Bryce and Ngāti Maniapoto rangatira had the following essential features:

- ▶ Bryce acknowledged that, unless it was prepared to use force, the Crown could not proceed with surveys or public works within the aukati unless it had the consent of Te Rohe Pōtae leaders. Whereas Bryce appears to have seen this as a temporary acknowledgement of practical reality, Te Rohe Pōtae leaders understood it as meaning that Bryce acknowledged the aukati and their authority within it, and as an assurance that the Crown would take no future action in their rohe without their consent.
- ▶ Ngāti Maniapoto leaders consented to the exploratory railway survey from Alexandra to Mōkau, provided the surveyors did not attempt to carry out any other work, and subject to a delay to allow them to inform and consult their people. They appear to have understood that the delay would be for two weeks or more following the 16 March 1883 hui, whereas Bryce seems to have believed that the survey could proceed within days. Bryce seems to have interpreted their consent as allowing the Crown to conduct exploratory surveys on more than one route, but there is no evidence that he explained this to the rangatira. He also seems to have interpreted the agreement as allowing trig surveys to continue; again, there is no evidence that he put this to the rangatira, let alone that they consented.
- ▶ The Crown agreed to hold back survey or Native Land Court applications within Te Rohe Pōtae until further discussions had been held.

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259. Bryce to Lewis, 16 March 1883 (doc A78(a), vol 2, p 547).

260. 'Mr Bryce in the Waikato', *New Zealand Herald*, 17 March 1883, p 5. Two days later, the *New Zealand Herald* reported that the survey would proceed in 'a day or two': 'Latest Wellington News', *New Zealand Herald*, 19 March 1883, p 5; doc A78, p 782.

261. Document A90, pp 40–41; submission 3.4.301, pp 27–29.

262. Document A78(i), p 38.

- ▶ Te Rohe Pōtae leaders would send a petition to Parliament setting out improvements they would seek to Māori land laws, and the Government would give that petition careful consideration.

The agreement was made between the Crown and Ngāti Maniapoto leaders, who had not yet had the opportunity to complete consultations with neighbouring iwi and hapū. Bryce's decision to order the survey had effectively forced them into negotiations before they were ready and in spite of their requests for more time.

In addition to its specific terms, the 16 March 1883 agreement was significant because it established the parameters for future negotiations. Both sides set out their objectives: for the Crown this was to open Te Rohe Pōtae for the railway, the Native Land Court, and European settlement; and for Te Rohe Pōtae Māori it was for the Crown to recognise and protect the aukati and their authority within it. The talks also established a negotiating process under which some matters would be agreed, while others would be deferred so that the proper mandate could be obtained – from Māori communities in the case of Te Rohe Pōtae leaders, and from the Government and Parliament in the case of Bryce. In these ways, the agreement placed relations between the Crown and Te Rohe Pōtae Māori on a new and more positive footing, in which both would have opportunities to pursue their goals in a mutually beneficial manner.

#### 8.3.4 Treaty analysis and findings

In the claimants' view, the 16 March 1883 agreement had constitutional significance. In their view, because Te Rohe Pōtae Māori at the time were continuing to exercise practical authority over the district, kāwanatanga had no practical effect. The Crown therefore recognised that in order to open the district for settlement 'it would first be necessary to treat with, and obtain the agreement of, Te Rohe Pōtae rangatira'.<sup>263</sup> Crown counsel, on the other hand, submitted that the only 'constitutional element of the 16 March 1883 agreements was the fact that the Treaty partners were negotiating an agreement, one that allowed a railway exploration survey through the Rohe Pōtae to occur'.<sup>264</sup>

In our view, the March 1883 agreement undoubtedly had constitutional significance, not only because it was between Treaty partners but because it established, for the first time, a process through which those Treaty partners would be able to negotiate to bring the terms of the Treaty into practical effect in this district. As we explained in chapters 3 and 7, the Treaty required a working out of how kāwanatanga and rangatiratanga would interact in practical terms. The Crown acknowledged that, following the signing of the Treaty, further discussions would be required to determine how the Crown's 'governmental authority was to be exercised, particularly in relation to issues of concern to Māori'. The Treaty therefore required 'the working out of institutional structures and relationships in the new colonial polity'.<sup>265</sup>

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263. Submission 3.4.128(b), p10.

264. Submission 3.4.301, pp 29–30.

265. Submission 3.4.312, p1.

Prior to the 1870s, no attempt had been made by either side to work out how Crown and Māori authority might relate to each in a manner that was consistent with the Treaty. In chapter 7 we showed how and why the negotiations that occurred between 1875 and the end of 1882 failed to establish a basis upon which these relationships could be worked out. This was because of the ongoing effects of war and the Government's refusal to recognise the legitimacy of the Kīngitanga, as well as the failure to reach agreement about the return of the confiscated land. Following the breakdown of the Crown's negotiations with the Kīngitanga, a new phase began in which the Crown negotiated directly with tribal leaders, in particular Wahanui. The amnesties, declared in February 1883, allowed the Crown and Te Rohe Pōtae leaders to put the past to one side. They created an opportunity for forgiveness and atonement in relation to the war, and potentially the blossoming, at last, of Rewi's tree of peace. At a more pragmatic level, they provided a legal resolution, which allowed Te Rohe Pōtae Māori to progress negotiations without any apprehension that previous actions might be treated as criminal.

Yet Te Rohe Pōtae leaders continued to proceed cautiously. While the Crown continued to place pressure on them to open their territory to settlement and public works, they were concerned to protect their lands and territorial rights. The decision to define an external boundary marked a significant step towards that end – one that would soon bring Ngāti Maniapoto together with other iwi occupying the district's borders (Ngāti Raukawa, Ngāti Tūwharetoa, Whanganui, and Ngāti Hikairo) in a manner that sought to call on the same collective strength that the Kīngitanga had offered them.

The exchanges entered into in March 1883 were the first time Te Rohe Pōtae Māori and the Crown were able to engage with each other in any meaningful way on the question of what would be necessary to give practical effect to the terms of the Treaty. For the first time they directly addressed questions of how the Crown's power of *kāwanatanga* (as expressed in particular through courts, surveys, and public works) might interact with Te Rohe Pōtae Māori rights of *tino rangatiratanga* (as expressed through the desire of Ngāti Maniapoto leaders for Crown recognition of the district's boundary and continued Māori authority within that boundary, and more specifically through their request that the Crown enact a satisfactory law for their lands).

The agreement established a process by which the parties could negotiate to bring the terms of the Treaty into practical effect. And it also marked a significant step by both parties towards acceptance of the other's rights under the Treaty. Bryce conceded the reality that he required Māori consent before he could take actions that affected the district. This was an implicit recognition of the existing *mana* and *rangatiratanga* of Te Rohe Pōtae Māori, and of the practical authority they continued to exercise through their enforcement of the *aukati*.

From a Treaty perspective, Te Rohe Pōtae Māori had a right to maintain their existing law and authority until they freely consented to change. They were also entitled to resist the Crown's efforts to construct the railway through their land for as long as they wished, because the Treaty had entitled them to deal with their lands as they pleased. They had enforced and maintained the *aukati* for this very



reason. Bryce may have believed and initially acted as if the Crown had legal authority to do as it pleased, but he also acknowledged the reality that he could not do so without potentially provoking a forceful response.

Te Rohe Pōtae leaders, in their turn, signalled their intention to engage with the Crown's power of *kāwanatanga*, and in particular Parliament's lawmaking function, by asking for new and better laws for Te Rohe Pōtae Māori lands. The record of their discussions on 15 March suggested they would look to the Crown to use its lawmaking power to recognise and protect their *tino rangatiratanga*, including the external boundary of their territory. As noted, exactly what Te Rohe Pōtae leaders would seek from Parliament remained a matter for further discussion. The mere fact of asking Parliament marked a significant departure from previous approaches by Kingitanga Māori to the protection of lands and *tino rangatiratanga*.

For all of these reasons, we characterise the March 1883 agreement as the first step toward a relationship that respected the dual spheres of *kāwanatanga* and *tino rangatiratanga* – it was an opportunity to demonstrate how these Treaty principles might be given practical effect in this district. Although neither party might have declared it as such at the time, in constitutional terms this is what the agreement entailed. It marked a new beginning in the relationship between Te Rohe Pōtae Māori and the Crown. The specific agreement was that the Crown's exploratory survey could continue, but both parties acknowledged this was a first step only: the Crown could not go further without returning to negotiations, and the outcome of those negotiations would depend on its willingness to recognise and protect the rights of Te Rohe Pōtae Māori. Exactly what Ngāti Maniapoto and other Te Rohe Pōtae iwi would seek would be set out in their petition to Parliament later in the year.

#### **8.4 THE JUNE 1883 PETITION AND THE GOVERNMENT'S RESPONSE**

In the months following the March 1883 agreement, the parties moved to put their understanding of the agreement into effect. Two actions were significant. In June 1883, four iwi of Te Rohe Pōtae – Ngāti Maniapoto, Ngāti Raukawa, Ngāti Tūwharetoa, and hapū and iwi of northern Whanganui – submitted a petition to the Crown setting out what they sought from the Crown in return for their consent to the railway. The essence of their petition was that they wanted the Crown to honour their Treaty rights, in particular their rights to possess and exercise authority over land. To this end, they asked the Government to keep the Native Land Court and its associated 'evils' out of their district, and they asked Parliament to enact new land laws under which they could determine land ownership among themselves, and owners could lease land in an open market, while sales would be prohibited. These were very significant requests. Te Rohe Pōtae leaders were presenting the Crown with the opportunity to use its lawmaking powers in a manner that recognised and gave practical effect to their Treaty rights, most particularly their rights to self-determination with respect to land.

The Crown was already considering proposals to establish native committees and introduce modest reforms to the Native Land Court. It decided that these

were a sufficient response to the petition.<sup>266</sup> The reforms in question were the Native Committees Act 1883, which provided for the establishment of district native committees with limited powers to consider land title issues and adjudicate civil disputes; and the Native Land Laws Amendment Act 1883, which made some modifications to the operation of the Native Land Court. From the claimants' perspective, the Crown's response failed to meet the demands set out in the June 1883 petition.<sup>267</sup> Neither Act effectively empowered Te Rohe Pōtae Māori to determine title to their own lands or to administer their lands and territories as they wished.<sup>268</sup>

The Crown regarded the petition, and the Crown's response, as initial steps on which further negotiation would be needed. Crown counsel submitted that the Government in 1883 considered the Native Land Laws Amendment Act 1883 and the Native Committees Act 1883 to be 'appropriate responses to the requests made in the petition.'<sup>269</sup> The Native Committees Act in particular was an 'adequate initial step', which 'reflected some of the requests of the petition', achieving 'what was practicable in the circumstances.'<sup>270</sup> Crown counsel also submitted that Te Rohe Pōtae acknowledged these Acts as 'steps towards' meeting their objectives, which they accepted as a sufficient basis for future discussion.<sup>271</sup>

#### 8.4.1 The railway survey begins and Hursthouse is stopped, March 1883

In the immediate period following the 16 March 1883 agreement, the parties moved to put their understandings of it into action. Bryce returned to Auckland, leaving final arrangements to be negotiated between the Crown's agent in the district, George Wilkinson, and the rangatira. The newspapers had reported that the survey would go ahead during the week beginning 18 March 1883, and this is what occurred.

On 18 March, according to the *New Zealand Herald*, Wahanui sent 'a messenger forward to Mokau' to inform Māori along the route that they should 'allow the survey to proceed through to Taranaki.'<sup>272</sup> On the same day, Wetere visited Wilkinson, saying he would be leaving for Mōkau within two days and proposed to take Hursthouse with him.<sup>273</sup> Wetere returned to Wilkinson's home the following evening (19 March) confirming that he would be leaving early in the morning

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266. The Native Affairs Committee, in considering the petition, recommended that it be given favourable consideration during consideration of these Bills (AJHR, 1883, 1-2, p 9). Subsequently, Bryce argued that the enactment of these measures had addressed all of the concerns set out in the petition: 'The Native Minister and the Kingites', *New Zealand Herald*, 1 December 1883, p 6.

267. Submission 3.4.128(b), p 15.

268. Submission 3.4.128(b), p 16.

269. Submission 3.4.301, p 44.

270. Submission 3.4.301, p 47.

271. Submission 3.4.301, p 50.

272. 'The Native Minister and the Kingites', *New Zealand Herald*, 19 March 1883, p 2; doc A78, p 781. Hataraka later reported that Wahanui had messaged his brother, Te Taratu, who lived at Ōtorohanga, telling him not to interfere with Hursthouse: 'Mr Bryce in the King Country', *Wanganui Herald*, 12 May 1883, p 2.

273. Document A78(a), vol 2, p 550.

from Wahanui's home in Te Kōpua, and expected Hursthouse to travel with him. Weterere told Wilkinson that Wahanui agreed with this arrangement. Wilkinson reported that he would accompany Hursthouse as far as Te Kōpua to 'satisfy myself that Wahanui is willing for them to start tomorrow and that there is no soreness through change of . . . arrangement'. He also reported that he would take along another surveyor, Laurence Cussen, in the hope of persuading Wahanui to allow the erection of trig stations on Kakepuku and adjacent hills.<sup>274</sup>

Wilkinson's memorandum suggests that Bryce was pushing ahead earlier than Wahanui and the other rangatira had previously anticipated. As noted in section 8.3.3, Hataraka's account was that Wahanui asked Bryce to wait two weeks after the 16 March hui, so that communities could be informed and consulted, whereas Bryce interpreted the agreement as allowing the survey to proceed within days.<sup>275</sup> The decision to go ahead in this way placed Wahanui in a difficult position. He and other Ngāti Maniapoto rangatira had not yet had the opportunity to fully consult their people, and both Tāwhiao and Taonui were absent (Tāwhiao was visiting Napier as part of his goodwill tour and was expected back in early April, while Taonui was still away marking the boundary).<sup>276</sup> But, notwithstanding the Government's wish to press ahead more quickly than had been agreed, Wahanui and Weterere showed they were willing to honour their side of the agreement. There is no conclusive evidence of them objecting to the railway survey beginning earlier than they had previously anticipated; indeed, arrangements between Wilkinson and the rangatira seem to have proceeded relatively smoothly, as shown by Weterere's offer to escort Hursthouse.<sup>277</sup>

On 20 March, Wilkinson set out from Alexandra for Wahanui's house at Te Kōpua, accompanied by Hursthouse, Newsham, and Cussen. Hursthouse and Newsham then set off with Weterere and about 20 other Māori.<sup>278</sup> Wilkinson and Cussen remained behind to speak with Wahanui about the trig stations.<sup>279</sup> The fact that the Government was seeking Wahanui's consent suggests that Bryce and Wilkinson knew the 16 March 1883 agreement did not include trig surveys, regardless of what Bryce had put in his letter.

Prior to this meeting, Wilkinson had warned Bryce that trig surveys would most likely be 'objected to for a short time', and that 'letting Mr Hursthouse thro[ugh] is as much as Wahanui will take upon himself', especially in the absence of Taonui, who was 'acknowledged to be the largest landowner in the Dist[ri]ct'.<sup>280</sup>

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274. Wilkinson to Bryce, 20 March 1883 (doc A78(a), vol 2, pp 555–556). The word between 'change of' and 'arrangement' is illegible.

275. 'Mr Bryce in the King Country', *Wanganui Herald*, 12 May 1883, p 2.

276. Document A78, p 784.

277. Hataraka suggested that Wahanui had been unhappy at the departure date being brought forward, and so had refused to provide an escort: *Wanganui Herald*, 12 May 1883, p 2. But this is not consistent with the other evidence, which shows that Weterere proceeded to escort Hursthouse into the district, and that (as Hataraka acknowledged) Weterere and Wahanui assisted Hursthouse when he was stopped at Te Uira.

278. Document A78(a), vol 2, p 560.

279. Document A78, p 783.

280. Wilkinson to Bryce, 20 March 1883 (doc A78(a), vol 2, pp 556–557).

Nonetheless, Wilkinson tried, and Wahanui told him in clear terms that no survey would be permitted except for the railway exploration until Taonui and his party had returned and matters had been discussed among the people. According to Wilkinson, Wahanui ‘almost guarantee[d]’ that once the party had resumed and a hui had been held, ‘everything will be settled and there will be no need for further delay’. Wahanui was ‘quite clear about the surveys himself but wishes his people to have a voice in settling the matter.’<sup>281</sup>

#### 8.4.1.1 *Te Mahuki and his seizure of Hursthouse*

The first few hours of Hursthouse’s journey with Wetere were uneventful. The group stopped for lunch at Ōtorohanga, meeting the same group that had stopped Hursthouse less than a week earlier.<sup>282</sup> They were glad the matter was resolved, but rather ominously, the chief Aporo said that though Ōtorohanga was one ‘parlour’, Te Uira (where the path branched off to Mōkau, near Te Kumi, north of Te Kūiti) was another.<sup>283</sup>

Later that afternoon, Hursthouse and the entire party accompanying him were stopped at Te Uira by the spiritual leader Te Mahuki of Ngāti Kinohaku and Ngāti Maniapoto and members of his movement, Tekau-ma-rua (see sidebar, section 7.4.3.1). Te Mahuki knew Hursthouse from Parihaka, where he and others of Ngāti Kinohaku had lived during the 1870s. Hursthouse had had a variety of roles in the Taranaki region, including surveyor, interpreter, and roading engineer. In November 1881, when Bryce led the invasion of Parihaka, Hursthouse had been involved in dispersing people from the village. He was subsequently a prosecution witness against Te Whiti, Tohu, and other Parihaka leaders.<sup>284</sup> Te Mahuki had returned to Te Kumi and established his Tekau-ma-rua community there after serving a prison sentence in Dunedin for his part, alongside many other Parihaka residents, in ploughing and fencing the Waimate Plains in defiance of the government survey.<sup>285</sup>

When they came upon Te Mahuki’s group, Wetere attempted to protect Hursthouse and Newsham as a heated argument broke out. This became a violent scuffle during which Wetere, his brother Te Rangī, and a third person from Wetere’s party, Te Haere, were all forced from their horses. Wetere determined it would be best to submit.<sup>286</sup> Te Mahuki’s people took Hursthouse and Newsham prisoner and led them back to Te Kumi. Wetere and his men followed, though one was sent to report to Wahanui, and Wetere himself followed the next day.<sup>287</sup>

281. Wilkinson to Bryce, 20 March 1883 (doc A78(a), vol 2, pp 560–561).

282. Document A78, pp 782–783; doc A110, p 641.

283. ‘The Outbreak in King Country’, *New Zealand Herald*, 28 March 1883, p 5 (doc A78, p 783).

284. Document A78, pp 548–549; doc A110, p 625.

285. Document A110, p 641.

286. Document A78, p 785; doc A110, pp 641–642.

287. Marr thoroughly describes events, from Hursthouse setting off on 20 March, through to Te Mahuki and others being tried and jailed: doc A78, pp 781–821; see also doc A110, pp 641–643; doc A78(a), vol 2, pp 558–559, 564.

Hursthouse and Newsham were held for two days. Their outer clothes and boots were removed, leaving them in their shirts and trousers. Their feet were chained, and their hands tied behind their backs. They were not fed on the first night, and when they were offered food the next day their hands remained tied behind their backs despite requests to have them tied in front so they could feed themselves. They were locked in an old cookhouse, together with Te Haere, who had been injured in the previous day's scuffle. In effect, Te Mahuki was treating them as he and other Parihaka prisoners had been treated, although Te Haere did not have his hands or feet bound.<sup>288</sup>

When Wahanui learned of the situation, he contacted Wilkinson telling the Government to take no action and leave matters to him.<sup>289</sup> Wilkinson contacted Bryce (who was in Auckland), and Bryce agreed. Wahanui and Weterere then set about resolving the situation. Weterere sent messages to settlements along the Mōkau River calling for men to assemble at Te Uira, and Wahanui, meanwhile, sent messages to Waikato, asking that they withdraw anyone who was supporting Te Mahuki, and not send anyone in. The plan was for Weterere to return to Te Uira to secure the release of Hursthouse and Newsham, while Wahanui would go only as far as Ōtorohanga and monitor events from there, intervening only if needed.<sup>290</sup> This, according to Marr, was '[i]n deference to Weterere's status in the locality, and his leadership of the group taking the surveyors'. Weterere and Wahanui both assured Wilkinson that Hursthouse and Newsham would be safe.<sup>291</sup>

The reinforcements – who numbered about 150 and included Aporo from Ōtorohanga and Te Kooti and some of his men – arrived at Te Kumi on 22 March, two days after Hursthouse and Newsham had been taken. Upon arriving, Weterere's force tied up some of the Tekau-ma-rua people in the way their prisoners had been, but reports from the time suggest there was no bloodshed. Hursthouse and Newsham were taken to Te Kūiti and looked after there.<sup>292</sup> According to Hataraka's account, Wahanui's brother, Te Taratu from Ōtorohanga, was also present and was responsible for liberating Hursthouse.<sup>293</sup>

#### **8.4.1.2 The hui to decide Te Mahuki's fate**

On 24 March, a large hui to decide what to do about Te Mahuki was hosted at Te Kooti's carved house in Te Kūiti, Tokanganui-a-noho. Te Mahuki attended with about 100 of his followers (men, women, and children), as well as Weterere, Taonui (who had now returned from marking the external boundary), and government agent Wilkinson.<sup>294</sup> Wahanui, as noted above, had chosen not to attend unless needed.

288. Document A78, pp 785–786, 790.

289. Document A78(a), vol 2, pp 558–559.

290. Document A78(a), vol 2, pp 564–567; doc A78, pp 786–787.

291. Document A78, p 787.

292. Document A78, pp 788–789, 792.

293. 'Opening the King Country', *Wanganui Herald*, 14 May 1883, p 2.

294. Document A78, pp 795–796.

The hui began with much discussion, led by Taonui, of his work marking out the boundaries of lands remaining under Māori authority. The only surviving account was made by Wilkinson, who found it ‘rather annoying’ that Taonui was delaying the discussion about Te Mahuki. He recorded no detail about the boundaries, and at one point attempted to interrupt Taonui and move the discussion on, before Weterere stopped him. In taking this approach, he seems to have grasped nothing of the importance of Taonui’s mission, being either unaware or uninterested in the significance of the boundary.<sup>295</sup>

When the hui eventually turned to the business of Hursthouse’s seizure, Te Mahuki gave an angry and critical speech that slated Hursthouse, Wilkinson, Bryce, the Government, Pākehā in general, the rangatira who had cooperated with Bryce, and even Te Kooti for taking what he called a ‘false pardon’.<sup>296</sup> Te Mahuki was especially furious that Bryce, under the West Coast Peace Preservation Act 1882, had prohibited him from returning to Parihaka. However, Te Mahuki also wanted to make amends. He was willing to submit to the Ngāti Maniapoto leaders and would not offer any further opposition to Hursthouse continuing his journey.<sup>297</sup>

The various leaders at the hui agreed that they would take no further action against Te Mahuki: he had already been sufficiently punished; his offence had been satisfied when the captives were rescued and some of the Tekau-ma-rua were treated the way the surveyors had been. The hui also accepted that Te Mahuki would offer no further opposition to the survey, and the matter was considered closed. This was not a unanimous decision: some present, including Weterere, wanted Te Mahuki and others handed over to government authorities, to be dealt with by Pākehā law. But the majority, influenced by Te Wharo, preferred to deal with Te Mahuki under their own laws.<sup>298</sup>

This was not what the Government wanted. Bryce had telegraphed Wilkinson the day before the hui demanding that the chiefs hand Te Mahuki and the others who had captured Hursthouse over to him. He would not tolerate leniency. Bryce noted he was thankful to the rangatira – Wahanui, Te Rerenga, and Te Kooti – for rescuing Hursthouse and Newsham. However, he said that though he had ‘stood aside’ while Wahanui took action, he had never agreed that Ngāti Maniapoto would determine ‘whether the law should be vindicated or not’. He could not ignore Te Mahuki’s ‘gross and flagrant outrage’. If Te Mahuki was not handed over he would prepare to ‘act for myself’. He argued that it would be easier for Ngāti Maniapoto to satisfy him now, by bringing in some of the culprits, than leaving it to him to ‘take action myself’; and he went further, saying a surrender would be

295. Wilkinson to Bryce, 24 March 1883 (doc A78(a), vol 2, pp 600–601); also see doc A78, pp 796–797.

296. Wilkinson to Bryce, 25 March 1883 (doc A78(a), vol 2, p 624).

297. Document A78, p 798.

298. Document A78, p 799.

better for ‘the Maori people’ and for the Government, ‘otherwise complications may arise.’<sup>299</sup>

Unmoved by Bryce’s threats, the rangatira stayed the course they had chosen. In coming to this decision, they were once again demonstrating their authority within the district. While they could debate about whether Pākehā law might apply in this case, the choice was theirs, and the decision, ultimately, was that their own laws would apply with no involvement from the Government. The Government, in turn, was powerless to act, unless it was prepared to risk armed intervention in the district. Wahanui reinforced this message by sending Bryce a telegram on 24 March telling him not to worry about Tekau-ma-rua – he (Wahanui) was working to bring about a satisfactory conclusion.<sup>300</sup>

Nevertheless, very soon afterwards Bryce was able to capture Te Mahuki and others from Tekau-ma-rua. Te Mahuki had made it known at the Te Kūiti hui that he would be crossing the aukati and going to Alexandra, apparently in an attempt to signal his defiance of colonial authority. Bryce, on hearing of these plans, had sent the Te Awamutu cavalry to join the Alexandra armed constabulary, creating a force of nearly 100 men.<sup>301</sup> On 26 March, Te Mahuki and some of his people rode into Alexandra. The group was unarmed but confrontational.<sup>302</sup> Twenty-seven Tekau-ma-rua protestors were arrested, including four boys who were eventually let go. The party offered no resistance. The 23 who remained (who included five more boys and two elderly men) seemed similarly unconcerned when they were tried in the Supreme Court on 5 and 6 April, where they variously faced assault-related charges – some related to the Hursthouse incident, and some to the Alexandra confrontation – and ‘creating a riot, rout and tumult.’<sup>303</sup>

The 23 defendants were found guilty and received sentences ranging from six to 12 months, some with hard labour.<sup>304</sup> Bryce got the outcome he sought, but without Wahanui’s direct support. Just as Bryce had understood that he could not arrest Te Mahuki within the aukati without risking a return to violence, Wahanui understood he could not have protected Te Mahuki beyond the aukati without taking the same risk.<sup>305</sup> Nor did Te Mahuki’s imprisonment signal the end of his influence: he continued to rail against the forces of colonisation until his death in 1899.<sup>306</sup>

#### **8.4.2 Te Rohe Pōtae Māori agree to petition the Government, April 1883**

On the basis of Wahanui’s handling of the Hursthouse incident it was hoped that the interrupted exploratory survey would now be able to continue unimpeded.

299. Bryce to Wilkinson, 23 March 1883 (doc A78(a), vol 2, pp 595–597); doc A78, pp 788, 794, 800.

300. Document A78(a), vol 2, pp 613–614.

301. Document A78, pp 799, 801–803.

302. Document A78, pp 803–804.

303. Document A78, pp 805–806, 808, 811.

304. Document A78, pp 808–813.

305. Document A78, p 806.

306. Document A78, pp 813–815.

However, the support of all communities throughout Te Rohe Pōtae could not be taken for granted. The next large hui was planned for Te Kūiti, to begin on 10 April, at which Wahanui and other chiefs were expected to seek agreement to the proposals that were set out in their 16 March 1883 letter to Bryce. Before the hui, Wahanui sought to soothe the concerns of Kīngitanga supporters from the Waikato and elsewhere, who regarded the 16 March agreement as breaching the aukati and who were unhappy at the arrest of Te Mahuki.<sup>307</sup>

Bryce indicated his intention to resume the exploratory survey in late March. He sought visits with Te Kooti, Rewi, Taonui, and Wahanui to discuss the survey, as well as matters related to the trials of Te Mahuki and his Tekau-ma-rua followers. By this time, he had decided that the completion of the exploratory survey should be more akin to a ministerial visit. He would accompany Hursthouse, thereby completing his long-planned trip across the territory to Mōkau.<sup>308</sup> The trip would be undertaken by a substantially expanded group, including a variety of officials, surveyors, and newspaper correspondents.<sup>309</sup>

Taonui – who had by then been updated about what had happened while he was away – had asked Bryce to wait a while for his response. He wrote to Bryce on 9 April giving his support for the railway survey, but by this time Bryce was already on his way to Alexandra with the surveyors to prepare for the journey to Mōkau.<sup>310</sup> In his response to Taonui, Bryce described his proposed trip as an act of friendship:

Taku haere i to whenua ki Taranaki . . . hei tohu aroha moku kia koutou ko to iwi. E watea ana nga wahi pakeha o Niu Tireni hei Haerenga mo koutou ko o hoa, a kia pena ano te watea o to whenua hei Haeranga moku me oku hoa . . . mau ma Ngatimaniapoto te tikanga kia pai toku haere kia kua hoki ahau e whakaraaurau.

My journey through your land to Taranaki . . . is intended to be a mark of friendship to you and your tribe. The European portion of New Zealand is open for you and your friends to travel in and with your part of the country should in like manner be open for me and my friends . . . It is for you and the Ngāti Maniapoto tribe to see that my way is peaceful.<sup>311</sup>

Bryce said nothing about his plans to open Mōkau lands for settlement. Wahanui's response to the proposed journey was somewhat muted. According to the *New Zealand Herald*, Wahanui was 'in a sense favourable': though he had not 'formally invited' Bryce to travel the territory, he would 'offer no objection'.

307. Document A78, pp 822–826, 829.

308. Document A78, pp 826–829, 831, 836–837.

309. Document A78, pp 836–837, 839.

310. Document A78, pp 836–840.

311. Letters, draft and te reo copies, Bryce to Taonui, not dated (doc A110, p 643; doc A78, pp 838–839).



According to the *Herald's* correspondent, Wetere was the only one of the chiefs consulted who directly invited Bryce to make the trip.<sup>312</sup>

#### 8.4.2.1 Wahanui's 'manifesto'

About this time, newspapers began publishing what was described as Wahanui's 'manifesto' – a letter submitted via a third party and dated 5 April 1883.<sup>313</sup> While doubt was cast on its authenticity by an unidentified Auckland source, it seems that the letter was indeed penned by Wahanui.

#### Wahanui's 'Manifesto', April 1883

##### *Te reo Māori text*

Te Waonui-a-Tane, Aperira, 1883. E to motu nei! E te ao nei! Titiro kattooa [sic] mai! Na te manu aute e rere atu na, kite kawē atu i enei mahi e rua, he Minita he Roia; he akiaki ta teteahi, he rai tangata ta tetetu, tene e te iwi he aha ra ta koutou? he akiaki mai i enei e rua kia raru ai te tangata raua ko te whenua mete kuku, ne? Ka pai to mahi ete Paraihe ne? E nga hoa kati, e tau ki raru, waiho ra kia taka te ahuru, a ka taka ano Tera pea koutou e mea mai he mea wha ka aro kau naku enei mamae tanga kao, rere; i kite ite paoa ote kawa e kake ana ite haitetanga ote hara. No konei ahau i mea atu ai, kaati koa, hanga paitia tatou kia piri ai kite piringa pono, haunga nga piringa raweke ma konei tatou karanga ai, e hoa, e hoa, tena koe, tena koe, nga hua tenei o te mahi pai. E rua enei he raumati he ahu, he hotoke, nga hua ote raumati he aha, he aha, e mau ana tona tangata ko uruao, koti hotoke tenei tona tukunga iho, he whare ri tona tangata ko Takurua hupenui tena e koro ma ko tewheo o enei hei tohunga ma koutou? Ko Uruao ranei? Ko takurua ranei? Kite tohu koutou ita koutou e tohu ai, me tuku mai e koutou kia au i te Waonui-a-Tane kia karangatia ai koutou e apa e pa. Na koti toru tenei o aku marama i mahara ai toku wairua kia whiti tera i tona koko uri tanga, kite rore e mahia paitia, tena to mahi e Takurua hupe nui. He whare ri, he whare ri. E hoa ma kei potatu te Mahi Rawanatanga [sic], otiia kia marama te whaka haere kei koro, e ai tate ki tapu. – Heoti ano na to kouto hoa hei kona ra.

##### *The New Zealand Herald's translation*

Te Waonui-a-Tane, April 5, 1883 – Oh, people of this Island! Oh, people of this world! All of you look this way. Behold a kite (made of aute bark) flies towards you, bearing you these two things – the Government for one and the lawyers for another. The

312. 'The Journey of Mr Bryce through the King Country', *New Zealand Herald*, 14 April 1883. This was the first in a series of detailed articles, written by a 'special correspondent', probably one of the journalists who accompanied Bryce's party.

313. Document A41, pp 72–73; doc A78, pp 826–829; doc A110, pp 643–645.

first goads, and the latter devours men. Now, I ask the public what is yours? Is it backing these two up so that evil should happen to men, to the land, and also to the world? You have done a grand thing, Mr Bryce; have you not? Oh, my friend, cease, cease! Settle yourself down, and let us have time so that our minds may be settled, and it will be settled. Perhaps you will think that these grievances are all imaginings of mine? No; because I saw the smoke of bitterness rising as the evils went forth, therefore I say to you, Cease, try and conduct us in a proper way, so that we may be bound together, not by a treacherous bond but by a bond of faith. By doing this we shall be able to say to each other, Friend, friend, greetings to you, greetings to you, as these are the fruits of good works. Take summer and winter for example. The fruits of summer are numerous, and particularly you have sweet and pleasant weather; but in winter, when you see the skies overcast, you will say it is going to be stormy weather; for in winter the weather is cold and stormy. Now, I ask you, elders, which of these will you choose? Will it be the sweet and pleasant weather of summer, or the cold and stormy weather of winter? When you have chosen, let me know at the Waonui-a-Tane, so that we may be able to call you, Aba, Father. Now, I have been three months considering within me, so that the sun may shine forth from its obscurity; but if we do not conduct things in a proper way, the winter weather will set in; it will be stormy weather – stormy. Oh, my friends, do not be too hasty in your work of government; but be judicious in your management, lest we fail, for such is the sacred word. – That is all from your friend. – Farewell.<sup>1</sup>

*The Tribunal's translation of key passages*

You are doing good work Bryce, are you? Friends, that is enough, wait until there is peace and it will come. Perhaps you are thinking that I have just thought about these pains [alternatively: difficulties, or painful difficulties], now, as time went on I saw the smoke of bitterness rising, when the sins went away. That is why I am saying do things right, so we are brought together in a faithful partnership [alternatively: a close and truthful relationship – piringa meaning 'close relationship' and pono meaning 'truthful'], leave aside partnerships built on bad faith. By following this idea – oh friend, oh friend, greetings to you, greetings to you – these will be the fruits of good intentions. . . .

Now, this is the third occasion that I have thought about the sun rising and moving towards darkness if matters are not handled well, and then a winter of running noses will prevail. A protected house, a protected house. ['Takurua hupe nui', winter of running noses, refers to the bleakness of winter as a time for taking shelter indoors, of sickness and shortage or scarcity] . . .

Oh my friends, do not be too hasty in your work of government, but be judicious in your management, lest we fail, in accordance with the sacred word.

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1. Te reo Māori and translation taken from the *New Zealand Herald*, 11 April 1883, p6 (doc A110, pp 644–645).

The rather metaphorical letter (dated 5 April) began with a critique of the harm that had befallen the people and the land as a result of the Government and the law, which he described as a 'kite' flying towards the North Island, and Te Rohe Pōtae in particular.

A significant portion of the letter appealed to Bryce to slow the pace of proceedings. Wahanui issued a challenge to Bryce: 'Ka pai to mahi e te Paraihe ne?' ('You are doing good work Bryce, are you?'). He asked Bryce to 'waiho ra kia taka te ahuru, a ka taka ano' ('wait until there is peace and it will come'). Most importantly, Wahanui's challenge to Bryce was to conduct matters in a way that is 'right' ('No konei ahau i mea atu ai, kaati koa'). If he were to do this, they would be brought together in 'te piringa pono' (a faithful partnership, which the *New Zealand Herald* translated as 'a bond of faith'). Wahanui added: 'haunga nga piringa raweke' ('they should leave aside partnerships based on bad faith, or 'treacherous bonds' in the *Herald's* translation). Wahanui's statements would tend to indicate that it was a partnership that had yet to be established: only through good works could they be brought together in that way.

Wahanui considered that if they did not conduct their work 'in a proper way', trouble would ensue, and called for the Government to be 'judicious' in its management. He added that the Government needed to conduct its business in accordance with 'te kī tapu' – the sacred word. Wahanui did not explain what he meant by this phrase, though a letter Rewi sent to the Government later in April revealed further clues as to its meaning (see section 8.4.3), as did the petition the tribes would send in June (section 8.4.5).

The *New Zealand Herald* agreed with Wahanui's call for proper conduct from the Government, stating that it was 'part of the duty of the Native Minister to take account of this feeling and to show the natives that their interests and welfare will be thoroughly secured.'<sup>314</sup>

#### 8.4.2.2 *The decision to send a petition*

Meanwhile, the chiefs continued to meet and organise. The large hui set for Te Kūiti began on 10 April 1883 as planned and ran throughout the week.<sup>315</sup> The hui confirmed their support for Wahanui's strategy of conditional engagement with the Crown, including a petition seeking laws that would recognise and protect their lands and authority.

Reports at the time tended to describe the hui as a meeting of 'Ngatimaniapoto', and Ngāti Maniapoto leaders certainly set the agenda. We cannot be certain about attendance from other Te Rohe Pōtae tribes, because the remaining records reveal little about attendance. At the time, Ngāti Raukawa had Native Land Court business in Cambridge for lands beyond the aukati, and communities of both Ngāti Raukawa and Ngāti Tūwharetoa had been hosting Tāwhiao on his goodwill tour. Short notice and severe flooding may also have affected people's ability to attend. It is known that at least two Tūhua chiefs were present – Hataraka (Ngāti Tama,

314. 'The King Country', *New Zealand Herald*, 11 April 1883, p 6 (doc A78, p 828).

315. Document A41, pp 72–76; doc A78, pp 840–847.

Ngāti Te Ika), and Ngatai Te Mamaku (Ngāti Hāua, Ngāti Hekeāwai).<sup>316</sup> We cannot be certain of attendance by rangatira from other tribes, but nor can we conclusively rule it out. Whether or not they attended, rangatira from Ngāti Raukawa and Ngāti Tūwharetoa did sign the petition that eventuated.<sup>317</sup>

One of the specific issues that required the attention of those assembled for the hui was Bryce's proposed travel across the territory to Mōkau, which was presented as a resumption of the Hursthouse exploratory survey. There seems to have been some frustration at the pressure to provide an answer to Bryce who – by the time the meeting began – was already at Alexandra preparing to depart.<sup>318</sup> Nonetheless, the hui passed a resolution in favour of allowing Bryce to make his journey. According to the *New Zealand Herald*, he 'was not to be hindered or obstructed', but 'was not to be allowed to make any survey' until the district's leaders had decided how they wanted their lands to be dealt with.<sup>319</sup>

This was the broader question facing the hui: if Te Rohe Pōtae Māori were to open their district, as Bryce had asked, how could they protect their lands from the wholesale alienation and destruction of communal authority that had afflicted other districts. At the 10 January hui at Rewi's settlement, they had discussed the prospect of petitioning Parliament seeking better laws for their lands, and the Te Kūiti hui sought to flesh out the details of that petition, including questions about what laws they might regard as acceptable.<sup>320</sup>

Those who spoke at the hui were concerned with avoiding the expense and difficulty associated with the Native Land Court, and therefore with coming to some arrangement which would allow tribes and hapū to determine ownership among themselves.<sup>321</sup> The *New Zealand Herald* reported that they were 'afraid of the state of things which they have seen before their eyes in the proceedings of the . . . Court.'<sup>322</sup> Soon afterwards, in an editorial, the *Herald* said that they were 'willing to open the country' but wanted to do it 'in such a way as will be most beneficial to themselves': 'They do not want everything to be thrown into turmoil, and themselves all set by the ears, and engaged in a series of struggles in the Land Court.'<sup>323</sup>

Nor was the hui satisfied with any of the other options that were open to them under existing law. They 'would have nothing to do with' the Native Reserves Act 1882.<sup>324</sup> That Act provided for Māori to vest lands in the Crown, to be managed on their behalf by the Public Trustee, who was empowered to rent the lands for farming, mining, or building, and to manage the proceeds for the benefit of the owners. This was an early precursor to the system of Māori land councils and Māori land boards which would be set up after 1900 (which will be discussed in later chap-

316. Document H10 (Hikaia), p 6; submission 3.4.211, p 13.

317. Document A78, pp 840–841; doc A41, pp 73–75.

318. Document A78, pp 840–841; doc A41, pp 73–75.

319. 'The Native Meeting at Te Kuiti', *New Zealand Herald*, 12 April 1883, p 5 (doc A41, pp 73–74).

320. Document A78, pp 840–841; doc A41, pp 73–75.

321. Document A41, p 74; doc A78, pp 843–844.

322. 'The Kingite Meeting at Te Kuiti', *New Zealand Herald*, 12 April 1883 (doc A41, p 73).

323. Editorial, *New Zealand Herald*, 17 April 1883, p 4 (doc A41, p 73).

324. 'The Native Meeting at Te Kuiti', *New Zealand Herald*, 19 April 1883, p 5.

ters). The *Herald* reported that Bryce hoped to bring the Act into operation in the King Country. Those at the hui were reportedly concerned that ‘if they gave a piece to the Government to deal with, that Ministers would issue a proclamation tying up a large district.’<sup>325</sup> They were also concerned with ensuring that land remained under communal control, and that there was no encroachment from settlers before satisfactory laws were in place, and before they had been able to determine ownership among themselves.<sup>326</sup> According to Robert Ormsby junior, who sent an account to the *New Zealand Herald*:

[I]t was decided to send a petition praying Government to pass an Act preventing unprincipled persons selling land, prohibiting surveys and prospecting for minerals within the defined boundary, until such times as they shall have settled their landed tribal claims.<sup>327</sup>

If the Government granted what the petitioners wanted, Ormsby said, the rangatira at the hui would be ‘willing to allow the necessary public works to proceed at once, such as trig survey, constructing railway line, and main road only’. Those leaders were ‘struggling between doubts and suspicions at the present mode of securing titles’:

The encroaching tide of immigration and land speculation, the protracted and tire-some hearing of cases in Court, have induced the natives to adopt the plan they have done. Ought they be discouraged from forming a plan by which they could settle their disputes before applying to the Native Land Court for titles?<sup>328</sup>

The rangatira were ‘doing their utmost . . . to bring about an amicable settlement between the two races, and impress the different tribes with the necessity of preserving their lands, so that in future they may not become landless and paupers.’<sup>329</sup>

Soon afterwards, the surveyor Laurence Cussen reported to his superiors that ‘the four tribes that own the land in the “King Country” had agreed to united action, under which they would defer all surveys until they had found a way to avoid the court and associated land losses. Wahanui, Cussen said, had made clear that the trig survey could proceed only once Te Rohe Pōtae Māori had settled matters among themselves. Wilkinson reported to his superiors along similar lines, but described these decisions as representing Ngāti Maniapoto views.’<sup>330</sup>

Some reports suggested that Tāwhiao intended to attend the hui. However, although he was reportedly on his way home from Taupō on 9 April, he did not make it. Rather, he stopped at Oruanui for several days, then went on to the Ngāti Raukawa settlement at Waotu on 17 April. The people of Waotu were then

325. ‘The Native Meeting at Te Kuiti’, *New Zealand Herald*, 19 April 1883, p 5 (doc A41, p 73).

326. Document A41, pp 72–74; doc A78, pp 843–834.

327. ‘The Natives and their Lands’, *New Zealand Herald*, 12 May 1883, p 6 (doc A41, p 74).

328. ‘The Natives and their Lands’, *New Zealand Herald*, 12 May 1883, p 6.

329. ‘The Natives and their Lands’, *New Zealand Herald*, 12 May 1883, p 6.

330. Cussen to assistant surveyor-general, 5 May 1883 (doc A41, pp 74–75); doc A41, p 76.

entangled in various Native Land Court proceedings at Cambridge, which is where Tāwhiao went next, spending a few days before finally heading to Whatiwhatihoe from Cambridge on 20 April, by which time the Te Kūiti hui was over.<sup>331</sup>

It is not clear why Tāwhiao stayed away. Weather, including flooding, may have played its part. It is also possible that, having stepped back from negotiations with the Government, he was giving Wahanui, Taonui, and other traditional land-owners the space to make suitable arrangements to protect their land. We do know that after he reached Whatiwhatihoe he was briefed about the events that had occurred during his absence, including Te Mahuki's actions, by Te Wheoro and other rangatira.<sup>332</sup> But we do not know whether he met with Wahanui, Rewi, or any of the other Ngāti Maniapoto rangatira after his tour. Tāwhiao did not stop for long at Whatiwhatihoe, leaving for Kāwhia by 25 April, where he was briefed about Bryce's February visit. Within weeks of arriving at Kāwhia, Tāwhiao left again, this time to tour Thames and the Bay of Plenty. He did not return until mid-June, just as Te Rohe Pōtae rangatira were preparing to submit their petition.<sup>333</sup>

### 8.4.3 Bryce's journey to Mōkau, April–May 1883

While the Te Kūiti hui progressed from 10–17 April 1883, Bryce and his party remained in Alexandra, hampered by weather that caused flooding and poor travelling conditions. The party that had gathered to accompany Bryce somewhat resembled the group that had travelled with him from Kāwhia to Alexandra two months earlier: his private secretary, Butler; under-secretary of the Native Department, T W Lewis; the government agent Wilkinson; the three surveyors Hursthouse, Newsham, and Cussen, assisted by a chainman; two armed troopers (or 'orderlies'); and two or three newspaper reporters.<sup>334</sup>

#### 8.4.3.1 Bryce meets Wahanui and Taonui

Bryce did not wait for word from the hui as to whether or not he should continue. He simply left Alexandra on the morning of 16 April 1883, while the hui was continuing, and before the resolution was passed authorising his journey. The party reached Ōtorohanga in the afternoon and stopped there for the night. On their way, near Te Kōpua, they were stopped by two chiefs who questioned their intentions before allowing them to continue. That evening, a small deputation from the Te Kūiti hui arrived at Ōtorohanga, bringing news that Bryce's group could proceed. The next day, Bryce and his party left Ōtorohanga and were met at Te Uira by Wetere. Informing them that he would escort them to Mōkau, Wetere took the party to Te Kūiti to spend the night.<sup>335</sup>

It is unclear whether the end of the hui at Te Kūiti and Bryce's arrival there were coincidental, or if in fact Bryce's arrival forced the hui to a close. Nevertheless,

331. Document A78, pp 829–833.

332. 'Native News', *Waikato Times*, 24 April 1883, p 2.

333. Document A78, pp 833–836.

334. Document A78, pp 847–848.

335. Document A78, pp 848–849; 'The Native Meeting at Te Kuiti', *New Zealand Herald*, 19 April 1883, p 5.

the assembled leaders now turned their attention to greeting Bryce. Taonui was the first to address the party when they were welcomed to the marae. He assured them that their trip to Mōkau would be safe and also reminded Bryce of the conditions imposed on 16 March: the surveyors could explore a possible railway route but 'looking neither to the right, left, or behind'.<sup>336</sup> By using this language, Taonui reminded Bryce of his own commitment to do nothing else towards construction of the railway without first returning to seek consent. Bryce replied that his journey was a 'friendly one', assuring Taonui that he had 'nothing in my heart that is hidden from you'.<sup>337</sup>

During the evening, and the next morning, Wahanui and Taonui reportedly had several conversations with Bryce. Most reports give little or no detail of what they talked about, or of who else may have been present, though the *Wanganui Herald* did provide some detail, reporting that Wahanui was concerned that other Europeans – in particular prospectors – might follow Bryce into the district.<sup>338</sup> According to Marr, some rangatira present were also concerned that the amnesty had only limited effect; in particular, Ngatai Te Mamaku was concerned about whether he would be protected over his role in the killing of Moffatt (section 7.3.3.6). This may have been because of the capture of Te Mahuki after Ngāti Maniapoto had decided not to turn him over. Bryce reportedly gave no assurances on this point.<sup>339</sup>

Hataraka, in his comments to the *Wanganui Herald* about the 16 April agreement, also described this hui. His account implied that Wahanui had been angered by Bryce's insistence on pushing ahead with the railway exploration in a premature manner. Bryce had now done this three times – first, on 8 March 1883 when he ordered Hursthouse into the district without first seeking permission; secondly, when he asked Hursthouse to return to the district within days of the 16 March agreement, when Wahanui and others believed they had longer to complete their negotiations; and, thirdly, when Bryce himself entered the district on 16 April without waiting for permission from the Te Kūiti hui.

Marr suggested that Wahanui had been angered not by the railway survey, but by renewed attempts by Bryce to restart the trig survey.<sup>340</sup> The surveyor general's annual report to Parliament reported that some trig surveys had been completed early in 1883, but only around Kāwhia.<sup>341</sup> But Bryce, in December 1883, said he had 'ordered a trig survey to be made' while he was at Te Kūiti, and that Wahanui and Taonui had objected because they 'did not understand it'. Bryce said he had refused to give them any assurances at the time, because he did not want it thought that he had given in only because he was in Māori territory, but 'when I reached Waitara, I ordered it to stop until I came here again'.<sup>342</sup>

336. *New Zealand Times*, 21 April 1883 (doc A78, p 849).

337. *New Zealand Herald*, 23 April 1883 (doc A41, p 73).

338. 'Progress of Mr Bryce', *Wanganui Herald*, 21 April 1883, p 3; doc A78, p 850.

339. Document A78, pp 849–850.

340. Document A78, p 852.

341. 'Surveys of New Zealand: Report for 1882–83', AJHR, 1883, C-2, p 12.

342. 'The Native Minister in the Waikato', *New Zealand Herald*, 1 December 1883, p 6.

The fullest account of the meeting was by Hataraka. In his version of events, there was considerable tension, with Wahanui threatening to ruin Bryce's career by keeping him out of the district, and Bryce acknowledging – once again – that he had no practical power in the district, being unable to enforce law or build roads, or even enter the district, without Wahanui's consent. Hataraka recorded the following exchange:

Wahanui said: 'Do not think I will open my mouth to speak words to you, Mr Bryce. All I have to say is, you can go your way now, but do not think I have given you the road or right of way. No, that I keep for myself, and the right to act as I judge best. But now (here Wahanui held up the forefingers of each of his hands), look here: see here are two kings, which of the two is yours?'

Mr Bryce remained silent, and spoke not one word.

Wahanui: 'You, Mr Bryce, are a Minister. I want to know a Minister of what or for what?'

Mr Bryce: 'A Native Minister for the Natives.'

Wahanui: 'You are wrong, for your laws are hard all over the island; therefore it is I say that the only chance you see of being saved is to come here to me. You are in fear of your position, and you come to me to protect yourself, and to be saved from the Parliament. Now if I choose to throw you down I could do so now; but I will not, as you are here residing with me. But I will take you to your Parliament at Wellington, and throw you, Bryce, down there before all people, the white as well as the dark, so that all men may judge between us.'

Mr Bryce remained silent.<sup>343</sup>

Later, when Bryce was ready to leave for Mōkau, Hataraka recalled him saying:

Wahanui, all our talk is ended, and if any other European comes after me on this road, he does so of his own accord. I have nothing to do with it, and if anyone says after me that he is coming to catch murderers, I have no part in that, the responsibility is not mine.<sup>344</sup>

Wahanui responded, somewhat enigmatically: 'I will break your head with my fist.' Marr took this as a warning to Bryce to honour what he had agreed, or face consequences. Bryce, according to Hataraka, left in haste, making no reply.<sup>345</sup>

#### 8.4.3.2 Bryce at Mōkau

On 18 April 1883, Bryce's party left Te Kūiti and arrived at the upper Mōkau settlement of Totoro late that afternoon. They were hosted by the chiefs Te Aria and Te Wharo and declined an invitation to stay an extra day to try the tuna for which the area was famed. Instead, the next morning, Wilkinson parted company with the

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343. 'Mr Bryce in the King Country', *Wanganui Herald*, 12 May 1883, p 2 (doc A78, p 851).

344. 'Mr Bryce in the King Country', *Wanganui Herald*, 12 May 1883, p 2; (doc A78, p 851).

345. 'Mr Bryce in the King Country', *Wanganui Herald*, 12 May 1883, p 2; (doc A78, p 851).



main group and returned to Alexandra. While the others were preparing to leave, Māori from throughout the district arrived to welcome the official party. Bryce's journey was momentous, being the first time any Cabinet Minister had travelled the route to Mōkau since the wars.<sup>346</sup>

The exploratory party (which now consisted of eight Pākehā and 17 Māori) soon left Totoro, and headed down the Mōkau River aboard two canoes, in what was described as a 'very pleasant but occasionally perilous passage'.<sup>347</sup> At the Mōkau Heads, they were challenged by the chief Takirau, who questioned Wetere about breaching the aukati. Wetere replied that the trip had been approved, and Takirau seemed satisfied with a letter from Wahanui that Wetere gave him. The officials stayed the night at Wetere's settlement and departed the next morning (20 April 1883) for Waitara, where they arrived that evening and received something of a hero's welcome.<sup>348</sup>

The public welcome at Waitara presented the first of several opportunities associated with the Mōkau trip at which Bryce could publicly acclaim his policy of 'firmness, justice and fair dealing with the natives' while also deflecting his critics.<sup>349</sup> Bryce portrayed Te Rohe Pōtae Māori as cordial and conciliatory, and the exploratory survey as bold, but said little about the conditional nature of his journey. This likely contributed to reports that the King Country could now be considered opened.<sup>350</sup> For example, reporting on a banquet at New Plymouth in Bryce's honour, the *Waikato Times* recorded that Bryce declared 'the King country was now opened to Europeans, and there would be no further obstruction to surveys, roads, or railways.'<sup>351</sup>

To his credit, Bryce soon corrected what he described as a 'mistake' made by the telegrapher, when he addressed a gathering of Opunake residents a few days after the banquet. According to the *Herald*, Bryce was 'careful to make the distinction' that 'the King country might be considered open for surveys for road and railway purposes; but with regard to other surveys he anticipated considerable delay'.<sup>352</sup> Even then, Bryce was overreaching – the 16 March 1883 agreement had been for a single exploratory survey, after which the way was to close up behind him. Nonetheless, a general assumption developed in the settler press in the wake of Bryce's journey through the King Country that he had both won the cooperation of the chiefs and opened the territory for public works at least. Wahanui's 'manifesto' and his call for caution gained no such traction or attention, even though the *Wanganui Chronicle* reprinted and reconsidered them around this time.<sup>353</sup>

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346. Document A78, pp 853–854.

347. 'Arrival of the Hon. John Bryce at Waitara', *Taranaki Herald*, 21 April 1883, p 2 (doc A78, p 854).

348. Document A78, pp 854–855.

349. 'Arrival of the Hon. John Bryce at Waitara', *Taranaki Herald*, 21 April 1883, p 2 (doc A78, p 856).

350. Document A78, pp 856, 866.

351. 'Mr Bryce Banquetted – He Declares the King Country to be Open', *Waikato Times*, 26 April 1883, p 2 (doc A41, p 70).

352. 'Mr Bryce and the King Country', *New Zealand Herald*, 28 April 1883, p 5 (doc A41, p 70).

353. Document A41, p 71; see Editorial, *Wanganui Chronicle*, 24 April 1883, p 2.

#### 8.4.4 Petition preparations continue

Following the Te Kūiti hui and Bryce's trip to Mōkau, the rangatira continued to prepare their petition, drawing George Grey, Wi Pere, and William Rees into their discussions.<sup>354</sup> Rewi added his support to developments in a letter he and two others wrote to Grey on 23 April 1883, in which they sought support for Parliament's authorisation of the external boundary of the Te Rohe Pōtae lands of Ngāti Maniapoto, Ngāti Raukawa, Ngāti Tūwharetoa, and Whanganui. They wrote:

E hoa, he kupu atu tenei naku kia koe mo te takiwa whenua e rahuitia ana e te iwi nui tonu, e Maniapoto, e Raukawa, e Tuwharetoa, e Whanganui, e tino whakatuturu ana hei nohonga mo nga tane mo nga wahine mo nga tamariki me nga uri whakatupu o tua atu . . . me tuku ki te Paremata mana e whakamana tenei rahui.

Friend, respecting the land which is kept by the great bulk of the people by Maniapoto, by Raukawa, by Tuwharetoa, by Whanganui. It is completely being kept sacred for an abiding place for the men, the women, the children and for future descendants . . . Give it to Parliament, it is for them to authorise this reserve.<sup>355</sup>

They continued by noting the pou that had been erected to define the boundary: 'Kua tu nga pou o tenei porotaka kua huaina te ingoa ko te Ki Tapu a te Iwi kia kaua e poka te Maori te Pakeha.'

In the original document, the translation reads: 'All the boundary marks of this surround are erected. It is called the sacred word of the people. Let it not be broken by Māori or Pākehā.'<sup>356</sup> However, Ngāti Maniapoto researcher, Paul Meredith, proposed another translation. Rather than having *named* their boundary the 'Sacred Word of the People', he wrote, a more appropriate translation would be that 'Rewi and his friends were possibly saying "the sacred word of the people is let it not be broken by Māori or Pākehā"'.<sup>357</sup> Whichever translation is preferred, the authors were conveying the idea that the pou roherohe represented the sacred word of the people, and neither the people's word nor the boundary itself was to be broken. This helps explain what Wahanui had meant when he asked the Government earlier in April (section 8.4.2.1) to be careful in its approach to its negotiations with Te Rohe Pōtae Māori, and that it act in accordance with 'te kī tapu'.

Tāwhiao, who was still on his tour of Thames and the Bay of Plenty, does not appear to have been part of these deliberations. He returned to Whatiwhatihoe in mid-June. Again, it is not clear that Wahanui and Tāwhiao took the opportunity to meet to discuss the petition or other related matters. Some newspapers suggested Tāwhiao rejected overtures from Wahanui to meet, but official sources are silent on the matter. As it was, Tāwhiao did not stop at Whatiwhatihoe for long before

354. Document A78, pp 867–869.

355. Letter, Rewi, Te Ni, and Te Kohika to Grey, 23 April 1883 (doc A110, p 645).

356. Document A110, p 646.

357. Document A110, p 646.

setting off for another visit to Kāwhia, to tend to growing concerns about government and Pākehā activity there.<sup>358</sup>

The survey of Kāwhia township in February 1883 had been followed by the construction of a public road from Raglan to Kāwhia. While local Māori had tolerated the survey, as well as a handful of Pākehā settlers who had since established themselves at Kāwhia (even though the Government had yet to sell any sections there), they were far less forgiving about the prospect of a government road that would both breach the aukati and require land. They opposed the survey by regularly removing survey pegs and cautioning surveyors to leave Māori land.<sup>359</sup> With hindsight, surveying the Pouewe block proved to be the thin edge of the wedge: Bryce returned in October that year, this time with an armed constabulary (discussed in section 8.5.1 below).

For his part, Wahanui left with a large party for Mōkau, to discuss both the petition and local concerns about the Joshua Jones lease (section 8.9.1.6). Indeed, local tensions would continue as a dynamic feature of Te Rohe Pōtae politics while the petition made its way through the parliamentary process.<sup>360</sup>

### 8.4.5 The petition of the ‘four tribes’, June 1883

The petition from the rangatira of the ‘four tribes’ of Te Rohe Pōtae was sent to Parliament in late June 1883, soon after the parliamentary session began. We set out the petition in full in appendix 8.1.

#### 8.4.5.1 The content of the petition

The petition was addressed to all arms of the colonial Parliament – the governor and both Houses of Parliament – and was presented to the House of Representatives by Bryce on 26 June 1883. The original petition was not located by research for this inquiry, and it is likely that various versions printed at the time, in newspapers and official publications, are all that survive. Unfortunately, that means that there is no full list of signatories to the petition, as the published versions only reproduced the text. What we do know is that the petition was signed by Wahanui, Taonui, Rewi Maniapoto, and 412 others. It was introduced as a petition of ‘nga Iwi o Maniapoto, o Raukawa, o Tuwharetoa, o Whanganui’. In the English translation, they were described as the ‘four tribes’ of Te Rohe Pōtae.<sup>361</sup> Bryce told the House that the petitioners included ‘all of the principal chiefs in that part of the country’.<sup>362</sup>

The official abstract gave a perfunctory description of the petition as asking for a ‘less expensive mode of investigating title and otherwise dealing with land.’<sup>363</sup> The *New Zealand Herald* noted the significance of the event – that Kīngitanga Māori

358. Document A78, pp 833, 835–836.

359. Document A78, pp 898–899.

360. Document A78, p 875.

361. ‘Petition of the Maniapoto, Raukawa, Tuwharetoa, and Whanganui Tribes’, AJHR, 1883, J-1, p 2 (doc A78, pp 868–869).

362. ‘Petition from King Natives’, *New Zealand Times*, 27 June 1883, p 2.

363. *Journal of the House of Representatives*, 1883, p xviii (doc A78, p 870).

were petitioning Parliament for better laws and asking the Native Minister to present the petition on their behalf, when such a move would have been extremely unlikely a year or two before.<sup>364</sup> The *Herald* also reported that members of the House 'listened to the words of the petition with profound attention.'<sup>365</sup>

The petition began by setting out the concerns which led to the petition being drawn up and took particular aim at the law. The petitioners said they had studied Parliament's laws 'from the beginning up to the present day' and deduced a number of things about what effect these laws had on the rights guaranteed to them under the Treaty of Waitangi. They said:

e ahu katoa ana te aronga o aua ture ki te tango i nga painga i whakataturutia kia matou e nga wahi tuarua tuatoru o te Tiriti o Waitangi, i tino whakapumautia ai te tino rangatiratanga, me te kore ano hoki e whakararurua ta matou noho i runga i o matou whenua.<sup>366</sup>

This was translated as 'they all tend to deprive us of the privileges secured to us by the second and third articles of the Treaty of Waitangi, which confirmed to us the exclusive and undisturbed possession of our lands.' However, a more literal translation of the second half of this statement was that their full chieftainship ('te tino rangatiratanga') had been fully guaranteed to them ('i tino whakapumautia'), and that there would be absolutely no disturbance to their ability to retain possession of their lands.

The petitioners said they saw no good in the laws affecting their lands, in particular the Native Land Court: '[K]ua waiho aua tikanga e mahia nei ki nga Kooti Whenua hei tikanga whakapouri hei pikaunga taimaha ano hoki ki runga kia matou' ('[T]he practices carried on at the Land Courts have become a source of anxiety to us and a burden upon us').

They asked who 'became possessed' of their lands once they had been adjudicated upon. While certificates of title proved their right to the lands, they were lured into debt by proceedings that were deliberately prolonged by lawyers who did not act in their interests but instead delivered their land to the land speculators. The result was that 'mau ana ko te wairua i nga Maori, ko te whatu, riro ke ana i nga Horo Whenua' ('we secure the shadow [of the land] and the speculators (land-swallowers) the substance'). They continued:

I runga i te nui rawa o to matou raruraru ki te kimi i etahi tikanga hei wawao i o matou whenua, i nga mate kua oti nei te whakatakoto, ka ui matou mehemea kaore he ture hei peehi mo enei mahi kino, ka utua mai kahore, heoiano tona tikanga me haere tahi ki te Kooti.

364. 'Parliamentary News and Gossip', *New Zealand Herald*, 25 June 1883, p 5.

365. 'The Petition of the Kingites', *New Zealand Herald*, 27 June 1883, p 4.

366. 'Petition of the Maniapoto, Raukawa, Tuwharetoa, and Whanganui Tribes', *AJHR*, 1883, 1-1, pp1-4.

In our perplexity to devise some means by which we could extricate our lands from the disasters pointed out, we ask, is there not a law by which we could suppress these evils? and we are told that the only remedy is to go to the Court ourselves.

Now, the petitioners protested, while they were striving to keep their lands, the Government was trying to open their country by surveying, and building roads and the railway, 'koia ka whakawatea i te ara hei mahinga mo enei mahi kino ki runga ki o matou whenua i te mea kaore ano i hanga paitia nga tikanga mo nga ra e takoto mai nei' ('thereby clearing the way for all these evils to be practised in connection with our lands before we have made satisfactory arrangements for the future').

They said it would not be right to subject their lands to such an objectionable system:

He aha te pai kia matou o nga Rori, o nga Rerewe o nga Kooti Whenua, mehemea ka waiho enei hei ara rironga mo o matou whenua, ka ora noa atu hoki matou ki te noho penei, kaula he Rori, kaula he Rerewe kaula he Kooti, otia, e kore matou e ora mehemea ki te kahore atu o matou whenua ia matou.

What possible benefit would we derive from roads, railways, and Land Courts if they became the means of depriving us of our lands? We can live as we are situated at present, without roads, railways, or Courts, but we could not live without our lands.

Though they were fully aware of the potential advantages of roads and railways, 'ko o matou whenua te mea pai ake i enei katoa' ('our lands are preferable to them all').

The petitioners went on to say that the four iwi had carefully defined the land over which their authority prevailed. The hapū had selected representatives to define the boundaries of their lands, erecting 'tohu' (posts) to mark out the lands still remaining to them over which Pākehā had no legal authority ('kaore nei te Pakeha ki ta matou mohio iho e whai paanga ana ki te whenua i runga i te ritenga o te ture').

The petitioners asked Parliament to 'kia whakamana mai' ('give effect to') five requests regarding their lands and authority:

1. E hiahia ana matou kia kore matou e mate i te nui rawa o nga rorerore o te whakamahinga o te Kooti Whenua Maori i te whakamahinga i o matou take whenua; kia wehe atu ano koki nga tikanga tahae, nga mahi haurangi, nga mahi whakatutua tangata, me nga mahi whakarihariha katoa e aru nei i muri i nga nohoanga o nga Kooti.
2. Me hanga mai ano hoki e te Paremete, tetehi ture hei whakapumau, i o matou whenua kia matou, me o matou uri, mo ake tonu atu, kia kore rawa e taea te hoko.
3. Kia waiho ma matou ano e whiriwhiri nga rohe o nga Iwi e wha kua whakahuaina ake nei, me nga rohe o nga hapu o roto o aua Iwi, me te aronga o te nui o te paanga



o ia tangata ki nga whenua o roto o te whakahaerenga rohe ka tuhia iho nei ki tenei Petihana.

4. A te wa e rite ai enei whakaritenga mo te aronga ki te whenua, me whakatu mai e te Kawanatanga etehi tangata whaimana, hei whakapumau i a matou whiriwhiringa me a matou whakaaetanga ki runga i te ritenga o te ture.
5. A te wa e oti ai te whakatau o te nui o te paanga o ia tangata o ia tangata ki te whenua, ka hiahia te tangata ki te reti, e kore o mana te reti e whakaritea e tona kotahi, e ngari me panui marire ki roto ki nga-nupepa kua oti te whakarite mo taua mahi, hei whakaatu i te takiwa e hokona ai te riihi o aua whenua e hiahiatia ana kia retia, kia ahei ai te katoa te haere mai ki te hokonga o aua riihi.

1. It is our wish that we may be relieved from the entanglements incidental to employing the Land Court to determine our titles to the land, also to prevent fraud, drunkenness, demoralization, and all other objectionable results attending sittings of the Land Court.
2. That Parliament will pass a law to secure our lands to us and our descendants for ever, making them absolutely inalienable by sale.
3. That we may ourselves be allowed to fix the boundaries of the four tribes before mentioned, the hapu boundaries in each tribe, and the proportionate claim of each individual within the boundaries set forth in this petition. [The petition then went on to describe the boundaries: see map 8.1].
4. When these arrangements relating to land claims are completed, let the Government appoint some persons vested with power to confirm our arrangements and decisions in accordance with law.
5. If, after any individual shall have had the extent of his claim ascertained, he should desire to lease, it should not be legal for him to do so privately, but an advertisement should be duly inserted in any newspaper that has been authorized for the purpose, notifying time and place where the sale of the lease of such land will be held, in order that the public may attend the sale of such lease.

The petitioners concluded by emphasising that they had no desire to keep the lands within the boundaries locked up from European settlement, nor to prevent leasing of land, or roads or other public works – but they did want the practices associated with the Native Land Court abolished. If their petition were granted, ‘ka tino awhina matou ki nga ritenga e nui haere ai nga ara, e puta mai ai nga painga ki tenei motu’ (‘we will strenuously endeavour to follow such a course as will conduce to the welfare of this Island’).

As shown in map 8.1, the petition boundary encompassed all of this inquiry district other than the area between Aotea and Raglan Harbours, along with a considerable area to the south and east of this district. In the east, the petition area bisected Ngāti Raukawa and Ngāti Tūwharetoa territories, and in the south it encompassed lands of northern Whanganui hapū and iwi, and the Poutama lands in which Ngāti Maniapoto and Ngāti Tama both had interests. The Ngāti Tūwharetoa claimant Napa Ōtimi said the petition boundary was based on the Kingitanga boundaries which ‘served both to mark a line that the Government

could not cross, and also to symbolise the connection between the tribes and the Kīngitanga. Some of the pou along the boundary marked ancient tribal boundaries, while others were more recent. They linked Whanganui, Ngāti Tūwharetoa, Maniapoto, Raukawa, and Waikato boundaries, demonstrating 'that the tribes had come together to support the Kīngitanga'.<sup>367</sup>

The petition envisaged a process by which iwi rohe (territories) would first be determined, and then hapū rohe, before 'te aronga o te nui o te paanga o ia tangata' ('the proportionate claim of each individual') was then recognised. It is not clear from the petition how the process of determining individual interests was to work in practice. The law at the time required title to be awarded to individuals in the form of tradeable shares in collectively owned land, but we think it unlikely that the petitioners envisaged this form of title. It seems more likely that they intended individual interests to be recognised in a manner that was contingent on the underlying title of the blocks sitting with hapū, creating a balance of community and individual interests. Certainly, in subsequent negotiations they made it known that their preference was for hapū to continue as the principal right holders in land.

Claimants told us that the petition cannot be understood solely in terms of the specific law changes that were sought. Those changes all concerned the administration of land, but the underlying purpose, claimants said, was to preserve the mana and tino rangatiratanga of their people. Mr Maniapoto said the petition was 'about the autonomy and authority of the collective tribes over their tribal domains', in accordance with the principles that had guided the Kīngitanga for the previous 20 years.<sup>368</sup> John Kaati told us that this petition 'represented a unified voice among iwi of the Te Rohe Pōtae in wanting to prohibit the Crown's acquirement of their lands', and that '[t]he rangatira also wanted to reassert their mana more so the mana motuhake of their people to ensure that nothing would happen until discussions had taken place with them first'.<sup>369</sup>

Mr Roa regarded the petition as an expression of the mana whatu ahuru of his Ngāti Maniapoto people. It was an attempt to negotiate an agreement under which peace would reign, balance would be maintained, and 'the way of life and lands occupied by each hapū' would be 'established and upheld'.<sup>370</sup> In this way, Mr Roa drew the link between retention and administration of land, which the petition was primarily concerned with, and the broader sphere of authority derived from ancestral relationships with that land. As he put it, '[u]nderpinning the Kī Tapu was the key concept that land was everything to our people'.<sup>371</sup>

The petitioners' expectation was that the opening of Te Rohe Pōtae would occur 'in accordance with our tikanga, at a pace we were comfortable with and in a way that we controlled the outcomes'.<sup>372</sup> These goals were clear, he said, from the

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367. Document J22, paras 51–57, 90.

368. Document A42, pp 6, 8–9.

369. Document H15, paras 144–145.

370. Document H9(c), paras 15, 24–25; see also paras 12–14.

371. Document 14, para 15.

372. Document 14, para 14.



petition. Mr Roa also referred to the petitioners' statement that their lands were preferable to all of the possible benefits of settlement:

These words are from our rangatira, to the rangatira of the Crown. They are consistent with the promises confirmed in Te Tiriti, as identified in the petition. Our clear expectation was explicit: we would retain the mana, the rangatiratanga, the whaka-haere i.e. the autonomous authority and the management of our lands.<sup>373</sup>

At the time, the *New Zealand Herald* described the questions raised in the petition as 'the most important, which could at the present moment be placed before the country'. It proposed that there was no hiding the fact that the 'system of conversion of title through the Native Land Court' had 'broken down'.<sup>374</sup> While the *Herald* expected the petition to be the cause of 'much discussion', it thought the Government's 'general disposition will be to yield to the desires expressed as far as possible'. It suggested that 'a Court composed of skilled and trustworthy persons' could determine the boundaries of the 'great tribes' and then the 'hapu or family boundaries'. The wishes of the 'individuals' could then be 'consulted without the present cost and waste before the Land Court'.<sup>375</sup> In another report, the *Herald* said that Bryce regarded the requests made in the petition as 'very reasonable and proper'. And it remarked on the significance of the petitioners' decision to petition Parliament for satisfactory laws, instead of rejecting Parliament's authority outright as supporters of the Kingitanga had previously done.<sup>376</sup>

In short, the petition signalled that Te Rohe Pōtae Māori wanted means by which they could manage their lands. They signalled that, above all else, they wanted to retain their land. They could live without roads and railways; they could not live without their land. They wanted to be freed from the unduly demoralising and destructive influences of the Court. They wanted to determine both the external boundary of their territory and the iwi and hapū subdivisions within it, and the rights of individuals within those subdivisions. Once that work was completed, they wanted the Government to appoint people furnished with the appropriate authority to give effect to their plans in accordance with the law. They wanted an Act of Parliament that would secure their lands to them and their descendants for ever, with no provision to sell it. If individuals with confirmed land interests wanted to lease their land, they should be allowed to do that so long as the leasing process was conducted in public, to ensure it was transparent and competitive. Notably, the petitioners made their declaration in terms of the rights that were guaranteed to them under the Treaty of Waitangi.

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373. Document 14, para 16.

374. Editorial, *New Zealand Herald*, 27 June 1883, p 4.

375. Editorial, *New Zealand Herald*, 27 June 1883, p 4.

376. 'Parliamentary News and Gossip', *New Zealand Herald*, 25 June 1883, p 5.

**8.4.5.2 Challenges to the petition**

Before long, the petition was challenged by questions about what groups it represented. This reflected the fact that the petition did not include only Ngāti Maniapoto lands, but also those in which neighbouring iwi had interests. As well as Ngāti Raukawa, Ngāti Tūwharetoa, and northern Whanganui iwi, the boundary also included lands in the north (in Kāwhia and in the northeast around Wharepūhunga) in which Ngāti Hikairo, Ngāti Mahuta, and Ngāti Hauā claimed interests. Reports in the settler press described the petition as being on behalf of Wahanui, Taonui, Rewi, and 412 others – naming only the Ngāti Maniapoto signatories and thereby creating the impression that it represented solely or mainly Ngāti Maniapoto views.<sup>377</sup>

Although Taonui had followed a careful process, spending three months traversing the border territories and speaking with communities who lived there,<sup>378</sup> concerns nonetheless inevitably arose among communities along or outside those borders. Some were concerned that the petition represented an attempt by Ngāti Maniapoto to secure interests in their territories. This reflected the atmosphere of suspicion that had been created by the Native Land Court with its mandate to convert complex and overlapping Māori land interests into defined blocks with named owners. These concerns were encouraged by private land agents and speculators, including William Grace, who wrote to Wetere suggesting that the petition was an attempt by Wahanui to claim all authority within the boundary.<sup>379</sup>

Some Māori were also concerned that the petition made no mention of Tāwhiao's authority, and instead placed trust in Parliament and the Government to protect the boundary and Māori authority within it. Whereas Wahanui and other rangatira clearly believed that engagement was necessary in order to secure peace and protect against the border pressures they faced, others in the Kingitanga movement believed it would be possible to hold out for longer.<sup>380</sup>

In its coverage of the petition's submission, the *Herald* had suggested that Parliament might come up with a 'plan to ascertain if the petition really expresses the wishes of the Kingites', before proceeding to consider its proposals.<sup>381</sup> Wahanui responded to the comment in a letter to the newspaper, making clear that, in his view, the petition had unanimous support from all who lived in the affected lands. He said he had noticed in the *Herald's* coverage 'a feeling of doubt whether our petition expressed the desire of the majority of the King natives', and he drew readers' attention to the part of the petition which described how 'deputies were chosen by the hapus to define the boundaries of the lands still remaining to us':

377. Document A78, p 873. Regarding Ngāti Hikairo, Ngāti Hāua, and Ngāti Mahuta interests within the boundary, also see AJHR, 1884, G-1, p 9; doc A85, p 274.

378. 'The Desires of the Kingites on the Land Question', *New Zealand Herald*, 23 July 1883, p 5 (doc A41, p 88).

379. Document A78, pp 873–875.

380. Document A78, pp 873–874.

381. Editorial, *New Zealand Herald*, 27 June 1883, p 4.

This shows plainly that it is our express wish and desire. Those men who were selected by the hapus went round our boundaries and erected posts, with the full consent of the people residing at different places where such posts were erected. We therefore desire the public to disregard any insinuations that may be made to the contrary.<sup>382</sup>

It is significant, here, that Wahanui referred to consent being given by hapū who lived in the lands along the boundary. In Māori tradition, it was hapū that held rights in land and managed its use. Wahanui was claiming the consent of traditional rights holders of all of the lands included in the boundary. He was not, however, explicitly claiming the unanimous support of all iwi to which those hapū might be affiliated. As noted, some iwi had lands within the boundary and lands outside it; consent had been sought only from those with lands within.

It is also significant that Wahanui referred to the petition as reflecting the wishes of ‘the majority of the King natives.’ The petition certainly used new tactics – declaring to Parliament the petitioners’ desire for it to make laws to protect their authority – but Wahanui does not seem to have seen it as representing a break from the Kingitanga itself, as some newspaper commentators suggested at the time. Rather, it was an attempt to secure Crown consent for what were Kingitanga goals: rejecting the Native Land Court and leaving Māori to administer their lands as they wished.

Wahanui noted that Parliament and the Government were also under pressure from land companies. He emphasised the conciliatory nature of the proposal – the petitioners were trying to establish a basis on which all New Zealanders could move forward together. But he also emphasised that such an outcome was only possible if Europeans stopped interfering with Māori land. From his point of view, this was not negotiable:

We particularly wish to save the people and to preserve our lands. If fresh water is mixed with salt it would be bitter to the taste, so will Europeans cause dissatisfaction if they persist in interfering with the management of our lands. Therefore we request the pakehas to cease causing trouble, and allow the fair day to arrive.

If Europeans ceased to be ‘selfish,’ then it would be possible to ‘permanently lay . . . down a course that will forward the welfare of the colony, so that men, women, and children of both races may rejoice’:

Pakehas and the King Maoris have been estranged from one another for a period of nearly twenty years, and our present aim is to bring about a reunion between the two races, and settle, once for ever, the estrangement that exists between the two peoples.<sup>383</sup>

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382. ‘The Desires of the Kingites on the Land Question,’ *New Zealand Herald*, 23 July 1883, p 5.

383. ‘The Desires of the Kingites on the Land Question,’ *New Zealand Herald*, 23 July 1883, p 5 (doc A41, p 88).

In a letter to *Te Korimako*, Wahanui also asserted that wide consultation had occurred around the petition. He explained said that it was the great desire of the petitioners that the 'Māori people would survive and that their land be returned'<sup>384</sup> ('He nui ta matou hiahia kia ora te iwi Maori, a kia tae mai hoki nga whenua kia matou').<sup>385</sup> However, Wahanui's responses were not sufficient to put to rest the question of representation. When it reported on the petition on 3 August, the Native Affairs select committee said it could not 'pronounce upon the allegations respecting boundaries or tribal rights'.<sup>386</sup>

Before the end of the month, the committee considered two related petitions which did not dispute the 'four tribes' petition on questions of policy – rejection of existing Māori land laws and the Native Land Court, and retention of Māori authority over land – but did dispute the boundaries Taonui had laid down. One of those petitions was signed by 489 'Ngatimaniapoto' and 'Waikato', including Manuhiri, Tūkōrehu, Ngatapa, Paku, Te Ngakau, Tana Te Waharoa, Tati Wharekawa, Hatara, and Nuimoa Te Paewaka. It had arisen from a hui called by Tāwhiao on 10 August 1883.<sup>387</sup>

The petitioners said they had not consented to the inclusion of 'ancestral lands of Potatau and Tawhiao' in the 'four tribes' petition area and had not consented to those lands being included in the four tribes' proposed title determination process. Most of the named petitioners appear to have been of Waikato descent. By referring to 'ancestral lands', the petition may have been concerned with protecting lands in Kāwhia, and in Wharepūhanga and Maungatautari (which lay just outside the petition area: see map 8.1 and appendix 1 to this chapter). Waikato iwi claimed these lands by take raupatu (see chapter 2). It may also have been concerned with lands at Whatiwhatihoe and nearby which Tāwhiao claimed through ancestry and occupation. Wilkinson, commenting on the petition in an official report, noted that Ngāti Maniapoto acknowledged the interests of Ngāti Raukawa, Ngāti Tūwharetoa, and Whanganui within the petition area. Waikato and Ngāti Hauā, on the other hand, were 'not admitted by Ngatimaniapoto to be [the] owners'.<sup>388</sup>

The other petition was in the name of Horonuku Te Heuheu, 'te tino Rangatira o Ngatituwharetoa i Taupo' (the 'head chief of Ngatituwharetoa, Taupo') and 21 others. The original petition seems to have been lost, but the Native Affairs Committee reported that Te Heuheu referred 'to the petition of Ngatimaniapoto, in which is made a claim for the lands of his tribe'. This claim, Te Heuheu said, did not have his consent. Te Heuheu gave the boundary of Ngāti Tūwharetoa lands, though the committee did not include that detail. Te Heuheu also complained 'of

384. Document A110, p 651.

385. 'Nga Whakaaro a Wahanui ma mo nga Whenua', *Te Korimako*, 15 August 1883, p 6 (doc A110, p 651).

386. AJHR, 1883, I-2, p 9 (doc A41, p 88).

387. AJHR, 1883, J-1A; AJHR 1883, I-2, p 24; doc A41, pp 89–90; doc A78, p 878. For details of the lands claimed by Waikato iwi within the petition area, see doc A85, p 274; doc A60, pp 69, 73–75, 82; AJHR, 1884, G-1, p 9.

388. AJHR, 1884, G-1, p 9.

the excessive fees allowed to lawyers in the Land’, and of the ‘practice of holding Courts at places distant from the lands adjudicated upon’. He asked for redress on these issues.<sup>389</sup>

The ‘four tribes’ petition did divide Ngāti Tūwharetoa territory. The boundary described in the petition ran down the middle of Lake Taupō, and on the south side of the lake from the mouth of Tauranga River to Ruapehu, before heading westwards towards the Waipingao Stream. This line effectively severed Ngāti Tūwharetoa territory in two by cutting through the lake. As shown by the words of their counter-petition, the Ngāti Tūwharetoa counter-petitioners were quite clearly acting under the impression that the boundary represented a territorial claim by Ngāti Maniapoto. This was not Wahanui’s intention. Rather, as discussed in section 8.4, the boundary had been drawn to represent lands belonging to all Te Rohe Pōtae tribes on which Europeans had no claim, and on which Māori authority therefore remained uncontested.<sup>390</sup> As the petition made clear, his intention was for the tribes within these lands to determine boundaries among themselves, rather than involving the court; the petition cannot therefore have been intended to represent only Ngāti Maniapoto territories.

The counter-petitions nonetheless raise questions about the extent to which Ngāti Tūwharetoa and other tribes along the boundary did in fact consent to the petition’s kaupapa. As described above, Wahanui’s position was that all hapū along the boundary had consented. But it appears that Te Heuheu was not involved, and it also appears that some communities along the boundary became concerned after the petition was sent, very likely as a response to agents such as Grace and to settler newspapers, which described the petition as dividing Ngāti Maniapoto lands from those of other tribes, and as dividing ‘Kingite’ tribes from those who wanted to submit to the colony’s laws and bring their lands before the Court. According to newspaper reports during August, some communities pulled out the pou whenua that Taonui had put in place. In August, Wahanui called hui in attempts to smooth things over, but – according to newspaper reports – they were not well attended.<sup>391</sup> According to one report, Rewi was sufficiently concerned about this opposition from Waikato leaders who claimed interests in the district that he asked Wahanui to move the boundary south from the Pūniu River to the Waipā.<sup>392</sup>

In this inquiry, Mr Maniapoto told us that Ngāti Maniapoto traditions emphasised the inter-tribal nature of the petition, which was sent not on behalf of Ngāti Maniapoto but on behalf of tribes who ‘supported the tikanga principles of the Kingitanga’ and were now bringing those principles forward into Te Ōhākī Tapu. The petition was ‘about the autonomy and authority of the *collective* tribes’ (our emphasis) and was ‘never just about the rohe of Ngāti Maniapoto nor a purely Maniapoto matter’:

389. AJHR, 1883, I-2, p 20 (doc A41, pp 89–90).

390. *Te Korimako*, 15 August 1883, p 6; translation from *New Zealand Herald*, 23 July 1883, p 5 (doc A110, p 627).

391. ‘Important Native Meeting in the King Country’, *Waikato Times*, 7 August 1883, p 2; ‘Native Affairs’, *Auckland Star*, 6 August 1883, p 2; doc A78, pp 881–882;.

392. ‘Wahanui’s Proposals’, *Waikato Times*, 21 August 1883, p 2.

It was about the five iwi and the kaupapa of tino rangatiratanga and the Kīngitanga. The principles that underpinned the establishment of the Kīngitanga would in the end become the founding cornerstones that would unite the chiefs and tribes of Te Rohe Pōtae. The whole process was underpinned by the authority of the chiefs and was marked by a continuing requirement that any proposed activity by the Crown in Te Rohe Pōtae had to be agreed in advance.<sup>393</sup>

Although Te Heuheu is on record as contesting the petition, there is clear evidence that several other senior Ngāti Tūwharetoa leaders supported and at times played crucial roles in Wahanui's negotiations with the Government.<sup>394</sup> As we will see later in this chapter, those rangatira appear to have represented the communities with lands inside the border, as counsel for Ngāti Tūwharetoa acknowledged.<sup>395</sup> They may well have signed the petition, though we cannot know. It may be that Taonui, in his marking of the external boundary, had not sought to meet and confer with Te Heuheu, regarding it as sufficient to meet the rangatira who lived along or within the boundary. In addition, as we have seen, events moved at a pace from March 1883, and Wahanui and other leaders had a great deal to contend with, including Bryce's attempts to move ahead with the exploratory survey, and the need to develop the petition itself. In doing so, they may have relied on rangatira along the boundaries to maintain support among their communities, and to develop support among their wider iwi, in particular those who lived outside the boundary but had interests overlapping it. In adopting this approach, they did not win Te Heuheu's support or explain to him the purpose of the petition. It is possible that they did not see the need to do so immediately, because the petition was designed to support the authority of those tribes, not undermine them, and to establish a process by which they could decide on their tribal boundary together.

It also appears that the differences among Ngāti Tūwharetoa rangatira reflected the different tactical approaches that Kīngitanga leaders in general were now considering in response to the pressures they faced from the Government, the Court, and settlement at their borders. As we will see, two key questions emerged in the period after Bryce called off negotiations with the Kīngitanga: first, should Māori engage with and make concessions to the colonial government in the hope that it might recognise their authority in return, or should they remain aloof? Secondly, if they engaged, should they do so in unison, either through the Kīngitanga or as part of the 'four tribes', or should they act independently in order to preserve their own tribal lands?

Ngāti Tūwharetoa claimants, and other Tribunals, have concluded that Te Heuheu rejected Wahanui's boundary because it divided Ngāti Tūwharetoa lands,

393. Document A42, pp 8–9.

394. Document J22, para 88, names Te Herekikie, Matuahū Te Wharerangi, Hitiri Te Paerata, and Te Papanui as Ngāti Tūwharetoa rangatira who took part in or supported the negotiations with the Government over the railway and economic development. Other sources also named Ngahuru Te Rangikaiwhiria and Te Pikikōtuku (doc A78, p 981). Also see Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, pp 221–222; submission 3.4.8, p 2; submission 3.4.281, pp 37, 39.

395. Submission 3.4.8, p 2.

but he was nonetheless supportive of the petition's underlying kaupapa, which was to preserve Māori land and authority.<sup>396</sup> The claimant Napa Ōtimi referred to differences over how to pursue that goal, Wahanui having chosen to engage with the Government while Te Heuheu and Tāwhiao did not. Mr Ōtimi said Ngāti Tūwharetoa tradition was that Kīngitanga leaders had become divided because of the Crown's decision to negotiate only with Wahanui and ignore not only Tāwhiao but also Te Heuheu.<sup>397</sup> The Central North Island Tribunal found that Wahanui and others behind the petition could have done more to communicate with all leaders of Ngāti Tūwharetoa to ensure they understood the true purposes of the petition: that it was intended to establish a rohe in which Māori authority would be preserved for all tribes, and was not intended as a claim on Ngāti Tūwharetoa lands.<sup>398</sup>

Just as we cannot know who from Ngāti Tūwharetoa signed the petition, we also cannot know who from Ngāti Raukawa and northern Whanganui iwi (Ngāti Hāua, Ngāti Hekeāwai, and Ngāti Hikairo ki Tongariro) signed. Again, however, there is clear evidence that senior rangatira from those tribes either had already supported<sup>399</sup> or later supported Wahanui in his negotiations with the Government, and on that basis may well have also signed the petition.<sup>400</sup> The Whanganui Whenua Tribunal concluded that the 'four tribes', including northern Whanganui iwi, had been involved in the petition, coming together to 'develop their own strategy for dealing with the Crown' and 'establish . . . a zone that included all customary Māori land under the Kīngitanga', though some Whanganui hapū subsequently fell away.<sup>401</sup> And the claimant Kevin Amohia told us that, although there was no record of who if anyone from Ngāti Hāua signed the petition, 'our traditions are that Ngāti Hāua were a party to it'.<sup>402</sup> As with Ngāti Tūwharetoa, divisions would emerge between those within the aukati who sought to act collectively with other tribes, and those outside it who sought to act independently in the hope of preserving the tribal estate.

The Native Affairs Committee made no recommendation on the Te Heuheu petition, noting that Parliament was already discussing the 'subject-matter of the petition', vis-à-vis the Native Land Laws Amendment Bill (discussed below

396. Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, pp 222–226; submission 3.4.8, p 3; doc J22, para 91.

397. Document J22, paras 86–89.

398. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 327–329, 332–333.

399. The Tūhua rangatira Hataraka (Ngāti Tama, Ngāti Te Ika), and Ngatai Te Mamaku (Ngāti Hāua, Ngāti Hekeāwai) had been involved in the April 1883 hui which made decisions about the petition: doc A78, pp 840–841; doc A41, pp 73–75.

400. For Ngāti Raukawa, Hitiri Te Paerata (also affiliated to Ngāti Tūwharetoa) was involved in negotiations with the Crown and signed the December 1883 application for the external boundary survey doc A78, pp 958, 981, while Te Papanui Takahiki (Ngāti Raukawa, Ngāti Tūwharetoa) was also recalled as supporting the negotiations (transcript 4.1.9, pp 387–388; doc J22, paras 88–89; see doc A41, p 132 for Ngāti Raukawa affiliation). Among northern Whanganui rangatira, Te Pikikōtuku, Ngatai Te Rangikaiwhiria, and Matuahu Te Wharerangi were all named as taking part in negotiations: doc J22, paras 88–89. These three were also regarded as Ngāti Tūwharetoa.

401. Waitangi Tribunal, *He Whiritauonoka*, vol 2, p 557.

402. Document H10, p 7.

in section 8.4.5).<sup>403</sup> With regard to the Waikato petition, the committee recommended that the House ‘take this and other similar petitions into consideration when dealing with Native questions’. However, as with Wahanui’s petition, the committee reported that it could not ‘enter into the question of tribal title or boundaries . . . or express an opinion thereon.’<sup>404</sup>

The committee considered a further related petition in August 1883, signed by Hone Wetere (a Kāwhia chief, not Wetere Te Rerenga of Mōkau) and others, all of Kāwhia. This petition sought an arrangement similar to that which Wahanui and his fellow petitioners requested: ‘protection in dealing with their own lands, with the assistance and advice of the Government’. In return, the Kāwhia petitioners would ‘assist in carrying out public works, such as roads, railways, and telegraphs’. In fact, as will be described in section 8.5, Ngāti Hikairo later joined their concerns with those of the June 1883 petitioners, effectively becoming the fifth iwi of Te Rohe Pōtae to have representatives supporting the petition. During the same period, tensions would flare up at Kāwhia over further government attempts to open the harbour and adjacent land for Pākehā settlement. For now, however, the Native Committee referred the Kāwhia petition to government for ‘consideration’ and once more gave ‘no opinion upon the question of ownership’.<sup>405</sup>

The counter-petitions and other opposition to the June 1883 petition serve to highlight just how complex an endeavour Wahanui, Taonui, and other petitioners were undertaking. Their goal was to secure Māori authority by appealing to the Crown, in accordance with the Crown’s duties under the Treaty. They were pursuing that goal in an environment of growing pressure at the district’s borders from land speculators and the Court – an environment in which tribes’ shared policy ambitions could easily be subsumed by their obligations to protect their own lands. It is important to recognise that the counter-petitions related only to Ngāti Tūwharetoa territories and to contested territories close to the Pūniu. For most of the 1883 petition area, and for almost the entirety of this inquiry district, support for the petition appears to have been unanimous or close to it. Indeed, there is some evidence that the counter-petitions brought Ngāti Maniapoto communities more strongly behind their leaders.<sup>406</sup>

Nonetheless, the unease felt by some along the boundary meant that Wahanui had to put additional time into shoring up support. He had intended to travel to Wellington to speak in support of the petition,<sup>407</sup> but instead remained in Te Rohe Pōtae during August and September of 1883, calling hui to confirm support for the petition.<sup>408</sup>

403. AJHR, 1883, I-2, p 20.

404. AJHR, 1883, I-2, p 24.

405. AJHR, 1883, I-2, p 24.

406. ‘The Mokau Lands’, *Auckland Star*, 27 September 1883, p 2.

407. Document A78, p 869; ‘Latest Native News’, *Waikato Times*, 12 June 1883, p 2.

408. ‘Native Affairs’, *Auckland Star*, 6 August 1883, p 2; ‘The Mokau Lands’, *Auckland Star*, 27 September 1883, p 2.



#### 8.4.6 The Government's response to the petition, July–September 1883

The Government's response to the June 1883 petition came in the form of two pieces of legislation: the Native Land Laws Amendment Act 1883 and the Native Committees Act 1883. Both were intended as general measures and were not specifically tailored to the issues raised in the petition.<sup>409</sup> Nevertheless, the Government treated the legislation as its primary response to the petition. This view was encapsulated in the report of the Native Affairs select committee, which considered the petition and reported in early August 1883, shortly after the Bills were introduced to Parliament. The committee included Bryce, the four Māori members of the House of Representatives, and nine other members of the House of Representatives.<sup>410</sup> It was empowered to call evidence, including hearing from the petitioners, but chose not to. Its report noted that the committee had

not thought it necessary to summon any of the petitioners to give evidence on this petition; but a considerable amount of evidence has been given on other petitions bearing incidentally upon its allegations. After careful consideration the Committee has arrived at an opinion that the complaints and fears expressed are too well-founded, and that the apparent desires of the petitioners are reasonable. The Committee therefore recommends the petition to the favourable consideration of the House when the Native Committees Bill and the Native Land Sales Bill [*sic*] are before it.<sup>411</sup>

##### 8.4.6.1 The Native Land Laws Amendment Act 1883

The Native Land Laws Amendment Act was introduced to the House by Bryce as the Native Land Bill on 26 July 1883 and received its final reading on 4 September. The Act set out to conduct minor reforms to the Native Land Court's processes.

These reforms followed a review of the court's process, which began April 1883, when the Government announced its intention to establish a commission of inquiry that would look at the 'whole working of the Native Lands Court'.<sup>412</sup> In the end, the Government did not establish a commission of inquiry. Instead, Bryce asked the chief judge of the Native Land Court, JE Macdonald, who had replaced Fenton in November 1882, to report on the need for 'some improvement' in the court's constitution and practice and to suggest remedies.<sup>413</sup> Macdonald was known to be in favour of reform, and had complained publicly about some matters related to the court, primarily the 'avidity' of the various groups of people surrounding it.<sup>414</sup> He was instructed in particular to focus on the expenses involved

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409. Document A78, pp 883, 889–890; doc A41, pp 96–101.

410. Document A78, p 877.

411. AJHR, 1883, I-2, p 9.

412. Editorial, *New Zealand Herald*, 23 April 1883, p 4.

413. Under-Secretary, Native Department, to chief judge, 26 May 1883, AJHR, 1883, G-5, p 1; 'Judge Macdonald on the Native Land Court', *New Zealand Herald*, 18 July 1883, p 5.

414. Chief judge to Native Minister, 22 June 1883, AJHR, 1883, G-5, p 3; 'Judge Macdonald on the Native Land Court', *New Zealand Herald*, 18 July 1883, p 5.

in determining titles, including allegations that they ‘entirely swallowed up’ Māori ‘estates’.<sup>415</sup>

He reported within a month, writing from Cambridge where the court was sitting at the time. He concluded that lawyers should not be banned from the court. Nor was he swayed by the argument that court costs drained Māori communities of their resources, arguing that expenses were paid by the ‘real client’ – the European purchaser – who, he claimed, was so often waiting in the wings of Māori land title investigations. Macdonald considered that the many ‘evils’ complained of were not part of the court’s essential make up, but rather were a consequence of particular circumstances. In the Cambridge district, for example, Macdonald acknowledged that the extent and value of the lands coming before the court had intensified settler competition, leading to some objectionable practices. At issue, then, was not the court, but the various parties – such as land speculators, their lawyers and agents – who relied on court decisions to facilitate access to Māori land. Macdonald zeroed in on the widespread practice of prospective would-be purchasers negotiating land transactions with Māori before the court determined title to the lands concerned. In his view, prohibiting the practice – indeed, making it a criminal offence – would avert the problems raised.<sup>416</sup> None of this, of course, addressed the question of the Crown’s role in the purchasing process, nor the type of title the court produced.

The Native Land Laws Amendment Act 1883 effectively incorporated Macdonald’s suggestion for penalising anyone who attempted to negotiate any kind of interest in Māori land – including arrangements for purchase, lease, occupation, or exchange – prior to the Native Land Court establishing the title to the land. No such negotiations could take place until 40 days after the title was ascertained (with ascertainment including the time it took to deal with applications for rehearing). Agreements reached prior to ascertainment of title could not be legally enforced, and fines of up to £500 could be imposed on anyone who participated in such agreements (sections 7–10, and 12–13). As many Māori wanted, the Act provided that lawyers and agents would be excluded from appearing in court, although the court retained some discretion to determine particular circumstances in which legal representation was warranted (sections 3 and 4). The Act also gave the court greater flexibility in regulating its approach to hearings (section 6).<sup>417</sup>

Both Marr and Loveridge described the reforms in the Act as ‘minimalist’.<sup>418</sup> The legislation addressed some of the criticisms levelled at the court, but in a manner that would not disrupt the goal of making Māori land available for Pākehā settlement. When Bryce introduced the Bill to the House, he noted its object of improving ‘the present mode of dealing with Native Lands’, while explaining that it

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415. Under-secretary, Native Department, to chief judge, 26 May 1883, AJHR, 1883, G-5, p 1; doc A41, pp 76–78.

416. Chief judge to Native Minister, 22 June 1883, AJHR, 1883, G-5, pp 1–3; doc A41, pp 76–79; doc A78, pp 883–887.

417. Document A78, pp 887–888; doc A41, pp 92–93; doc A50, p 119.

418. Document A41, pp 92–93; doc A78, p 887.

was ‘highly desirable – indeed almost necessary’ to bring the ‘large tracts of unoccupied [Māori] land in the North Island’ into ‘profitable occupation’. This, Bryce said, would be ‘in the interests of the colony and in the interests of the Natives.’<sup>419</sup>

If the reforms did not work, Bryce foresaw ‘a return to the pre-emptive right of the Crown’<sup>420</sup> – the right, established under article 2 of the Treaty of Waitangi, for the Crown to be the sole purchaser of Māori land. Even without pre-emption, the Act gave the Government a clear advantage over private land purchasers: nothing in the Act applied to the Crown (section 13), which could continue to not only negotiate for Māori land before the court investigated its title, but also be represented by lawyers in court. The provisions to exclude lawyers, and prohibit land dealings prior to title being determined, easily found support, including among the Māori members of the House of Representatives. However, Te Wheoro, speaking in the House of Representatives, doubted the Act would sufficiently change the court’s processes.<sup>421</sup>

#### 8.4.6.2 *The Native Committees Act 1883*

The second piece of legislation – the Native Committees Act – provided the legal framework for the establishment and work of ‘native committees’, which were to comprise at least six and no more than 12 members, elected in districts constituted under the Act. The Bill was introduced to the house by Bryce on 24 July 1883 and received its final reading on 29 August.

Prior to its introduction, two of the Māori members of the House of Representatives – Tawhai and Taiaroa – said that all of the Māori members supported the Bill and encouraged its introduction in order to gauge views of members.<sup>422</sup> In July, the four members had sent an appeal to the secretary of the Aborigines Protection Society, setting out how the Crown had broken the ‘bond of Waitangi’, ‘which being a party to a suit in the question of lands, acts also as its judge’. They stated on behalf of Māori: ‘We merely desire to get the control of our lands into the hands of an elective body of Maoris.’<sup>423</sup> Possibly on the basis of previous native committee proposals (section 7.4.4.6), or on the basis of Government explanations of the Bill (discussed below), the Māori members appear to have hoped that Bryce’s native committees would have substantial powers. As we will see, that would not be the case. The historian Vincent O’Malley, writing about the Māori members’ views, said it was doubtful that they knew of Bryce’s plans to make the committees essentially powerless.<sup>424</sup>

The Bill passed through the House without debate. On introducing its second reading, Bryce briefly commented that its ‘object was to supply a means to enable the Maoris to discuss matters of interest connected with their land, and to report

419. ‘Native Land Laws Bill’, NZPD, 9 August 1883, vol 45, p 456 (doc A41, p94).

420. ‘Native Land Laws Bill’, NZPD, 10 August 1883, vol 45, p 534 (doc A41, p98).

421. Document A78, p 888; doc A41, p 99.

422. Vincent O’Malley, *Agents of Autonomy: Maori Committees in the Nineteenth Century* (Wellington: Huia Publishers, 1998), p 151.

423. O’Malley, *Agents of Autonomy*, pp 145–146.

424. O’Malley, *Agents of Autonomy*, p 151.

the decisions they might arrive at to the Native Land Court, for the information of the Court'. He added: 'The establishment of these Committees was a thing that had long been desired by the Native population in some form; and he might say that so long ago as 1880 certain Native members of the House and himself prepared clauses which they thought might be embodied in a Bill.'<sup>425</sup>

Bryce distanced himself from the Native Committees Empowering Bill, which had been introduced by Tomoana the previous year. He said that he had felt 'bound to oppose' that Bill, because he 'thought it went too far by giving the Committees a jurisdiction and power which were likely to cause disputes and conflicts between the races'. 'However, the present Bill was based upon the clauses which were prepared by the Native members and himself in 1880, and he thought the Native members were themselves perfectly satisfied with this Bill, of which he now moved the second reading.'<sup>426</sup>

O'Malley notes that there is no evidence that Bryce had been involved in drafting Tawhai's Bill of 1880, which went even further than those presented to Parliament in 1881 and 1882 in providing for real powers to be given to the proposed committees, and to which his own Bill bore few similarities. A telling change from Tomoana's Bill of the previous year was that the term 'empowering' had been dropped from its title.<sup>427</sup>

The Bill received some debate in the Legislative Council. There, the Premier, Frederick Whitaker introduced the legislation, saying that he was 'sure nothing but good would come out of it, as it would be a step towards giving the Natives a little more power in the management of their own affairs.'<sup>428</sup> Colonel Whitmore thought otherwise, saying that it was 'one of the most childish Bills ever introduced to Parliament . . . It could have no possible effect for good, and it must do an immense amount of harm.' Henare Tomoana's Bill would have been of 'unmixed advantage to the colony'. The committees established under that Bill, he said, 'would have taken the place . . . of the Native Land Court, and that would have been a very good thing to do'. By contrast, the committees introduced in Bryce's Bill 'had no power whatever. They could do nothing, whatever, but they might express an opinion to the Land Court, which the Court might accept or reject as it thought fit'. The result, he thought, would be 'a succession of quarrels from end to end of the districts'. He added that Māori needed to be given 'a more potent voice in declaring who were the actual proprietors and successors in the case of Native land. At present they could do nothing.'<sup>429</sup>

An alternative view was put by Henry Williams, who thought that the Bill was a move in the right direction. 'We had deprived the Natives of the mana of their chiefs', he said, including taking away the machinery that had been provided,

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425. Bryce, 22 August 1883, NZPD, vol 46, p153.

426. Bryce, 22 August 1883, NZPD, vol 46, p154.

427. O'Malley, *Agents of Autonomy*, p152.

428. Whitaker, 29 August 1883, NZPD, vol 46, p341.

429. Whitmore, 29 August 1883, NZPD, vol 46, pp341-342.

including native assessors and policemen. ‘The consequence was that Māori had invented their own machinery of government, and it was almost exactly the same as that set forth in this Bill.’ He said that he knew a judge of the Native Land Court who, on a case coming before the court, simply said to the Natives, ‘Now, first go out and settle these differences amongst yourselves. When you have agreed, then come in, and I will clinch your decision.’ While the machinery in the Bill ‘might not be so complete as could be desired’, it was still ‘a move in the right direction, and for these reasons he would support the measure’.<sup>430</sup>

Whitaker responded by saying that Whitmore was mistaken: the present Bill was a copy of Tomoana’s.<sup>431</sup> However, as O’Malley noted, the similarities were only those about procedure; the rest of the Bill bore little resemblance to its predecessor.<sup>432</sup> Whitaker thought that very little might come of the Bill, because Parliament had ‘tried before to give the Natives the power of dealing with questions of this kind, but they had not availed themselves of this privilege’. He did not say what ‘powers of this kind’ meant, nor did he say when Parliament had previously sought to empower Māori in a manner similar to this Bill. He also acknowledged that Wahanui and the Kingitanga were ‘dissatisfied with some portion of the Bill’. Nonetheless, he hoped that Māori in some parts of the country would take it up. He said that he could not say whether Wahanui and Ngāti Maniapoto would take it up – in any case, he said, it had not been passed specially for them, but for all Māori.<sup>433</sup>

The Act, as it was passed,<sup>434</sup> tended to bear out Whitmore’s assessment of the powers of the prospective committees rather than that of Bryce: in short, they had few resources to draw on, and even fewer powers to exert. The Act set out the rules and requirements for members, elections, and conducting meetings, but there was no indication as to how committees might be resourced, including the payment for members. Committee members could not sit without first swearing an oath of allegiance to the Queen.<sup>435</sup>

The rules for conducting elections required the resident magistrate to notify elections 21 days in advance in ‘populated parts of the district, by advertisement, placard, notice or otherwise’ (section 4). Nominations would then be received at a single place of the resident magistrates’ choosing, following which voting would commence (section 5). The 12 people with the most votes would be elected to the committee (section 6). There was no requirement for hapū and iwi within the specified district to have guaranteed representation. The process relied on the fact that

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430. Williams, 29 August 1883, NZPD, vol 46, p 344.

431. Whitaker, 29 August 1883, NZPD, vol 46, p 345.

432. O’Malley, *Agents of Autonomy*, p 154.

433. Whitaker, 29 August 1883, NZPD, vol 46, p 345.

434. O’Malley commented that only one part of the Bill was amended during its progress through the House: clause 14, dealing with the power of the committees with respect to title investigations. However, he noted that the records give ‘no indication of the nature of this amendment’: O’Malley, *Agents of Autonomy*, p 282.

435. Document A78, pp 891–892.

all those who might have interests in the committee would be present at the place chosen by the resident magistrate on the day the election was called. This process had significant ramifications when it came time for the Crown to call an election for the new committee that was to be established in Te Rohe Pōtae (discussed in section 8.6.4.1).

The committees were provided power to arbitrate over minor disputes, not exceeding £20 in value, provided that both parties agreed. Apart from that, there was no provision for the committees to levy fines, nor to pass local by-laws. In other words, they were to have no powers of self-government. The most telling provisions were in the powers granted to the committee in relation to the Native Land Court. The committees could make inquiries into Native Land Court cases where owners or successors were to be determined, or where boundaries were in dispute, and they could report their decisions in writing to the Chief Judge, for the information of the Court.<sup>436</sup>

The Crown submitted that the Act provided Māori committees with ‘a power to fix boundaries’, which could be used in conjunction with the Native Land Laws Amendment Act 1883, which (under section 6) provided the court with ‘the flexibility to use “the best ways and means, without reference to legal formalities, to ascertain and determine the ownership of land held by Natives under their customs and usages”’.<sup>437</sup> However, the court was under no obligation to take notice of any reports submitted by the committees. Section 14(3) did not (as the Crown suggested) give the committees a power to ‘fix’ boundaries. Rather it provided that – in the event of disputes arising – committees could ‘make such inquiries as it shall think fit, and may report their decision thereon, certified in writing in the Maori language under the hand of the Chairman of the Committee, to the Chief Judge of the said Court for the information of the Court.’ All decision-making powers would continue to reside in the court.

Nor did the Act offer Māori an alternative to the court. Under the Native Reserves Act, they could apply to the court for reserve status for qualifying lands; and under the Native Committees Act they might be able to have a stronger say over land titles. However, they would still have to do those things through the Native Land Court; no other choice was offered to them.

#### **8.4.6.3 *The response of Te Rohe Pōtae Māori to the Government's reforms, August–September 1883***

Even while the Bills were making their way through Parliament, Wahanui made his views known through a letter to various newspapers. During the debate in the Legislative Council, Pollen commented that he had understood the Bill had been introduced at the request of Wahanui, but the chief ‘had since expressed his dissatisfaction with the provisions of the Bill’.<sup>438</sup>

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436. Document A41, pp93–94; doc A78, p889.

437. Submission 3.4.301, p59.

438. Pollen, 29 August 1883, NZPD, vol 46, p342.

Wahanui, in letters to *Te Korimako* (in te reo Māori) and the *New Zealand Herald* (in English), noted the petitioners' approval of that part of the Native Land Laws Amendment Act that implemented the exclusion of lawyers and land agents from the Court:<sup>439</sup>

E whakapai ana ano matou ki etahi wahi o te 'Pire Whakatika i nga Ture Whenua Māori', ta matou e whakapai ana ko te arainga atu i nga roia ratou ko era atu tangata kia kaua e uru ki roto ki te whakahaerenga o matou take whenua . . . ko te whakahaeranga o nga tangata e tahuri ana ki te hoko, ki te reti whenua ki etahi o matou i te mea kaore ano i oti te whakahaerenga take whenua.<sup>440</sup>

We approve of part of the Native Land Laws Amendment Bill. The part we approve of most is the exclusion of lawyers and other land agents from having anything to do with the settlement of our land claims, also the [indictability of] persons that try to buy or lease land from any of our people before the settlement of land claims.<sup>441</sup>

However, the legislation failed to address a central tenet of the petition: the demarcation of the boundary, in order to cloak it with legal protection:

A, he mea ake tenei, he mea hoki i meatia tenei Pire hei whakarite mo ta matou pitihana. I tino whai matou kia kite iho i te whakaurunga o etahi kupu ki roto hei whakamana i ta matou whakahaerenga rohe i tukua atu nei i roto i ta matou pitihana. Na te mea, ko tenei te mea e tino hiahia ana matou kia tino whakamana i naianei.<sup>442</sup>

And, as this Bill is intended to carry out our petition, we would like to have seen a clause inserted that would have given effect to the delineated boundary set forth in our petition, as this is the principal thing at present we wish confirmed.<sup>443</sup>

Wahanui also explained the petitioners' dissatisfaction with the native committees legislation:

Ko te 'Pire Komiti Maori' e rere rawaho ana tera i ta matou pitihana, nate (sic) mea e ki ana te pitihana kia matou ano te ritenga, mo a matou whakahaere hei muri rano i te otinga o nga take whenua katahi a te Kawanatanga ka tonoa atu kia tukua mai etahi

439. Document A41, pp 100–101; doc A78, pp 895–896; doc A110, pp 652–653; 'Na Wahanui: He Kimi', *Te Korimako*, 15 September 1883, p 5. (Translation in *New Zealand Herald*, 28 August 1883, p 5).

440. 'Na Wahanui: He Kimi', *Te Korimako*, 15 September 1883, p 5 (doc A110, pp 652–653).

441. 'The Native Land Laws Amendment Bill: Letter from Wahanui', *New Zealand Herald*, 28 August 1883, p 5 (doc A110, pp 652–653). Minor translation amendment by the Waitangi Tribunal.

442. 'Na Wahanui: He Kimi', *Te Korimako*, 15 September 1883, p 5.

443. 'The Native Land Laws Amendment Bill: Letter from Wahanui', *New Zealand Herald*, 28 August 1883, p 5.

tangata whaimana hei aki mo a matou whakaritenga a ki reira ra ano. Tetehi e tango rawa ana i to matou mana.<sup>444</sup>

The Native Committees Bill is not in accordance with our petition, because the petition states that we are to manage our own affairs, and after we have settled land claims, then the Government will be asked to send some person vested with power to give effect to our arrangements, and not till then. Further, this Bill takes altogether from us our authority.<sup>445</sup>

Wahanui once again emphasised the customary, self-governing nature of the territory:

ko ta matou kupu tenei e papatupu tonu ana enei whenua waihoki me nga tangata. No konei matou i mea ai kia matou ano te ritenga o matou whenua kia whakakorea rawatia atu ano hoki nga Kooti Whenua.<sup>446</sup>

Our lands are still under our customs, and so are the people; therefore we say, leave the management of our lands to us, and abolish the Land Court altogether.<sup>447</sup>

#### 8.4.7 Treaty analysis and findings

We pause here to consider whether the Crown's response to the June 1883 petition was adequate in terms of the Treaty of Waitangi. In order to do so, we must first assess the petition and establish whether the demands of Te Rohe Pōtae Māori were consistent with the Treaty, and – more particularly in respect of the terms of negotiation that had been established in March 1883 – whether Te Rohe Pōtae Māori clearly set out reasonable and practicable measures by which the Treaty could be brought into proper effect.

##### 8.4.7.1 *Were the demands of Te Rohe Pōtae Māori consistent with the Treaty?*

The petition was, without a doubt, a remarkable initiative on the part of Te Rohe Pōtae Māori. It was the result of a period of sustained co-ordination on the part of the district's iwi in response to the pressures they had faced from the Crown in preceding years. The petition's full purpose and effect can only be understood in the context in which it was made – particularly the marking of the external boundary, and how Te Rohe Pōtae Māori came to associate it and its protection with their rights and authority.

Arising from these acts, the petition is best understood as a declaration on the part of the petitioners – and therefore of the vast majority of Māori communities

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444. 'Na Wahanui: He Kimi', *Te Korimako*, 15 September 1883, p 5.

445. 'The Native Land Laws Amendment Bill: Letter from Wahanui', *New Zealand Herald*, 28 August 1883, p 5.

446. 'Na Wahanui: He Kimi', *Te Korimako*, 15 September 1883, p 5.

447. 'The Native Land Laws Amendment Bill: Letter from Wahanui', *New Zealand Herald*, 28 August 1883, p 5.



throughout this inquiry district – of the tino rangatiratanga that had been exercised by their communities for generations: a declaration that tino rangatiratanga was both a form of authority that was in existence and a right that had been guaranteed to them by the Treaty of Waitangi. It represented an opportunity for the Crown, as a Treaty partner, to use its lawmaking powers to provide them with the protection of their tino rangatiratanga that had been promised to them by the Treaty.

The declaratory aspect of the petition can be seen in the context in which it was drawn, as Taonui proceeded to mark the boundaries with pou roherohe, consulting with communities as he went as to the initiative they were about to embark on. The letter of Rewi and others to Grey indicates the importance that Te Rohe Pōtae Māori had come to attach to the idea of securing their external boundary. They came to see it as a marker of the rights and authority held by the peoples of the territory. The ‘sacred word’ (‘Te Kī Tapu’) – as represented in the pou that had come to be erected on the encircling boundary – was the people’s declaration that their rights and authority were in existence and had to be respected.

Rewi signalled that in order for their people to agree to the opening of the territory for the railway, the Crown would need to guarantee that their rights and authority would be protected. This would require Māori and the Crown to work in partnership, with the Crown using its legislative powers to recognise, protect, and give practical effect to Treaty rights. Wahanui’s ‘manifesto’ indicated that the Government would have to proceed judiciously by respecting the authority of Te Rohe Pōtae Māori – in order for the Crown and Te Rohe Pōtae Māori to enter into a faithful partnership (‘te piringa pono’).

These statements illustrate how the rangatira who signed the petition associated ‘Te Kī Tapu’ – the people’s declaration of their rights and authority – with the requirement that the Crown recognise their external boundary. Having formalised a relationship with the Crown, they were now in a position to have their pre-existing rights and authority recognised by Parliament. This is what they sought from the negotiations in exchange for allowing the railway to run through their territory. It was in this context that the petitioners set out how the Crown should provide for the legislative recognition of their rights within their territory, and in doing so reverse the trend of legislation that undermined the Treaty’s guarantees. They described these guarantees as they were set out in the te reo Māori version of the Treaty: ‘nga wahi tuarua tuatoru o te Tiriti o Waitangi, i tino whakapumautia ai te tino rangatiratanga, me te kore ano hoki e whakararurua ta matou noho i runga i o matou whenua.’

This was much stronger language than the English text of the Treaty, which was faithfully reproduced in the translation of the petition as: ‘privileges secured to us by the second and third articles of the Treaty of Waitangi which confirmed to us the exclusive and undisturbed possession of our lands’.

The petitioners, however, understood that the Treaty had provided them with much more than the ‘exclusive and undisturbed possession of our lands’. Not only would they be able to retain their lands for as long as they wished (or, more literally,

that they would not be disturbed in the occupation of their lands – ‘e whakararurua ta matou noho i runga i o matou whenua’), they would also fully retain their absolute chieftainship in relation to those lands (‘i tino whakapumautia ai te tino rangatiratanga’).

In chapter 3, we explained how and why the Treaty guaranteed the right of tino rangatiratanga, which entailed not just the undisturbed possession of certain properties and treasures, whether tangible or intangible, but also the exercise of absolute chieftainship or self-government in relation to those things. As part of the Treaty relationship, the Crown was obliged to use its powers of kāwanatanga to protect and give effect to these rights so far as was practicable under the circumstances. To this extent, the petitioners’ view of their Treaty rights accords with our determination of the meaning and effect of the Treaty, arising from its two texts and reconciling the differences between them.

The petitioners also made clear that they were entirely unwilling to sacrifice any of those rights in exchange for the supposed benefits of the railway and European settlement. Those benefits would be worth nothing, they said, if they resulted in Te Rohe Pōtae Māori losing their land. Their intention was not to lock up the territory from European settlement, or to prevent leasing, but to prevent the wholesale land alienation and other harmful practices they associated with the Court. This was their right, guaranteed to them by the Treaty of Waitangi.

The petitioners asked the Crown to take five actions:

- ▶ To relieve them from the ‘entanglements incidental to employing the Native Land Court’, including fraud, drunkenness, and demoralisation;
- ▶ To enact a law to ‘secure our lands to us and our descendants for ever, making them absolutely inalienable by sale’;
- ▶ To recognise their authority to determine iwi and hapū rohe (territories) within Te Rohe Pōtae, and to determine the proportionate interest of each individual within those territories;
- ▶ To appoint people who could confirm these arrangements for iwi and hapū rohe and individual interests so they would have a legal effect that was recognised by the colony’s laws; and
- ▶ To provide that any individual who had established rights to land and who wished to lease that land could do so, so long as the sale of the lease was publicly advertised.

In this way, the petitioners set out in specific terms what they expected to be provided to them in the course of future engagements with the Crown, before they would be willing to contemplate giving consent for the construction of the railway. They did not wish to lock up their territory against European settlement and public works, but were clear that retaining their lands was their priority. They signalled that they would only agree to what the Crown was seeking if the rights and authority guaranteed to them under the Treaty of Waitangi – including the right to determine their own titles and manage the future disposition of lands – were firmly secured by a new act of Parliament. And they signalled clearly that they were willing to contemplate the leasing of land, but not sales.

The petition represented a declaration to the Government to formally provide for Māori authority within the machinery of the colonial state. For the first time since 1840, they were accepting that the Crown's lawmaking powers could apply to their territories, while also calling the Crown's attention to the reciprocal obligations enshrined in the Treaty. In this manner, their approach appears to have been deliberately designed to overcome the Crown's previous concerns that the Kingitanga had sought an authority separate from the Crown or from colonial institutions. The petitioners seemed confident that what they were seeking both fitted with the Treaty and could be achieved with the support of enabling legislation. Their petition was an opportunity for the Government to provide statutory recognition for the petitioners' tino rangatiratanga.

#### **8.4.7.2 Was the Government's response adequate?**

The parties differed over the adequacy of the Crown's immediate response to the petition, which came in the form of the Native Land Laws Amendment Act 1883 and the Native Committees Act 1883. The claimants considered that the Native Committees Act, in particular, did not provide Te Rohe Pōtae Māori with 'real power and therefore was not able to deliver on what was promised'.<sup>448</sup>

The Crown's view was that its response was considered by the Government at the time to be an appropriate response to the petition.<sup>449</sup> Crown counsel summarised the two Acts as having 'met Rohe Pōtae Māori part way, made changes to the existing system, . . . reflected some of the requests of the petition, achieved what was practicable in the circumstances, and incorporated beneficial features for Rohe Pōtae Māori'.<sup>450</sup> Yet counsel also submitted that the adequacy of the response could be assessed by the response of Te Rohe Pōtae leaders, and acknowledged that they were not satisfied over matters such as recognition of the boundary, and recognition of the right of Te Rohe Pōtae Māori to manage their own affairs within their territories.<sup>451</sup> Counsel nonetheless submitted that 'despite the limitations of the Native Committees legislation, Te Rohe Pōtae Māori made effective use of its provisions by establishing and operating a district committee (known as the 'Kawhia Native Committee', discussed below in section 8.6.2) under the Act'.<sup>452</sup>

In response to the suggestion by claimants that the Crown could have put in place legislation similar to that for Te Urewera in 1896 (which granted the people of Te Urewera powers of self-government and tribal control over lands), the Crown submitted that that legislation had been enacted in a very different parliamentary environment. In 1883, the Government did not have control of Parliament, and those seeking greater powers for Māori could not win parliamentary support. On the one hand, counsel submitted that there was 'substantial opposition to elements

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448. Submission 3.4.128, p 9.

449. Submission 3.4.301, pp 44, 47.

450. Submission 3.4.301, p 47.

451. Submission 3.4.301, pp 47–48.

452. Submission 3.4.301, p 48.

of the new legislation'; on the other hand, counsel also acknowledged the passage of the Native Committees Act was 'fairly smooth', aside from 'some scepticism about the title ascertainment provision, and the novelty of some of the provisions'.<sup>453</sup> The Crown also submitted that it had never accepted 'the proposition that the Native Land Court system should not apply to the Rohe Pōtae'. Nor, at that time, did it accept 'the proposition of a district overlapping several tribal territories being subject to separate legislation allowing for local self-government'.<sup>454</sup>

In sum, the Crown's position was that the legislation it enacted was an adequate first step towards meeting the demands set out in the petition, although it did not satisfy Te Rohe Pōtae leaders and did not deliver the powers of tino rangatiratanga or self-government the petitioners demanded. On the one hand, the Crown said its failure to deliver what Te Rohe Pōtae leaders sought was a reflection of parliamentary opposition to empowerment of Māori, but on the other hand the Crown acknowledged that the Government was itself unwilling to deliver what the petition sought.

If we are to accept that the Crown's response was an adequate first step, we would need to see evidence, first, that delivering what the petitioners sought was impracticable at that time, and, secondly, that the Crown genuinely intended to take further steps to meet the terms of the petition once they became practicable. We have seen no such evidence.

In respect of what was possible at the time, there is no evidence that the Crown even considered granting the petitioners the rights and powers they sought. Rather, the decision was made – as reflected in the report of the Native Affairs Committee – that the Government's response would be in the form of the Native Committees Act and the Native Land Laws Amendment Act, both of which were already before the House. Neither was a specific response to the petition, and neither was intended to deliver the powers that Te Rohe Pōtae Māori sought. As Whitaker said in Parliament, they were intended for all Māori, not just Te Rohe Pōtae Māori.

More importantly, there is no clear evidence to suggest that a Bill giving substantial powers to Māori within districts would have been defeated. As discussed in chapter 7, both McLean and Premier Grey had been prepared to offer self-government arrangements of some kind for the whole district in the late 1870s, so it was clearly not inconceivable by the standards of the time. An 1882 Bill providing meaningful powers for district native committees (including powers to make by-laws, adjudicate in some civil disputes, conduct assault and larceny trials, and conduct preliminary land title determinations which the Native Land Court would then have to take account of<sup>455</sup>) had been only narrowly defeated in Parliament, and might have passed had it received the Government's support. Bryce was one of those who strongly opposed the measure, and he did so for the specific reason that he opposed the proposal that the Court would have to take cognisance of

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453. Submission 3.4.301, p 46.

454. Submission 3.4.301, p 49.

455. Native Committees Empowering Bill 1882, ss 9–11, 16.

native committee decisions on land title (see section 7.4.4.6).<sup>456</sup> Bryce was simply unwilling, in 1882 or 1883, to provide for self-government arrangements even when others in Parliament were.

In debating the 1883 native committees legislation, some members of the House clearly favoured giving Māori greater powers to determine land titles, but the Government did not favour such measures. In the Legislative Councillor Sir George Whitmore's view, the similar titles of the Native Committees Empowering Bill 1882 and the Native Committees Act 1883 had deceived Māori members into believing they were similar measures. In his view, the Native Committees Act gave Māori 'nothing but a sort of a sop to keep their mouths shut'. Māori leaders, he added, 'are not pleased with it'.<sup>457</sup>

The Government was on other occasions quite willing to make special provision for Te Rohe Pōtae. It had done so in respect of the Railway Authorisation Act 1882. The Amnesty Act 1882, though applying generally, was almost entirely designed to address the situation there. In 1884, legislation would be passed enabling the construction of the railway by prohibiting private purchasing within Te Rohe Pōtae and surrounding districts (section 8.7.2), and this would be followed by several other Acts aimed specifically at protecting the Crown's land purchasing position in Te Rohe Pōtae and other areas of Māori land served by the railway. Special legislation was also passed in 1885 enabling the settler Joshua Jones to complete a lease of land at Mōkau (section 8.9.1).

But the Government was not willing to empower native committees to determine title to Māori land, especially in a district with more than one iwi who might have competing claims. Nor was it willing to grant Māori communities meaningful powers of self-government. As Bryce acknowledged in 1884, his intention was that Native Land Court would be 'assisted' by native committees; the idea of Māori determining title among themselves was 'utterly impracticable',<sup>458</sup> and the idea of Māori self-government was an 'absurdity'.<sup>459</sup>

Was this a reasonable position? The June 1883 petition was contested by iwi whose interests straddled the boundary. The Waikato–Maniapoto petition aimed to protect what the petitioners regarded as Tāwhiao's ancestral lands and rejected the land title process described in the four tribes' petition (under which the four tribes asked to determine land title among themselves). The petition of Te Heuheu and Ngāti Tūwharetoa also rejected the petition area boundary, which split Ngāti Tūwharetoa lands. There is no evidence that these tribes were opposed to the petition's underlying principle – that Māori should determine land ownership among themselves and should then be free to administer lands as they wished. Their concern was with the boundary, and with the potential implications of that boundary. For Waikato iwi, the concern may have been that the 'four tribes' would shut them out of any title determination process. Among Ngāti Tūwharetoa, the concern

456. Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, pp 217, 229.

457. 'Native Committees Bill', 29 August 1883, NZPD, vol 46, 1883, p 342 (doc A67 (Boulton), p 56).

458. Bryce to governor, 11 January 1884, AJHR, 1884, A-1, p 12.

459. Document A78, p 1025.

was that the tribal rohe would be split (and the petitioners may also have been concerned that different systems of authority would operate in each part). These concerns, in turn, reflected the pressures that Te Rohe Pōtae iwi faced due to the encroachment of the Native Land Court on the borders of their territories.

Had the Government seriously interrogated the motivations behind the Ngāti Tūwharetoa and Waikato–Maniapoto petitions, it would have understood that the petitioners' concerns were mainly over boundaries and protection of tribal land interests, not over the underlying kaupapa. The Native Committees Act 1883 did not determine boundaries, it concerned the powers that native committees might exercise within the areas they were established to serve. But the Government appeared only to be prepared to use the counter-petitions to lend weight to its view that Māori could not be given authority over their own lands in respect of either title determination or administration.

The tribes of Te Rohe Pōtae had long experience of resolving rights issues among themselves and had debated tribal rohe as recently as 1882 (chapter 7). The National Park and Central North Island Tribunals, when considering these issues, found that the various tribes of Te Rohe Pōtae should have been given the opportunity to resolve boundary issues among themselves, but the Government never considered this option. If it had explored this possibility, it might also have considered whether it was possible to define tribal boundaries for native committees – an outcome that may well have won support from the tribes involved. But this was an option that would have taken time and negotiation, which the Government, impatient to press on with the railway, was not prepared to offer.

Instead, the Government advanced native committees legislation that gave very few powers to native committees and delivered almost nothing of what the petitioners had sought. This, along with the Native Lands Amendment Act 1883, were the Crown's only responses to the petition, in which Te Rohe Pōtae Māori had called for the Crown to recognise and give effect to their tino rangatiratanga over their lands. The committees manifestly did not give effect to tino rangatiratanga, which involved a right of Māori communities to exercise absolute chieftainship or self-government over their lands and territories, including a right to manage those lands as they wished. The Central North Island Tribunal described the Native Committees Act 1883 as a 'very serious missed opportunity' to provide meaningful powers for district Māori committees, both in terms of determining land titles and in terms of self-government more generally.<sup>460</sup> And the National Park Tribunal endorsed the finding of the 1891 Native Land Laws Commission that the Act was a 'hollow shell' that 'mocked and still mocks the Natives with a semblance of authority.'<sup>461</sup> We agree.

If the Crown was unwilling to contemplate providing for Māori to determine land titles among themselves, and to have full authority to administer their own lands, it should have told them so in plain terms. Te Rohe Pōtae Māori had clearly

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460. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 318.

461. Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, p 230; see also p 217.

articulated to the Crown their view of the Treaty of Waitangi, and how its terms might be put into practical effect by the Crown. The response they received was only partial and did not fully reveal the Crown's position on the Treaty, nor the full extent of the rights it was willing to accord to Māori under the Treaty.

In sum, we could only accept that the Native Committees Act 1883 was an initial response if we were satisfied that a more expansive measure could not have received the approval of Parliament at that time, and if the Act had been a genuine attempt to establish institutions that might be expanded further in the future. We are not satisfied on either count; rather, the Act *was* the Crown's response.

Under the Act, the court could still be placed in the position of authority in determining title over Māori lands within the petition area, and land could still be alienated. Wahanui's response reminded the Government that it had not given effect to the petition's key demands: the recognition of the external boundary and the management of their own affairs. The petitioners' position was that after they had determined tribal and hapū rohe, certain persons identified by Māori could be given powers to confirm their arrangements. Wahanui was clear that the Native Committees Act did not allow for this to happen, and denied the many communities who had supported the petition their rightful authority: 'What we have to say is this[:] our lands are still under our customs, and so are the people; therefore, we say, leave the management of our lands to us, and abolish the Land Courts altogether.'<sup>462</sup> This was a kaupapa that the petitioners clearly supported (and once again we emphasise that the petitioners represented the vast majority of communities in this inquiry district). From the available evidence, it was a kaupapa that Te Heuheu and those supporting Tāwhiao's land interests in the north of the district would also have supported.

We therefore find that the Crown's refusal to contemplate and put into effect a meaningful measure in response to the petition of Te Rohe Pōtae Māori constitutes a breach of the Treaty principles of autonomy and partnership, and the Crown's obligation to actively protect the tino rangatiratanga of Te Rohe Pōtae Māori.

#### **8.4.7.3 *The effect of the Crown's response on the negotiations***

While the Crown did not meet the demands of Te Rohe Pōtae Māori as set out in the petition, and therefore breached its Treaty duties, was this critical to the success of the negotiations at that point? The petitioners had not won what they sought – Crown recognition of their authority within their rohe. But the Crown's failure at this point did not alter the reality that Te Rohe Pōtae Māori continued to exercise that authority on the ground, and the Crown still could not achieve what it wanted (the railway, the court, and settlement) without their consent. Clearly, further negotiation would be required.

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462. 'The Native Land Laws Amendment Bill: Letter from Wahanui', *New Zealand Herald*, 28 August 1883, p 5.

Wahanui had set out the expectations of Te Rohe Pōtae Māori in his response to the native committees legislation. He had once again made clear that Te Rohe Pōtae Māori expected nothing less than Crown recognition, in an Act of Parliament, of their Treaty right 'to manage our own affairs', including with respect to land. Without that, there would be no consent for further progress on the railway or surveys.

Bryce may have had little sympathy for Te Rohe Pōtae leaders' demands, but he had been forced to negotiate before, and in order for the exploratory survey work to proceed peacefully, he needed to maintain the goodwill of the communities. Thus, even though the Crown had failed this initial test, it still had the opportunity to mitigate the prejudice Te Rohe Pōtae Māori might suffer, and put matters back on track, by arriving at further agreements. How far the Crown would be willing to go would be tested as the negotiations proceeded.

### 8.5 THE DECEMBER 1883 EXTERNAL BOUNDARY AGREEMENT

Further tests soon appeared as Bryce returned to Kāwhia with the intention of establishing Crown authority there. By then, Bryce had decided it was time for Te Rohe Pōtae Māori to submit an application to the Native Land Court. However, Wahanui was determined to demonstrate the support of his people for the initiatives set out in the June 1883 petition.

The opportunity for all these matters to be put to test occurred at the next major hui, when Bryce returned to Kihikihi in November–December 1883. A significant new agreement emerged under which the Crown would survey the external boundary of the 1883 petition area, and Te Rohe Pōtae Māori would make an application to the Native Land Court. Claimant counsel submitted that the sole purpose of that application was to seek Crown recognition of the external boundary, in order to define the area over which the mana and rangatiratanga of Te Rohe Pōtae Māori would continue to be exercised. Counsel submitted that Te Rohe Pōtae Māori had no interest in having iwi, hapū, and individual land titles determined by the Court.<sup>463</sup>

The Crown, however, considered that the application was made in the hope that 'the Court would recognise their title.'<sup>464</sup> Ultimately, the Crown submitted, 'the Rohe Pōtae leadership knew they were taking risks with the application for a survey and title investigation', as this was the only way to 'take control of the title determination process and extract concessions from the government.'<sup>465</sup> We consider these positions below.

#### 8.5.1 Further steps to open Kāwhia, September–October 1883

Soon after the Native Committees Act 1883 and the Native Lands Amendment Act 1883 were enacted, the premier, Frederick Whitaker, resigned, saying he had

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463. Submission 3.4.128(b), pp 17, 21.

464. Submission 3.4.301, p 55.

465. Submission 3.4.301, p 61.



private business to attend to. His replacement was the former premier, Harry Atkinson.<sup>466</sup> Bryce remained as Native Minister, and the change did not immediately herald any significant changes in policy on Te Rohe Pōtae or Māori more generally (though changes would come the following year, as we will see in section 8.6.6).

In the months following the new legislation, there was a degree of public optimism that Wahanui and other June 1883 petitioners might come to accept the legislation, even if some remained opposed to the opening of their district. The *Herald* proposed that the issues at hand were 'merely a question of arrangement'. It predicted that 'the Ngatimaniapotos' would 'demand large reserves' and 'oppose any survey or any railway' if they were not made. 'But reserves the Government can easily make', the *Herald* editorialised, and the public would likely be supportive. The Government needed to act with some urgency, particularly in selecting a route for the main trunk railway, which the *Herald* forecast would otherwise become an election issue in 1884.<sup>467</sup> However, Wahanui's letter indicated that Te Rohe Pōtae Māori would not so easily agree.

### **8.5.1.1 The opening of Kāwhia Harbour and preparations for land sales, September 1883**

While Wahanui had been attempting to persuade the Crown to go further, Bryce's attention was drawn back to Kāwhia. As discussed in section 8.3.1, Bryce had claimed in January to have opened Kāwhia, and the Government had surveyed the Pouewe sections and had begun to construct a road from Raglan. With settler newspapers supporting the view that the town had been opened, settlers began to drift in. By May a boarding house and other businesses were reported to be operating on the as yet unsold land.<sup>468</sup>

While Kāwhia Māori had initially tolerated the surveyors who laid out the township, they eventually began to question the Government's intentions, especially as it prepared to expand its surveying work by bringing the road into the district and selling the township sections. Tensions developed, and Tāwhiao returned from his Bay of Plenty tour to check on matters in person. There, a spokesman for Tāwhiao (who was not named in reports) declared that Kāwhia township and harbour belonged to Māori and that Europeans would have to leave if asked. Several chiefs called for a stricter approach to the aukati. In July, a party of more than sixty Māori disrupted the survey of the Government's road from Raglan to Kāwhia, pulling up about a mile of survey pegs in the Kāwhia-Aotea section as a warning not to cross into Māori territory. There were also reports of Māori threatening to forcibly remove the surveyors and to destroy their property. However,

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466. 'The Premier Resigns', *New Zealand Herald*, 24 September 1883, p 5.

467. Editorial, *New Zealand Herald*, 29 September 1883, p 4 (doc A41, p 101).

468. Document A78, p 899.

the situation settled down when work on the road stopped due (Bryce insisted) to funds running out, not because of tangata whenua policing of the aukati.<sup>469</sup>

Tensions rose again from September 1883 as the Government prepared to accelerate its opening of the township. On 8 September, Parliament passed the Kawhia Township Sale Act 1883, which enabled the Crown to legally proceed with selling the township sections by public auction. Two days later, the Government began work to open the harbour. A government steamer under Captain Fairchild arrived during the week beginning 10 September 1883 and began to mark the harbour entrance with buoys and beacons, as they had previously begun to do in February. Apparently, no notice or courtesy of any kind was offered to any of the local rangatira, including Tāwhiao. Even chiefs who were well-disposed towards the Crown, such as Hone Wetere (who had led the Kāwhia petition just months earlier), were irritated with the Government's lack of etiquette.<sup>470</sup>

Within a few days of the steamer's arrival, local Māori expressed their anger. What exactly happened is unclear. Reports suggested that Ngāti Mahuta chiefs Te Ao and Tihirahi went around removing and destroying the beacons. They were also reported as threatening local Pākehā and looting. However, later suggestions claimed only one beacon was pulled up, and that settlers were warned but not attacked. It does appear that the chiefs were very angry and repeated earlier claims that the township land had never been properly transacted. Initial suspicions that Te Ngakau and Tāwhiao were behind the protests were later addressed by Wilkinson. Wilkinson acknowledged that Tāwhiao had actually denounced and not authorised the action, but he expressed support for the suspicion that Te Ngakau was involved and that this was part of a more defiant Māori strategy against the Government's activities in the township.<sup>471</sup>

Bryce sent his private secretary, Butler, to investigate the situation in Kāwhia. Butler was made aware that Te Ao and Tihirahi did not enjoy the universal support of the Kāwhia leaders. He warned the two rangatira that Bryce was very angry about what had happened; they had broken the law and were technically liable for prosecution. On considering Butler's report, Cabinet agreed to send an armed constabulary to Kāwhia – a military outpost would be established, the beacons replaced, and Tāwhiao and his people warned against any further acts of resistance.<sup>472</sup>

### 8.5.1.2 *The arrival of Bryce and the armed constabulary, October 1883*

The armed constabulary force numbered 112 men. They landed at Kāwhia aboard the steamer *Hinemoa* on 3 October, accompanied by Bryce himself, and set up their camp on a hill above the township. Hearing of Bryce's arrival, Tāwhiao

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469. Document A78, pp 899–900; see also 'Native Obstruction at Kawhia', *New Zealand Herald*, 6 July 1883, p 5; 'Tawhiao's Obstruction', *Waikato Times*, 5 July 1883, p 2; 'The Native Obstruction at Aotea', *Waikato Times*, 21 July 1883, p 2.

470. Document A78, pp 901, 909–911.

471. Document A78, pp 901–902.

472. Document A78, p 902.

arrived to meet with him, and the two men met in person for the first time since the failed negotiations at Whatiwhatihoe almost a year earlier.

According to Bryce's own account of the visit, Tāwhiao took responsibility for the damage done to the beacons. He 'correctly assumed' that the Government's actions were a direct challenge to his authority and an assertion of Crown sovereignty. Tāwhiao told Bryce that he wanted to know what the beacons represented and asked if they meant the Government was taking possession of the land around Kāwhia. He said he wanted Kāwhia Harbour left to him, and he also opposed the Government building roads in the district. He had not been consulted about either the roads or the 'opening of Kāwhia' (that is, opening the harbour to Europeans and establishing Kāwhia township for European settlers). Yet in Bryce's words, Tāwhiao was 'content with the letter of the Queen sent to him (the Treaty of Waitangi)'.<sup>473</sup> If Tāwhiao did indeed use these words, we consider it likely that he intended them to suggest that he was content with the Treaty guarantee of Māori rights to their lands and fisheries. The description of the Treaty as a 'letter sent to him' was presumably intended metaphorically, to refer to the Queen's words to all rangatira who signed, or were offered opportunities to sign, the Treaty.

Bryce replied that the Treaty had 'two sides.' While the Queen had undertaken to respect Māori rights to their lands, Māori had agreed to accept her sovereignty. He pointed out that no lands had been taken from Māori without payment, 'except where tribes had first violated their part of the treaty'. In other words, Bryce was justifying the post-war confiscation of Waikato and Taranaki lands, and – contrary to what Tāwhiao had implied – was also reading the Treaty guarantee of tino rangatiratanga as a guarantee of mere possession. Bryce denied that the beacons denoted possession of the land, they were merely for the purpose of guiding vessels. He denied any intention to seize land, either in February when he had first visited, or now. He did not even intend to claim the land on which the constabulary was camped; when the constabulary decamped, the land would belong to 'whoever were proved to be the lawful owners of it.' As for constructing roads over Māori land, that was both a 'lawful act' and a 'valuable present' to whoever owned the adjacent land. The destruction of the beacons, on the other hand, was 'wrong – very wrong – and a repetition of it could not be tolerated'. Bryce said it was not he, but those who destroyed the beacons, who had brought the constabulary to Kāwhia. However, he would not take any further action about it. For his part, Tāwhiao offered to re-erect the beacons himself, but the work was already taken care of, completed by Captain Fairchild, under the guard of 20 armed constabulary in case of any obstruction.<sup>474</sup>

On the evening of their meeting, Tāwhiao and two other (unnamed) chiefs dined with Bryce aboard the *Hinemoa*. Afterwards, according to the *Herald*:

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473. 'The Opening of the Kawhia Harbour (Memorandum by the Native Minister), 16 October 1883, AJHR, 1884, G-1, pp 1–2 (doc A78, pp 903–905).

474. 'The Opening of the Kawhia Harbour (Memorandum by the Native Minister), 16 October 1883, AJHR, 1884 G-1, pp 1–2; 'The Expedition to Kawhia', *New Zealand Herald*, 8 October 1883, p 5.

the party on board, while promenading on deck, noticed a large number of natives on the beach driving cattle, which they brought up opposite the vessel. Tawhiao then, addressing Mr Bryce, said the cattle were a present for the use of the constabulary, and asked the Native Minister to accept them. They numbered fifteen head. Mr Bryce formally accepted the cattle and then returned them to the natives, making Tawhiao a present of twelve bags of seed potatoes.<sup>475</sup>

Bryce also met leaders of Ngāti Hikairo during the visit and took the opportunity to encourage them to place their lands before the Court – a course of action they had already been considering. As noted earlier, their August 1883 petition had indicated that they were willing to consider public works in the township, in return for protection of their lands. Bryce may have indicated that protection would be offered, because soon after his visit the Ngāti Hikairo rangatira Hone Te One attended a hui where he argued that Kāwhia should be opened for roads and other works.<sup>476</sup> According to a later report from the Government's agent, Wilkinson, Ngāti Hikairo did decide to make an application to the Court, which led to tensions with Ngāti Mahuta, who also claimed interests in northern Kāwhia.<sup>477</sup>

The *Hinemoa* left Kāwhia to return to Wellington on 5 October, with Bryce onboard, 'everything being in perfect order.'<sup>478</sup> In his account of the visit, which he penned on 16 October, Bryce portrayed the Government's programme of work at Kāwhia as amounting to a clear assertion of Crown sovereignty, and also as a rejection of the claims of Tawhiao and other Māori to have authority over the area. He described the township as having been 'quietly taken possession of' in February 1882 and explained his actions in October as a further 'assertion of the Sovereign rights of the Queen without any recognition of the pretensions of the Maori potentate'. He dismissed the recent protests as little more than an attempt to test the Government's intentions and resolve, and claimed that Māori at Kāwhia were divided over the protest actions that had occurred, with the majority in fact pleased to see the constabulary established.<sup>479</sup>

Bryce spoke in rather general terms, and the newspapers tended to oversimplify internal tensions among Māori, so it is difficult to know for sure just how divided the Kāwhia communities were at the time, or the ways that any divisions impacted on the complex inter- and intra-tribal relations at Kāwhia. Bryce's comments, and his actions, suggest that he was not above taking advantage of such divisions, and perhaps encouraging them where that aided his goals. By asserting sovereignty over Kāwhia, he was taking direct aim at the Kīngitanga, but he was also sending a message to signatories of the June 1883 petition. The petition

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475. 'Mr Bryce and Tawhiao', *New Zealand Herald*, 9 October 1883, p 5.

476. Document A78, pp 907–909.

477. 'Reports from Officers in Native Districts', AJHR, 1884, G-1, p 9.

478. 'The Expedition to Kawhia', *New Zealand Herald*, 8 October 1883, p 5.

479. 'The Opening of the Kawhia Harbour (Memorandum by the Native Minister)', 16 October 1883, AJHR, 1884 G-1, pp 1–2.

area had included Kāwhia and Pirongia lands up to the confiscation line (see map 8.1). Here, Bryce was showing his willingness to ignore the petition area boundary if he felt the circumstances warranted it. More particularly, he was crossing the boundary with armed force. Ngāti Hikairo and Ngāti Mahuta, the principal iwi of northern Kāwhia, would be left to consider their options.<sup>480</sup>

The arrival of the constabulary would also become significant for other reasons. Very soon, alcohol would be flowing into Kāwhia Māori communities via the constabulary camp's canteen. Canteens that sold liquor were a typical feature of constabulary facilities at the time, and Wilkinson was aware that the enhanced access to liquor at Kāwhia, and the drunkenness it entailed, compared poorly with the relative sobriety of communities like Whatiwhatihoe and others within the aukati.<sup>481</sup> The June 1883 petitioners had already signalled that they wished to avoid the social effects of drunkenness that were associated with the Native Land Court. Very soon, Māori communities within Te Rohe Pōtae would begin to seek other ways to control liquor in the territory.

### 8.5.2 Ongoing issues with the exploratory surveys, March-June 1883

In the months before the constabulary arrived at Kāwhia, government surveyors had resumed their railway exploration surveys. Whereas Ngāti Maniapoto leaders had understood the 16 March 1883 agreement as being for a single journey through to Mōkau, the Government in June 1883 pushed ahead with surveys of three other routes from Te Awamutu – a western route to Marton via Stratford, a central route to Marton via Taumarunui, and an eastern route to Napier. All three routes required exploration within the aukati (the eastern route included some lands in northeast Te Rohe Pōtae, and the other routes passed through the centre of the district). On several occasions, the surveyors met with opposition from local communities, who were unwilling to let them cross the aukati.<sup>482</sup>

#### 8.5.2.1 Opposition and stoppages

The Government assigned four surveyors to complete the exploratory work. George Williams was assigned to the eastern route. John Rochfort was assigned to the central route, starting his work at Marton and working his way north towards Tūhua. And Robert Holmes and Morgan Carkeek were assigned to the western route, starting at Stratford and also working their way north towards Tūhua.<sup>483</sup> In addition to gathering information about possible routes for the railway, the surveyors were also gathering information about the quality of the land. For example,

480. Document A78, pp 907–909.

481. Document A78, pp 908, 1027, 1029.

482. Marr describes these events in detail in doc A78, pp 909–925. The routes are mapped in doc A119, plate 30. Reports from the surveyors' are in AJHR, 1884, 1-6, pt 5, and in AJHR, 1884, D-5.

483. 'Reports on Main Trunk Line, Auckland to Wellington', AJHR, 1884, 1-6, pt 5, pp 87, 89, 95, 98–99; Carkeek to chief surveyor, Taranaki, 27 July 1884, AJHR, 1884, 1-6A. Other surveyors later contributed to explorations for the western route (Laurence Cussen, HM Skeet, and Arthur Rawson).

in the various places where he surveyed, Rochfort noted soil quality, locations and types of timbers, details of ancient battle sites, and other items.<sup>484</sup>

In time, those employed on the exploratory railway routes encountered opposition which – though described by Loveridge as ‘sporadic’ – became more intense the closer they got to the aukati.<sup>485</sup> Holmes and Carkeek (western route) worked for some months without incident, only being warned off by local Māori when they approached Tūhua in November 1883.<sup>486</sup> Rochfort (central) and Williams (eastern) both found they could muster support in some quarters by consulting influential chiefs, but likewise encountered difficulties as they neared the aukati.<sup>487</sup>

Williams was first obstructed as he passed through lands to the north-west of Lake Taupō in July 1883. He initially carried on, paying no heed to warnings to turn back. He also admitted to using the Ngāti Raukawa chief Hitiri Te Paerata’s absence at the Native Land Court in Cambridge as an opportunity to examine some of the northern Taupō land (Te Paerata, a close relative of Rewi, was one of the rangatira responsible for enforcing the aukati<sup>488</sup>). Local Māori were not happy, but Williams was soon able to report that he had a letter from Te Paerata giving him permission to explore. He nonetheless continued to meet opposition, which increased in intensity as he travelled.<sup>489</sup>

John Rochfort observed a similar pattern in the opposition he encountered, which varied in degrees as his proximity to the aukati changed. Rochfort pushed past objectors, who he determined would not hold their ground if challenged. However, as was the case with Williams on the eastern line, and Holmes on the western, that strategy was rendered less and less effective the closer Rochfort got to upper Whanganui communities. In effect, the patterns of refusal the surveyors experienced through the last quarter of 1883 signalled that the aukati was still in place and Te Rohe Pōtae communities continued to regulate it.<sup>490</sup>

In September, Bryce prepared a circular letter addressed to ‘The Chiefs of the Maori people’. He wanted to address a perception that the resistance the surveyors encountered was caused by a lack of information among Māori about the true nature of the survey (that is, nothing more than exploratory). Although the final version has not survived, a draft of the letter indicates Bryce noting that the Government was proceeding with the railway so that ‘the fruits of the earth may pass to and fro’, for the ‘great advantage’ of ‘both races’. His advice was that Māori should ‘assist me in this great work’. He asked that the chiefs make the way for the surveyors ‘smooth’, and to have ‘obstacles . . . quietly removed.’<sup>491</sup> Overall, Bryce’s letter was insufficient to quell resistance to the surveyors. By early November, the

484. Document A78, p 922.

485. Document A41, p 102.

486. Document A78, pp 913–914.

487. Document A78, pp 910–924; doc A41, p 102.

488. Document A78, pp 30, 81, 83.

489. Document A78, pp 911–912.

490. Document A78, pp 913–922.

491. Bryce, draft letter, not dated [ca September 1883] (doc A41, p 102; doc A78, pp 914–915).

Government had been forced to instruct Holmes and Carkeek to refrain from pushing across the aukati boundary for fear of further opposition, while Williams was instructed to suspend work on the eastern line, and to take the leave he had owing.<sup>492</sup>

### 8.5.2.2 *Obstacles to Rochfort's survey*

Meanwhile, Rochfort had continued on the central line, in increasingly tense circumstances. Rochfort carried supplementary letters of support from influential Pākehā like Resident Magistrate William Woon and the Reverend Thomas Grace. And he had the backing of particular chiefs, such as the prominent Whanganui leader Te Keepa Te Rangihiwini. Yet, local Māori opposition continued to impede his progress. In September, he was delayed for days at a time at Karioi near Ruapehu, where the people disputed the Crown's earlier acquisition of interests in the Rangataua block. As shown in map 8.1, Ruapehu marked the southernmost point in the June 1883 petition. Rochfort was delayed again at Ruakaka, near the Manganui o te Ao tributary of Whanganui, and for several more days as he travelled in the company of seven chiefs chosen to see him back down the river. It was not a direct trip, but rather one that stopped and started along the river as the chiefs paused at various communities to debate Rochfort's survey.<sup>493</sup>

Overall, there was a mix of opposition and support, and Māori communities proposed a range of conditions under which Rochfort might be allowed to proceed. These included requiring him to produce evidence of Tāwhiao or Wahanui's authority, waiting for general political circumstances between Māori and the Crown to improve, and waiting for the next Maehe (in 1884). In other words, they continued to rely on the inter-tribal governance structure that had served Te Rohe Pōtae communities for many years under the Kīngitanga.<sup>494</sup> At one point, in early October, Rochfort suggested Bryce send some armed forces. However, Bryce reportedly regarded it 'unwise to force our way'.<sup>495</sup>

Rochfort reached the Waimarino plains in mid-November, where he sought the support of Pehi Tūroa, and at Taupō he gained further support from Topia Tūroa. He and his party were allowed to proceed to Taumarunui – also part of the 1883 petition boundary – though it was not to be a straightforward exercise.<sup>496</sup> Two men assigned to guide Rochfort 'retreated' and returned home (to Taupō and Rotoaira) as the party neared Taumarunui.<sup>497</sup> Then, with about 30 miles of their journey remaining, Rochfort and his party were stopped and had their pack-horses and some of their gear confiscated.<sup>498</sup>

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492. Document A78, p 913.

493. Document A78, pp 913–916.

494. Document A78, pp 915–918.

495. Appendix to Rochfort report, AJHR, 1884, D-5, p 5 (doc A78, p 921).

496. Document A78, pp 922–923.

497. Rochfort to Blackett, 14 December 1883 (doc A78, p 923).

498. Document A78, p 923.

Allowed to continue on, Rochfort finally reached the pā at Taumarunui in late November, where he was met, he said, ‘sullenly[,] without a word of welcome.’<sup>499</sup> It soon became clear that he would get no further than Taumarunui, which Ngatai Te Mamaku confirmed when he arrived. Ngatai, who was still waiting for confirmation that he would be included in the amnesty, told Rochfort he could protect him, but only on his own land. He could not protect him beyond Taumarunui, and it would be pointless to carry on because the aukati was firm. No one could pass through while Bryce and Wahanui still had unresolved matters to address. This was confirmed by the arrival of men responsible for enforcing the aukati, who similarly refused Rochfort permission to go further. They also refused to let him send a messenger through and noted that Wahanui had ‘stopped the country’ for a long time, and that some of them had been patrolling the district for the last six months.<sup>500</sup>

Thus, by December 1883, the third of the three exploratory surveys was over, at least for now. Rochfort went back to Tokaanu and from there made his way around the eastern boundary of the aukati to Kihikihi, where he arrived on 14 December.<sup>501</sup> There Rewi and Wahanui told him to wait until 17 December – Bryce was expected that week, and everything would then be ‘settled satisfactorily.’<sup>502</sup>

### 8.5.3 The hui at Kihikihi, November-December 1883

Following his visit to Kāwhia, Bryce returned to Wellington. Having already tried to persuade Ngāti Hikairo to place their lands before the Native Land Court, he turned his attention to persuading Ngāti Maniapoto. He wrote to Wahanui, suggesting it was time for a decision about matters they had previously discussed.<sup>503</sup> We do not know if Wahanui responded, but he had previously expressed his dissatisfaction with Bryce’s response to the petition, and clearly wanted more substantial law reforms. Bryce, as well as wanting to bring Te Rohe Pōtae lands to court, also had to deal with continued opposition to trig surveys and to the additional railway surveys. Both sides clearly had much to discuss before Te Rohe Pōtae leaders would consider opening their district to the railway or the court. In mid-November, Bryce travelled to Auckland, and then to Te Awamutu, where he met Rewi. Arrangements were made for a hui to be held at Kihikihi, between Bryce and Te Rohe Pōtae leaders.<sup>504</sup>

Wahanui, Rewi, Taonui, and other leaders gathered at Alexandra on 28 November for preliminary discussions. Topics covered included the railway – in particular, the question of whether to allow the central exploratory survey to continue and which route they might prefer – and questions of land, in particular the

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499. Appendix to Rochfort report, AJHR, 1884, D-5, p 5 (doc A78, p 924).

500. Document A78, p 924.

501. Document A78, p 924.

502. Rochfort to Blackett, 14 December 1883 (doc A78, p 925).

503. Note on coversheet of Bryce to Wahanui, 10 October 1883 (doc A41, p 103); doc A78, p 934.

504. These events, and preparations for the hui, are discussed in doc A41, pp 103–105 and doc A78, pp 930–938.



question of whether to place their lands before the court.<sup>505</sup> The party then left for Kihikihi, where they met Bryce on 30 November and 1 December, at the house the Government had built for Rewi.<sup>506</sup>

Some newspaper accounts described it as a meeting between Bryce and ‘the Maniapotos’, and named Wahanui, Taonui, Rewi, Hopa Te Rangianini, Taromoa, Hitiri Te Paerata, John Ormsby, Te Wharo, and Aporo as either speaking or taking some other part in the proceedings. Te Paerata was a leader of Ngāti Raukawa and of northern sections of Ngāti Tūwharetoa;<sup>507</sup> all others were of Ngāti Maniapoto, though Taromoa was also affiliated to Ngāti Hikairo, and Te Rangianini to Ngāti Matakore.<sup>508</sup> Of the most senior Ngāti Maniapoto leaders, only Wetere Te Rerenga was absent.<sup>509</sup> The Crown’s agent George Wilkinson later acknowledged that representatives from Ngāti Maniapoto, Ngāti Raukawa, Ngāti Tūwharetoa, and Ngāti Hikairo had all been present and taken active part in the proceedings.<sup>510</sup>

The outcome of the hui was an application on behalf of the ‘four tribes’ – Ngāti Maniapoto, Ngāti Raukawa, Ngāti Tūwharetoa, and Whanganui – to the Native Land Court, for the purpose of having the external boundary of the 1883 petition area surveyed.<sup>511</sup>

### 8.5.3.1 Bryce’s address to the rangatira

The formal proceedings began on 30 November with a speech from Bryce to the assembled rangatira.<sup>512</sup> Bryce addressed the Government’s response to the June 1883 petition. He acknowledged that the ‘complaints’ in the petition had ‘something in them’ and said he had initiated legislative reforms that had removed all of the petitioners’ objections: the court had been improved and simplified; lawyers and agents were now excluded from proceedings; means had been ‘arranged for committees to inquire into titles’; the Government now provided funds for surveys; and the law prohibited land purchases before title had been determined. ‘[S]o far as possible,’ he said, ‘the wishes of the petitioners have been carried out.’ He added that he had said ‘that I was willing to help you, and I have kept my word.’<sup>513</sup> Bryce made no mention of the ways in the Native Committees Act had fallen short of what the petitioners had sought in return for their agreement to open the district; on the contrary, he implied that the committees would have real power in determining title when the legislation did not provide for that, and his clear intention was to persuade the assembled leaders that no further reform was needed before they opened their district.

505. ‘Wahanui and the Railway’, *New Zealand Herald*, 30 November 1883, p 5.

506. Document A78, p 939.

507. Submission 3.4.8, para 10; doc A83, p 18.

508. Document A78, p 939.

509. Editorial, *Waikato Times*, 4 December 1883, p 2.

510. Document A78, p 959; see also p 958.

511. Document A41, p 105; doc A78, p 938.

512. Marr (doc A78, pp 940–943) and Loveridge (doc A41, pp 106–107) described Bryce’s speech based on accounts from the *New Zealand Herald* and other newspapers.

513. ‘The Native Minister and the Kingites’, *New Zealand Herald*, 1 December 1883, p 6.

Having dispensed with the petition, Bryce then turned to what he regarded as the core business for the meeting, which he described as ‘the subject on which everything turns’: his proposal that Ngāti Maniapoto apply to the Native Land Court for an investigation of title to the territory. Bryce said the hui was ‘a representative meeting of the Ngāti Maniapotos’ and maintained that what was now required was for Ngāti Maniapoto to bring their land before the court. ‘There could be no better time for sending applications for hearing for the whole of your territory’, he said. Although Bryce said there were other matters to attend to, such as the completion of the halted railway exploratory surveys and recommencement of the trig survey, he insisted that everything ‘comes back to what I said at first – investigation of title’: ‘Therefore, I advise you, the Ngātimaniapotos, to have your titles investigated. That action will be followed by the appointment of a committee to assist the Court.’ He also undertook to ‘send two Judges to this district, to remain two years if necessary’.<sup>514</sup>

Prior to the hui, Bryce had sought advice from officials about applications that had been made to the Native Land Court. In all, he was aware of 15 applications since 1881 for surveys for court purposes.<sup>515</sup> In the 16 March 1883 agreement, Bryce had made a commitment to hold back survey and court applications within Te Rohe Pōtae until further discussions had been held. Now, he reminded Te Rohe Pōtae leaders of these applications. It was his ‘duty’, he said, to inform the rangatira that if they made their own application to the court, ‘well’, but if they did not, ‘I cannot hold back the Court any longer.’ He concluded by noting that he had ‘spoken plainly . . . as I always do.’<sup>516</sup> In fact, Bryce had withheld salient details about the 15 applications. None were within the inner aukati. One concerned part of Kāwhia, which had been heavily contested for many generations; the other 14 all concerned the narrow area of land in the north-east of the district which was contested by Ngāti Hauā of Waikato, Ngāti Matakore, Ngāti Maniapoto, and other groups.<sup>517</sup> In essence, these cases appear to have been the spillover from southern Waikato Native Land Court cases, in particular the Maungatautari case which caused bitter rivalry between Ngāti Hauā and Ngāti Raukawa.<sup>518</sup>

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514. ‘The Native Minister and the Kingites’, *New Zealand Herald*, 1 December 1883, p.6.

515. Document A41, p.104; doc A78, pp.942–943.

516. ‘The Native Minister and the Kingites’, *New Zealand Herald*, 1 December 1883, p.6.

517. Document A79, p.56.

518. Document A12, pp.219–224. According to the Ngāti Raukawa deed of settlement, Ngāti Raukawa remained aloof from the original Maungatautari case in the 1870s, partly because of the Kingitanga prohibition on engaging with the court and partly because many of the rangatira with knowledge of the relevant history and whakapapa had been killed during the Waikato war. The court awarded the block to Ngāti Hauā, who claimed it by virtue of military defeats of Ngāti Raukawa during the early nineteenth century in which other iwi had also taken part. Subsequent rehearings also found against Ngāti Raukawa, denying them holdings in ancestral lands. According to the deed, this has continued to be a source of grievance for Ngāti Raukawa right up to the present: Raukawa and Raukawa Settlement Trust and the Crown, ‘Deed of Settlement of Historical Claims’, 2012, paras 2.53–2.56.

**8.5.3.2 Te Rohe Pōtae Māori leaders propose an external boundary survey**

Wahanui's response was brief.<sup>519</sup> Bryce's words were 'clear', he said, and he 'agreed' with them. However, Wahanui also proposed a course of action that was entirely different from what Bryce had put to them: 'Let there be only one survey. When that is finished make the subdivision surveys, so that each one may know his place. Let the survey be an external one.'<sup>520</sup>

Wahanui said nothing about the court and title determination, and nothing about the railway: everything returned to the need to define the external boundary, which had been a core demand they had set out in the June petition, which Wahanui had repeated when he signalled his objection to the Native Committees Bill in August.

Rewi then spoke in support of Wahanui's proposal. He too said that the first course of action would be for Wahanui to fix the external boundary. This was an important step, he later explained, because it was only through this that 'the minds of people will be known'. Once the boundary had been properly agreed to by all the people, the survey of it could proceed. 'When that is done then a day can be fixed further to discuss the matter.' This indicated that, from Rewi's point of view, precisely how title would be determined (and the further surveys associated with it) would be a matter for further negotiation, and only after the external boundary was confirmed. 'After the tribal boundary is determined subdivision surveys can go on afterwards.'<sup>521</sup>

In response, Bryce indicated his satisfaction that he had obtained their 'agreement'. But he was also coming to terms with the proposal that was now being put to him: 'I understand what you want is that the tribal boundary should first be fixed, after that the subdivisions. I see nothing to object to in the proposal, nor need there be much delay in completing that work.'<sup>522</sup>

Evidently, at this stage, Bryce did not appreciate – or deliberately ignored – the fact that the proposal being put forward by Wahanui and Rewi was on behalf of the four tribes, not just Ngāti Maniapoto; and in respect of the external boundary of Te Rohe Pōtae, not the 'tribal' boundaries between the iwi. In short, the chiefs were indicating to Bryce the extent of their commitment to the objectives set out in the June petition. This point came to the forefront during the speech of the Ngāti Maniapoto chief Hopa Te Rangianini. Earlier in 1883, Te Rangianini had been associated with a possible application for title determination to land south of Kihikihi.<sup>523</sup> He appeared to reference this in speaking first to Wahanui. Te Rangianini said that if Wahanui had taken a different position 'I would have carried out my intentions' to have his land surveyed. However, Te Rangianini went on to say, because they all agreed on the survey of the external boundary, they could

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519. Marr (doc A78, pp948–950) and Loveridge (doc A41, pp107–108) described the responses of Wahanui and other rangatira, relying on accounts from the *New Zealand Herald* and other newspapers.

520. 'The Native Minister and the Kingites', *New Zealand Herald*, 1 December 1883, p6.

521. 'The Native Minister and the Kingites', *New Zealand Herald*, 1 December 1883, p6.

522. 'The Native Minister and the Kingites', *New Zealand Herald*, 1 December 1883, p6.

523. Document A78, p745.

now all work together. Te Rangianini then turned to Bryce and reminded him of their rights: 'We can refer back to the terms of the Queen's treaty of Waitangi. Be merciful to the Maoris; maintain the principles of the treaty.' Wahanui reaffirmed Te Rangianini's words by saying that 'we are one'; he asked that no separate survey be allowed at Kāwhia.<sup>524</sup>

Bryce, however, insisted that Ngāti Maniapoto and Ngāti Hikairo make separate applications. He noted that Ngāti Hikairo land 'encroaches on your claim' and said it was for the court to determine who held rights in which areas. 'The evidence of Wahanui and friends will be heard as well as others. Boundaries in that way will be fixed, but I do not understand he or others should prevent them having their claims decided by the Court. . . . The applications of the Ngatimaniapotos will be simultaneous with the Ngatihikairo's.'<sup>525</sup>

Rewi countered Bryce by insisting that it was the collective tribes – including Ngāti Hikairo – that now sought the survey of the external boundary, and that this was needed so they could determine their interests amongst themselves: 'The Ngatimaniapotos and Ngatihikairo's are one people. Their interests should not clash. Let the matter between them be deferred, and one survey made of the whole country.'<sup>526</sup>

Taromoa said that although Ngāti Hikairo had submitted an application to the court, they would 'agree when they hear to-day's proceedings'. This suggests that, although Taromoa was of Ngāti Hikairo, the tribe was not sufficiently well represented at the hui to make a decision there. Taonui also affirmed the position that there should be one survey encompassing the boundary: 'Let there be only one survey; the subdivisions to stand back; tribal boundaries to be arranged first; no other survey to take place till authorised by the natives. A committee will arrange all these matters.'<sup>527</sup>

While Bryce then acknowledged that 'the matter before us is external surveys', he seems to have understood that as meaning surveys of tribal boundaries, not surveys of the external boundary as the rangatira intended. In Marr's view, it is likely that they used the term 'rohe porotaka' to describe the external boundary, but it is not known how this was translated.<sup>528</sup> Bryce insisted that the only way forward was for a formal application to be submitted to the court by Ngāti Maniapoto alone: 'Never mind about Ngatihikairo's and other matters.' He emphasised that the hui represented the most influential Ngāti Maniapoto rangatira and recommended that 'a few' of them sign an application then and there. Blank application forms could then be sent to the other tribes in the district so they, too, could apply to the court. In urging Ngāti Maniapoto to make an application, he was supported by William Grace, who had been presenting himself to the Government as a person with influence over the rangatira. Grace told the leaders that they should act

524. 'The Native Minister and the Kingites', *New Zealand Herald*, 1 December 1883, p 6.

525. 'The Native Minister and the Kingites', *New Zealand Herald*, 1 December 1883, p 6.

526. 'The Native Minister and the Kingites', *New Zealand Herald*, 1 December 1883, p 6.

527. 'The Native Minister and the Kingites', *New Zealand Herald*, 1 December 1883, p 6.

528. Document A78, pp 946–947.

immediately to secure their lands; otherwise they would be leaving their children 'as a carcass' to be preyed on by hawks.<sup>529</sup>

According to the *New Zealand Herald's* report, Rewi appeared to be swayed towards Bryce's position at about this point of the hui: 'If it is decided that we sign an application for a portion of the land about here, and there is no dispute among ourselves as to the ownership; it is good.' Bryce recommended that Wahanui, Rewi, Taonui, Te Wharo and Hopa Te Ranganini be the chiefs whose names would be affixed to the application. Wahanui then asked for the collected leaders to be given the night to consider the matters discussed.<sup>530</sup>

### 8.5.3.3 Outcome of discussions

Discussions resumed between Bryce and the principal rangatira in a private meeting the next morning (1 December). There are no minutes of what was discussed at this meeting. Marr considered that the 'lengthy private discussions indicate that it took considerable effort and persuasion to overcome chiefly reluctance to make a Court application, even for only an exterior boundary survey'.<sup>531</sup> However, given what subsequently ensued, it is equally possible that the discussion focused on who would be included in the application, and what its purpose would be.

The decision that was made during these discussions was revealed during the course of the public hui, which resumed on the afternoon of 1 December. The *New Zealand Herald* summarised the outcome in a 3 December report, which was headlined: 'The Natives Accept Mr Bryce's Proposals: The Application to the Land Court Signed'.<sup>532</sup> The following day, the *Herald* provided further details. It reported that John Ormsby – a relatively young Ngāti Maniapoto leader who took on a greater leadership role in coming years – had managed the public announcement, reading out a document which reportedly set out the reasons why the tribes had agreed to sign the application:

When copies of the new Land Act [i.e. the Native Land Laws Amendment Act 1883 which introduced modest reforms to the Native Land Court] were circulated among the natives they held a meeting at Kuiti to consider its provisions. At this meeting various tribes were represented, and being satisfied with the Act, they were now prepared to agree to Mr Bryce's proposals, re surveying and adjudication of the land.<sup>533</sup>

According to the *New Zealand Herald*, William Grace then:

Read the application for survey, and read out the boundaries which the natives propose to have, also the names of thirty chiefs which were inserted in the body of the

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529. 'The Native Minister and the Kingites', *New Zealand Herald*, 1 December 1883, p 6.

530. 'The Native Minister and the Kingites', *New Zealand Herald*, 1 December 1883, p 6.

531. Document A78, p 955.

532. 'The Natives Accept Mr Bryce's Proposals', *New Zealand Herald*, 3 December 1883, p 5.

533. 'The Opening of the King Country', *New Zealand Herald*, 4 December 1883, p 5 (doc A41, p 110).

document, and who represent four tribes, namely, Ngatimaniapoto, Ngatiraukawa, Ngatituwharetoa and Ngatihikairo.<sup>534</sup>

The *Waikato Times* similarly reported that after a ‘rather lengthened private interview’ between Bryce and the chiefs ‘an application was signed to have the land surveyed and passed through the court’:

Thirty leading chiefs representing the Ngatimaniapoto, Ngatiraukawa, Ngatihikairo and Ngatituwharetoa tribes allowed their names to be inserted in the body of the form, signifying that on behalf of these tribes they were willing that the survey should be proceeded with, and which will be done without delay.<sup>535</sup>

As these and other reports made clear, the purpose of the application was to request a survey of the external boundary of the ‘four tribes’ – though Ngāti Hikairo was now included in place of Whanganui. The reports also indicated that the boundaries of the area to be surveyed were the same as those set out in the June 1883 petition – some 3.5 million acres. The bottom of the application was signed by five principal chiefs – Rewi, Hitiri Te Paerata, Taonui, Wahanui, and Hopa Te Rangianini. A further 30 chiefs signed in the body of the application form, in a place for those endorsing the application.<sup>536</sup> Marr reported that no 1883 application from the four tribes to the court had been found, in spite of ‘extensive searches of official government files and Land Court records.’ The identity of the 30 chiefs therefore remains unknown.<sup>537</sup>

The Crown, in this inquiry, contended that the application was not only for a boundary survey, but also for title to the land. The comment made by Ormsby (as quoted in the *New Zealand Herald* above) might be interpreted as supporting such a view, but we do not know whether Ormsby himself used the word ‘adjudication’ or that was the newspaper’s interpretation, or indeed that of the newspaper’s source, which is reasonably likely to have been Bryce or William Grace. Loveridge also noted comments made in 1889 by Pepene Eketone – another emerging Ngāti Maniapoto leader – that the survey was to be followed by an ‘investigation of the title to the land . . . in full at one Court.’<sup>538</sup> But Marr pointed out that these comments were made much later, after title had been determined and the Crown was preparing to purchase the land: Eketone’s focus was on protecting the land under those circumstances, not on the nuances of a decision made six years earlier.<sup>539</sup>

In our view, there is little in the events prior to the hui, the reports of the meeting with Bryce, or the reports about the application itself to suggest that rangatira signed it with the intention of commencing title determination proceedings

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534. ‘The Opening of the King Country’, *New Zealand Herald*, 4 December 1883, p 5 (doc A41, p110).

535. ‘Mr Bryce’s Mission Successful’, *Waikato Times*, 4 December 1883, p 2 (doc A41, p 111).

536. Document A78, p957.

537. Document A78, pp 957–958, 959.

538. Taupouuiatia commission, minute book, 29 July 1889, fols 38–39 (doc A90, pp 37–38).

539. Taupouuiatia commission, minute book, p 41 (doc A90, p 39).

over the petition area. Aside from the comments made by Ormsby and Eketone, all other evidence points to a view that the rangatira signed the application on the express understanding that they were only allowing the survey of the external boundary, and that this would be a further step towards achieving what they had set out in their petition. Although they might have approved of aspects of reforms to the court's procedure that had recently occurred, Wahanui's prior and ongoing objections to the extent of those reforms indicated that they remained unsatisfied.

Of the principal leaders who signed, four were of Ngāti Maniapoto, one of whom was also affiliated to Ngāti Hikairo. But the application was not solely on behalf of Ngāti Maniapoto. The inclusion of Hitiri Te Paerata (in place of Te Wharo, whom Bryce had suggested) provided representation from Ngāti Raukawa and from northern hapū of Ngāti Tūwharetoa. Wilkinson acknowledged that rangatira from all four tribes named in the application (Maniapoto, Raukawa, Tūwharetoa, and Hikairo) had been at the meeting and had signed.<sup>540</sup> The *Waikato Times* also reported that the 'thirty leading chiefs' who signed were representative of the 'four tribes' whose interests were implicated by the application.<sup>541</sup>

Notably, the 'four tribes' named in the application included Ngāti Hikairo, but did not mention Whanganui iwi with interests in the petition area (prominent Whanganui leaders would soon afterwards offer their support, as we will see in section 8.5.4). Nor is there specific evidence of broad representation among Ngāti Tūwharetoa hapū with interests in the area. Rewi and Wahanui acknowledged that there was work to do to ensure that all communities along the border supported the application, and continued to support the broader agenda set out in the June petition. Rewi suggest that Wahanui would proceed around the rohe 'fixing' the boundary: only through this process could the people's minds be known.<sup>542</sup>

In sum, the intention of the chiefs in signing the application differed markedly from what Bryce had set out to achieve. Rather than an application by Ngāti Maniapoto for the title determination of their territory, it was an application from representatives of the four named tribes for the survey of the external boundary of Te Rohe Pōtae – the entire territory that had been set out in the petition. In the chiefs' view, they had obtained the Government's agreement that the application would *only* involve the survey of the external boundary – any questions about what would happen after this would be for later discussion, with Taonui preferring a Māori 'committee' to take over from there.<sup>543</sup> Bryce appeared to emphasise this understanding by saying that a surveyor would be sent immediately. According to the *Waikato Times*, he also insisted that the boundary survey could only be completed if a trig survey was also conducted.<sup>544</sup>

In official terms, however, the document signed by the rangatira was an application to the court for title determination. As Marr explained, there was no process

540. Wilkinson report, 14 May 1884, AJHR, 1884, G-1, p 9 (doc A78, p 959).

541. 'Mr Bryce's Mission Successful', *Waikato Times*, 4 December 1883, p 2 (doc A78, p 958).

542. 'The Native Minister and the Kingites', *New Zealand Herald*, 1 December 1883, p 6.

543. 'The Native Minister and the Kingites', *New Zealand Herald*, 1 December 1883, p 6.

544. 'Mr Bryce's Mission Successful', *Waikato Times*, 4 December 1883, p 2 (doc A41, p 112); 'The Natives Accept Mr Bryce's Proposals', *New Zealand Herald*, 3 December 1883, p 5.

in place by which the Crown could formally achieve what had been discussed and agreed to at the hui. The Native Land Act 1873 provided for the court to determine ownership of any land placed before it and provided furthermore that the land could be awarded only to named individuals.<sup>545</sup> Chief Judge Macdonald later explained that the court only had powers to determine tribal boundaries *after* investigating title. While the Native Land Act 1873 had anticipated that tribal boundaries might be fixed outside the court through a process of prior investigation by specially designated district officers, these had been barely implemented and had quickly fallen into abeyance.<sup>546</sup>

Te Rohe Pōtae leaders had gone to considerable lengths to explain to Bryce what they wanted – a survey of the external boundary. As the petition and other correspondence had made clear, they regarded this as a first step towards securing Crown recognition of their authority over their land. It would have been entirely possible for Bryce, or the rangatira themselves, to arrange for the boundary to be surveyed, without any application to the court; the law required a survey before title could be awarded, but it did not require a title application before there could be a survey.<sup>547</sup> Yet Bryce repeatedly insisted that that was the case – the only option available to the rangatira, if they wanted the external boundary surveyed, was to make an application to the court.

Furthermore, and contrary to what Te Rohe Pōtae leaders had made clear in their discussions with Bryce, he subsequently portrayed their request to confirm the external boundary of Te Rohe Pōtae as an application for both survey and title determination by Ngāti Maniapoto alone. Bryce immediately sent a telegram to William Rolleston, Minister of Lands, to say that he had met with ‘nearly all the principal men of the Ngatimaniapoto tribe’, who had submitted an application for a ‘survey and investigation of title for the bulk of the land known as the King Country.’<sup>548</sup>

Bryce was reportedly very pleased and ‘somewhat proud’ of the result.<sup>549</sup> Initial newspaper reports characterised the application in various ways. The *New Zealand Herald* ran two reports on December 3, one characterising the application as being ‘for determination of title,’<sup>550</sup> and the other describing it more accurately as an application by the four tribes (Maniapoto, Raukawa, Tūwharetoa, and Hikairo) ‘for external survey of the whole of what has been known as the King Country.’<sup>551</sup> The *Waikato Times* described it as an application to ‘have the land surveyed and passed through the court.’<sup>552</sup>

Very soon, commentators were turning their attention to the implications of the agreement. The *Waikato Times* opined that the external survey would soon be

545. Native Land Act 1873, s 47.

546. Document A78, p 946.

547. Native Land Act 1873, s 33.

548. Bryce, telegram to Rolleston, 1 December 1883 (doc A78, pp 962–963).

549. Editorial, *Waikato Times*, 4 December 1883, p 2.

550. Editorial, *New Zealand Herald*, 3 December 1883, p 4.

551. ‘The Natives Accept Mr Bryce’s Proposals’, *New Zealand Herald*, 3 December 1883, p 5.

552. ‘Mr Bryce’s Mission Successful’, *Waikato Times*, 4 December 1884, p 2.



followed by internal subdivision, upon which the district would be ‘thrown open for settlement, with convenient roads and, let us hope, a railway.’<sup>553</sup> It also claimed that “‘Kingism’ [was] now a thing of the past and [could not] in any shape be again revived.”<sup>554</sup> Bryce himself was reported as saying that the agreement represented ‘the final settlement of the native difficulty’, which would render the office of Native Minister unnecessary, presumably on the basis that Te Rohe Pōtae Māori were now expected to assimilate.<sup>555</sup>

#### 8.5.3.4 Further discussions among the iwi

Following the hui, Te Rohe Pōtae Māori leaders returned to their communities to consult on their decisions and gain agreement to the external boundary survey. One of the key meetings was at Kāwhia. Bryce had left Kihikihi immediately upon conclusion of the hui, arriving in Kāwhia on 4 December. The following day he attended a hui with some 150 people, including the rangatira of Ngāti Hikairo, who appeared to have been informed of the outcomes of the hui at Kihikihi. Although they expressed support for the idea of the external boundary survey, they were also concerned at the speed of the process underway, and Tāwhiao’s lack of involvement.<sup>556</sup>

Bryce was placed in the position of having to encourage their involvement in the application for the external boundary survey, while also promoting the idea that this would allow Ngāti Hikairo to pursue their own, independent claims to land in Te Rohe Pōtae.<sup>557</sup> Here, Bryce acknowledged the true nature of the application. According to the *New Zealand Herald’s* report:

Mr Bryce said the Ngatimaniapotos would get the most of the land when the survey for the tribal ownership was completed, but he was sorry to find a wrong impression about the survey. This was not for fixing the title. The real survey would follow the Land Court.<sup>558</sup>

This appears to suggest that Bryce understood the agreement as being for a boundary survey followed by a process in which iwi territories would be defined. This seems to be consistent with his words at the Kihikihi hui. It is possible that he assumed that the court would define the iwi rohe, whereas rangatira had made no commitment about what would happen after the boundary survey was completed and seem to have intended that Māori would determine the rohe among themselves, either through a committee they would appoint (as Taonui had said) or by some other means that remained to be determined (as Rewi had suggested). Bryce’s comments suggest that, from his point of view, the boundary survey would have no practical effect, at least in terms of land ownership; it would soon be

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553. Editorial, *Waikato Times*, 4 December 1883, p 2.

554. ‘The Natives Change of Policy’, *Waikato Times*, 4 December 1883, p 2.

555. ‘Mr Bryce on the Native Question’, *Waikato Times*, 5 December 1883, p 5.

556. Document A78, pp 968–969.

557. Document A78, pp 968–969.

558. ‘Mr Bryce at Kawhia’, *New Zealand Herald*, 14 December 1883, p 6.

subsumed by the court process. Bryce also maintained that the Ngāti Hikairo part of the boundary would be separate from, but eventually join, 'Wahanui's boundary'. Reports of the hui indicate that the chiefs then signed an 'agreement', which also does not appear to have survived.<sup>559</sup> According to Marr, newspaper reports characterised it as an application from Ngāti Hikairo to extend the boundary survey a little further north, to accommodate their interests.<sup>560</sup>

A similar hui took place on 8 December at the Ngāti Raukawa settlement, Aotearoa, reportedly for those who were concerned about the potential meaning and effect of the application. Hitiri Te Paerata was among those who spoke in favour of the application. After it had been explained, those chiefs present are said to have agreed to support the application.<sup>561</sup>

Some communities continued to express concern about the survey, with newspaper reports suggesting they saw it as a threat to their own land and also to the Kingitanga policy of not engaging with Crown institutions. At Tokanui on 6 December, Te Rangianini sought to persuade his Ngāti Matakore people to support the survey. The *Waikato Times* reported on the hui, attributing its account to William Grace, who had attended the 1 December hui in support of Bryce. A minority of Ngāti Matakore people were opposed to the survey, but most, according to the report, supported it. One of those present was Hauāuru, who was affiliated to Ngāti Matakore (of Ngāti Maniapoto) and Ngāti Hauā of Waikato. He reportedly supported the survey, promising to visit Tāwhiao and 'say farewell' to the King's laws. But a few days later, he and his Ngāti Hauā kin were reported to have changed their minds and decided to obstruct the survey. The *Times's* correspondent was not sure about the reason for this,<sup>562</sup> but soon afterwards Hauāuru explained that he feared the land would be lost if he followed Wahanui's policy.<sup>563</sup> In this, he was possibly influenced by the newspaper reports suggesting that the land would soon be divided up and opened for settlement. Indeed, Bryce himself would very soon afterwards be emphasising that the application would determine tribal boundaries and ownership of the land, as we will see in the next section.

#### **8.5.4 Confirmation of the agreement to survey the external boundary, December 1883**

Bryce returned to Kihikihi on 18 December 1883, around the time Rochfort also arrived at the settlement, his survey having been stopped a few weeks before. He had two main orders of business: determining whether the amnesty would apply to Ngatai Te Mamaku; and making final arrangements for the boundary survey and other surveys that he wanted to complete. Wahanui and other senior leaders

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559. 'Mr Bryce at Kawhia', *New Zealand Herald*, 14 December 1883, p 6; doc A78, pp 968–970. It is possible the 'agreement' signed at Kāwhia was recorded on the same document as the original boundary application. Neither has been located.

560. Document A78, p 970.

561. Document A78, p 967.

562. 'Kihikihi', *Waikato Times*, 6 December 1883, p 2; 'The Opening of the King Country', *New Zealand Herald*, 10 December 1883, p 2; 'Te Awamutu', *Waikato Times*, 11 December 1883, p 2.

563. 'Tawhiao and the Natives', *Waikato Times*, 22 December 1883, p 2.

also sought to confirm the support of the district's people for the boundary survey, and the broader kaupapa of the 1883 petition.

Several hundred Māori converged on Kihikihi for the meeting. They included representatives of Ngāti Hauā and Ngāti Mahuta who were opposed to the survey, and senior leaders from what had now become the 'five tribes' – Ngāti Maniapoto, Ngāti Raukawa, Ngāti Hikairo, Ngāti Tūwharetoa, and northern Whanganui iwi such as Ngāti Hāua – who supported the survey on the basis that it would define all of their collective territories. On the morning of 18 December Bryce met privately with Wahanui and other senior leaders, while opponents of the survey held their own hui outside. The following morning he met Wahanui and other leaders to discuss Ngatai, and in the afternoon the agenda moved on to survey arrangements. By the end of the hui, Bryce had gathered the information he needed to justify a pardon for Ngatai, and final arrangements had been made for the boundary survey, and also for the resumption of railway exploration.<sup>564</sup> These arrangements were confirmed in letters which were exchanged at the close of the hui, setting out the parties' shared understandings: the Government would carry out an accurate survey of the boundary for the purpose of issuing a Crown grant to the tribes and hapū of Te Rohe Pōtae; and the survey would cost no more than £1,600, which Te Rohe Pōtae Māori would pay.<sup>565</sup>

#### **8.5.4.1 The confirmation of Ngatai's inclusion in the amnesty**

The settler press in 1880 had treated the murder of William Moffatt as a common crime by a 'mere handful of savages' bent on 'cool, deliberate murder.'<sup>566</sup> This type of response was common for the time, as was the reluctance of the Government to pursue the perpetrators beyond the aukati, for fear of angering the Kīngitanga.<sup>567</sup> However, in February 1883 when the general amnesty was issued it was unclear whether amnesty should be extended to Ngatai.

As discussed in section 8.5.2, it was Ngatai who had stopped Rochfort from crossing the aukati at Taumarunui. From Bryce's point of view, including him in the general amnesty could help to secure his support for a resumption of the survey – but Bryce nonetheless had to confirm that Ngatai's killing of Moffatt had been of a political nature; otherwise it would not meet the criteria set out in the Amnesty Act 1882.<sup>568</sup> Because Moffatt had been known to Ngatai and other members of Ngāti Hāua prior to his murder, there were questions surrounding the circumstances of his death. Ministers sought clarification as to whether the murder had been personally or politically motivated, as Moffatt had once lived within the very same boundaries for which he had been killed for stepping upon.<sup>569</sup>

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564. Document A78, pp 971–972, 981.

565. Document A78, pp 981–983.

566. Editorial, *Taranaki Herald*, 17 November 1880, p 2 (doc A78, p 124).

567. Document A78, pp 124–125.

568. Document A78, p 125.

569. 'Inquiry by Hon Native Minister at Kihikihi', AJHR, 1886, G-8, p 2.

On the morning of 19 December 1883, Bryce questioned Ngatai over his relationship with Moffatt, the nature of the murder, and the politics of the aukati.<sup>570</sup> Bryce then verified Ngatai's story with Wahanui and Rewi. Later, once Bryce had returned to Wellington, he and his fellow ministers unanimously agreed that Ngatai was included in the amnesty, as the crime had been committed in protection of the aukati and was in fact of a political nature.<sup>571</sup>

#### 8.5.4.2 *Confirmation of the survey arrangements*

The various groups came together on the afternoon of 19 December. Rewi, Wahanui, and Taonui were reported to have spoken first in favour of conducting a boundary survey, as a first step towards Crown recognition of the boundary and the five tribes' authority over lands within the boundary. Wahanui said that he had started the 'vessel (the survey) on its course. All sail had been set, and he was not going to take in a reef'.<sup>572</sup> However, a number of other leaders then spoke in opposition to the survey, most of whom were identified as having associations with Waikato, though Hauāuru was also affiliated to Ngāti Matakore, who in turn were closely connected to both Ngāti Maniapoto and Ngāti Raukawa. Hauāuru and other people maintained support for Tāwhiao and opposed the taking of any action to survey their lands.<sup>573</sup>

Bryce replied to these statements by reiterating his opposition to Tāwhiao. 'New Zealand is too small for two sovereignties, and I will never recognize your authority except over your own tribe.' He emphasised that they would be able to manage their own lands and also encouraged them not to fear the boundary application. 'An application to the Court does not settle the ownership. It is an application to the Court to settle who has the right in the land. If you have real claims, you will not fear to have them investigated.' The purpose of this particular application, he said, was 'to determine boundaries as between tribe and tribe.' Afterwards would come 'subdivisions between hapu and hapu, and possibly after that for settlement of individual claims'.<sup>574</sup> As already noted, this was not how those who had signed the application saw it. Nor was it consistent with how Bryce had explained the application to Ngāti Hikairo on 4 December (section 8.5.3.4), except to the extent that Bryce appeared to believe that court-led definition of tribal boundaries would follow the boundary survey. This explanation cannot have helped to smooth over the differences between the four tribes and those of Waikato.

One chief, Haimona, reportedly told Bryce at this point that the reason they objected was because 'we do not want to be counter-claimants, because we have seen in the Native Lands Courts people putting in applications for land who have small interest become strong because they are the first claimants'.<sup>575</sup> Bryce responded by saying that the current proposals 'will remove the evils he complains

570. Document A78, p 125; 'Inquiry by Hon Native Minister at Kihikihi', AJHR, 1886, G-8, pp 1-3.

571. 'Inquiry by Hon Native Minister at Kihikihi', AJHR, 1886, G-8, p 3.

572. 'The Kingites and the Native Minister', *New Zealand Herald*, 19 December 1883, p 6.

573. Document A78, pp 972-973.

574. 'The Kingites and the Native Minister', *New Zealand Herald*, 19 December 1883, p 6.

575. 'The Kingites and the Native Minister', *New Zealand Herald*, 19 December 1883, p 6.

of'. The 'large tribal boundaries', he said, should be 'settled as a first step'; it was for this reason, he said, that he had 'acquiesced in the proposal for this large survey'. Bryce explained further that the 'names of the tribes and individuals will be admitted, but the survey and the final division will be made without claims and counter-claims. Understand that the applications will not confine the rights to the applicants, or to the names only of those contained in them.'<sup>576</sup>

According to Marr, Bryce's speech suggested that he envisaged there would be a stage prior to any investigation of title that would be 'confined to a boundary determination only', a stage which was not provided for in the native land legislation.<sup>577</sup> However, it was unclear exactly what process he envisaged, except that the court would be involved. In this, he differed from what Wahanui and the other chiefs had set out at the previous hui. There, they had insisted that any action that would be taken initially would be confined to a survey of the external boundary. Though they referred to the process by which they envisaged titles to be determined as set out in the petition – the establishment first of iwi boundaries, then hapū boundaries, then individual interests – they explicitly ruled out any decisions on how this would work until the external boundary survey had been completed.

Bryce attempted to reassure those who objected that the application did not prejudice their interests to land. In doing so, he suggested that the establishment of tribal boundaries would occur without claims or counter-claims, perhaps a reference to the proposal he made at the previous hui to give the prospective native committee a role in the process. While this may have gone some way to assuaging the concerns of those present, it was a proposal that went beyond what the chiefs had agreed to at the previous hui, where they had confined matters solely to the survey of the external boundary, leaving how the title to the land would be confirmed to later discussions.<sup>578</sup>

Wahanui and the other chiefs were not given the opportunity to respond to Bryce, who announced at the end of his speech that he saw no point in further discussions and appears to have departed immediately. This only caused further debate among those present, though newspaper reports suggested that the majority supported the external boundary survey, with only a minority still opposed.<sup>579</sup>

#### 8.5.4.3 Exchange of letters

On the following day (19 December), the chiefs met with assistant surveyor-general Stephenson Percy Smith, who was accompanied by various surveyors who were to conduct the work. Bryce refrained from attending this part of the proceedings, instead conducting his inquiry into whether the chief Ngatai should be included in the amnesty. The chiefs (Rewi, Wetere, and John Ormsby were named in reports<sup>580</sup>) agreed that the Government would conduct the work at the

576. 'The Kingites and the Native Minister', *New Zealand Herald*, 19 December 1883, p 6.

577. Document A78, p 976.

578. 'The Native Minister in Waikato', *Waikato Times*, 20 December 1883, p 2 (doc A78, pp 974–977).

579. Document A78, p 977.

580. 'The Survey of the King Country', *New Zealand Herald*, 20 December 1883, p 5.

cost of £1,600 (Wilkinson later reported that they had previously negotiated with private surveyors who intended to charge over £20,000 for the same work). They were also reported to have obtained an agreement that if trig surveys were necessary, Māori would not be charged.<sup>581</sup> Subsequently, newspapers reported that the leaders had agreed to the trig survey being conducted and to railway surveys also resuming. Reports also suggested that the rangatira regarded the trig survey as Government work, but saw the boundary ‘as a private survey’ which they had contracted the Government to complete for them.<sup>582</sup> Wahanui later (in 1885) said he had not been consulted about trig surveys,<sup>583</sup> but Rewi (in a letter to Bryce) confirmed that the rangatira had consented to them.<sup>584</sup> It is possible that consent was given in principle, but that Māori were not made aware of the scale of work involved: trig surveys required extensive survey work throughout the district, not just along the boundary.

Smith recorded that the meeting was pan-tribal, including representatives of the ‘four tribes’. Among the chiefs who were present were Te Herekieke, Ngahuru Te Rangikaiwhiria, Te Pikikōtuku, and Hitiri Te Paerata – all of whom Smith identified as having associations with Ngāti Tūwharetoa.<sup>585</sup> As noted earlier, Te Paerata was an influential Ngāti Raukawa leader who was also affiliated to Tūwharetoa. Ngahuru Te Rangikaiwhiri (Ngāti Manunui, Ngāti Parekawa, Ngāti Hāua) of western Taupō was among the most senior Ngāti Tūwharetoa rangatira.<sup>586</sup> So, too, was Te Herekieke (Ngāti Aho) of southern Taupō.<sup>587</sup> Te Pikikōtuku (Ngāti Hāua, Ngāti Hekeāwai, and Ngāti Tūwharetoa) was a very senior rangatira of Taumarunui and northern Whanganui.<sup>588</sup> Together, these four possessed mana over large areas of Ngāti Raukawa, Ngāti Tūwharetoa, and Whanganui lands from the north-west to the south-west of Lake Taupō, making it clear that the survey application had broad support from those Ngāti Tūwharetoa people whose lands were directly affected.

Claimants also recorded another Ngāti Tūwharetoa and Ngāti Raukawa rangatira, Te Papanui Tamahiki, as supporting Wahanui’s negotiations with the Crown, though we do not have specific evidence of his attendance at this hui.<sup>589</sup> The

581. Document A78, pp 979–980, 984.

582. ‘The Survey of the King Country’, *New Zealand Herald*, 20 December 1883, p 5; ‘Waikato District News’, *New Zealand Herald*, 31 December 1883, p 6; ‘The Survey of the King Country’, *New Zealand Herald*, 22 December 1883, p 6; ‘The Survey of the Railway Line’, *New Zealand Herald*, 21 December 1883, p 5.

583. ‘Notes of Native Meetings’, AJHR, 1885, G-1, p 14.

584. Document A41, p 127.

585. Document A78, p 981.

586. He could also claim affiliation to Ngāti Parekawa, Ngāti Raukawa, and Ngāti Hāua: doc J22, p [26] n; Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, pp 67, 222, 296; doc A50, pp 142–143; doc A60, pp 487–488, 1220.

587. Transcript 4.1.9, pp 354, 553; doc A50, pp 75, 140, 152–153.

588. Transcript 4.1.7, pp 191, 221; doc A50, pp 75, 140–142; Waitangi Tribunal, *He Whiritaunoka*, vol 1, p 87.

589. Transcript 4.1.9, pp 387–388; doc J22, paras 88–89.

Whanganui whenua Tribunal identified three principal rangatira of northern Whanganui at this time: one was Te Pikikōtuku, and the others were Ngatai Te Mamaku (Ngāti Hāua, Ngāti Hekeāwai<sup>590</sup>) and Matuaahu Te Wharerangi (Ngāti Hikairo ki Tongariro; Ngāti Tūwharetoa);<sup>591</sup> claimants recorded all three as having supported Wahanui's negotiations with the Crown, though, again, we do not have specific evidence of Matuaahu being present at this hui.<sup>592</sup> In sum, the survey agreement represented all who claimed interests in the land, with the exceptions of Ngāti Hauā and Ngāti Mahuta. Settler media later emphasised this point, presenting it as representing a fracturing of the Kingitanga and a transfer of power from Tāwhiao to Wahanui.<sup>593</sup> Other observers (including Wilkinson) presented it as a split between the territory's traditional rights-holders and the more recent (and disputed) land claims of the King and his closest kin.<sup>594</sup> According to one report, Tāwhiao visited Wahanui late in December, reversing his opposition to the survey.<sup>595</sup>

As with the March 1883 agreement, the December 1883 survey agreement was secured with an exchange of letters. The letter from the chiefs, dated 19 December, said:

Kua whakaae matou ma to Kawanatanga e whakaoti pai nga ruritanga tika o te rohe porotaka o to matou poraka e taea ai te whakaputa mai te Karauna Karaati ki a matou me o matou iwi me o matou hapu hoki, mo te utu kua whakaritea mai nei e koe e kore e neke atu i te kotahi mano i te ono rau pauna £1,600 hei utunga atu ma matou. Na ko ta matou kupu tuturu tenei katia rawa tenei whakaritenga e whakarereketia e tetahi atu tikanga, e tetahi atu Kawanatanga ranei a muri ake nei.

We consent that the Government should make an accurate survey of the external boundary of our block in order that a Crown grant may issue to us, our tribes, and our hapus for the price as arranged by you, namely, that the cost to us should not exceed £1,600. Now, this is our decided word: this agreement must not be altered by any other arrangement or by any future Government.<sup>596</sup>

The letter was signed by Wahanui, Taonui, Rewi, Ngahuru Te Rangikaiwhiria, Te Herekieke, and Te Pikikōtuku.<sup>597</sup> We note that the signatories expected a Crown

590. Document H10, p 6; submission 3.4.211, p 13.

591. Waitangi Tribunal, *He Whiritaunoka*, vol 1, p 100.

592. Document J22, paras 88–89.

593. 'The Position of Tawhiao', *Waikato Times*, 27 December 1883, p 2.

594. 'Reports from Officers in Native Districts', AJHR, 1884, G-1, p 9; editorial, *New Zealand Herald*, 19 December 1883, p 4; 'The Native Minister in Waikato', *Waikato Times*, 20 December 1883, p 2.

595. 'Kihikihi', *Waikato Times*, 29 December 1883, p 2.

596. 'Wahanui and Others to Smith', 19 December 1883, AJHR, 1885, G-9, p 2 (doc A41, pp 122–123; doc A78, p 982).

597. 'Wahanui and Others to Smith', 19 December 1883, AJHR, 1885, G-9, p 2 (doc A41, pp 122–123; doc A78, p 982).

grant to follow the survey – that is, the Crown would provide a warrant or deed acknowledging the five tribes' ownership of the land inside the boundary, without any investigation of title. Smith appeared to confirm this impression, reportedly telling Rewi and others 'that the total cost of the survey, £1600, would entitle the owners to a certificate of title'.<sup>598</sup>

The letter from Smith faithfully repeated the arrangements set out in the letter from the rangatira, except for a final additional comment that the 'terms of this document apply to the external boundaries only'.<sup>599</sup> This addition came from Bryce, who noted to Smith that 'I am content you should bind the government present and future in the manner and to the terms proposed. It is of course the external boundary that is intended and not future subdivisions'.<sup>600</sup>

Bryce's comment on the agreement supports the chiefs' understanding that it was limited to the survey of the external boundary. Nothing in their letter, or in Smith's response, indicated that a title investigation by the court would follow on from the survey; on the contrary, Smith had given an assurance that a Crown grant would be issued to the applicants on completion of the survey, without mention of any other formality being necessary. Perhaps the only concession the chiefs made, and the only difference from their June petition, was to allow for their customary lands to be converted into a Crown grant to all of the tribes and hapū. Nothing was said about any court involvement in determining title or subdividing the land into iwi or hapū blocks. During the speeches at the previous hui, Taonui had hinted that any future subdivision should be conducted by a committee that Māori would appoint, and Bryce had responded that native committees could inquire into titles. But how exactly this would happen was a matter for future discussion. Rewi had suggested as much during the first hui at Kihikihi in March 1883: first, the external boundary would need to be finalised, then another day could be fixed for discussing matters further.

Six years later, Wahanui, Taonui, and Hauāuru wrote to the Native Minister explaining their understanding of the agreement. According to Marr:

They explained (in translation) that in 1883 they had held a large meeting at Kihikihi with Bryce and there agreed to fix the outside boundary of the land known as the 'Rohe Potae' of the five tribes (the application of 1 December 1883). These five tribes were Ngati Maniapoto, Ngati Raukawa, Ngati Hikairo, Whanganui and Tuwharetoa. An agreement was drawn up regarding the survey and the price for it (19 December 1883). Under this agreement they understood the whole block was 'as one' with one survey and one Court investigation (to confirm it). They explained that in their view, the 'weight and authority of this agreement was exactly similar to that of the treaty between ourselves and the Government'.<sup>601</sup>

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598. 'Yesterday's Proceedings', *Waikato Times*, 20 December 1883, p 2.

599. Smith to Wahanui and others, 19 December 1883, AJHR, 1885, G-9, p 2, (also reproduced in doc A41, pp 122–123 and doc A78, p 982).

600. Bryce, note on survey agreement, 19 December 1883 (doc A78, p 983).

601. Document A78, p 984.



While Bryce may have taken a different view, the two written documents affirmed the understanding of the chiefs: they had submitted an application on behalf of the five tribes to the whole of Te Rohe Pōtae and had entered into an agreement by which the government would survey the external boundary and then acknowledge their ownership. In the meantime, Bryce had promised that all other applications to the court relating to this area would be held back while this process was completed. Once this was done, they could turn their minds to what was next.

### **8.5.5 Treaty analysis and findings**

Here we pause to consider the nature and significance of the December 1883 external boundary survey agreement in terms of the Treaty, and in terms of the negotiations as they stood at that time. As we have seen, there was considerable difference between the parties on these issues: the claimants considered that Te Rohe Pōtae Māori made the application solely for the purposes of confirming the external boundary and therefore the territory in which Māori authority would endure.<sup>602</sup> The claimants also believed that Bryce misled the applicants into believing ‘that their desires would be met’ – in other words, that an application could lead directly to a Crown grant in the name of all five tribes, with no further involvement from the court in iwi or hapū subdivision – when the law did not provide for that.<sup>603</sup> The Crown considered that Te Rohe Pōtae Māori made the application in an attempt to take control of the title determination process through the Native Land Court and extract further concessions from the Government.<sup>604</sup>

#### **8.5.5.1 What did Te Rohe Pōtae Māori seek in making the application?**

The intentions of the five tribes in making the application were signalled in the events leading to the hui with Bryce in November and December 1883. In the June petition, they had clearly stated their opposition to the Native Land Court’s involvement in determining title to their land. The Crown’s response, in the Native Committees Act 1883, was forcefully opposed by Wahanui on the grounds that the committees did not replace the court as the deciding body; Te Rohe Pōtae Māori then stopped the railway surveys on the grounds that they went beyond what had been agreed to in March 1883. Wahanui looked to another meeting with Bryce through which he could demonstrate his people’s support for the petition and attempt to gain Crown agreement to its terms. Nothing in these circumstances suggest that Te Rohe Pōtae Māori were about to make an application to the court to seek title determination at iwi or hapū level. Rather, their desire was to have the boundary surveyed, as a step towards having their authority over the land within the boundary recognised.

Notwithstanding Wahanui’s objections to the Native Committees Act, Bryce sought to persuade Te Rohe Pōtae leaders that he had met their legislative

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602. Submission 3.4.128(b), pp 17, 21.

603. Submission 3.4.128(b), p 18.

604. Submission 3.4.301, p 61.

demands as far 'as possible', and that he had therefore 'kept my word' to Te Rohe Pōtae leaders. In this, he was acknowledging the reciprocal nature of the March 1883 agreement, and the reasonable expectation of Te Rohe Pōtae leaders that he would make meaningful concessions in return for their consent to further surveys. But he was also claiming that the Crown had done what Te Rohe Pōtae leaders sought, when quite plainly it had not, as Wahanui had already told Bryce.<sup>605</sup>

Bryce also sought to test the resolve of Ngāti Maniapoto leaders in particular, by presenting them with various court applications that had been made to Te Rohe Pōtae lands, in the hope of persuading them that they now had to apply to the Native Land Court to have the title to their land confirmed. If they did, Bryce promised that a committee would be appointed to assist the court, and two judges would be sent for that purpose. But if they did not apply, he said, he would not be able to hold back the competing claims for much longer.

Wahanui's proposal to Bryce at the hui was unambiguous: the Crown should proceed to survey the external boundary that had been set out in the June petition. As he had earlier informed the Government in response to the legislative reforms, the external boundary survey was the first matter he and the other leaders wished to have confirmed. Once that had been completed, Te Rohe Pōtae Māori could turn to the work of defining interests, as set out in their petition: first, the rohe of each tribe; then the rohe of hapū; then finally the definition of the relative interests of each individual in communal rohe. As Taonui had explained, Te Rohe Pōtae leaders saw this as work they could complete themselves; indeed, the Kingitanga tribes had held previous discussions about inter-tribal boundaries in 1879 and 1882.<sup>606</sup>

Nothing in Wahanui's proposal suggested that the Native Land Court would have any role in determining title to the lands; instead, Wahanui wanted the Crown to provide for formal recognition of the external boundary. This was but one of the demands they had set out in the June petition. All other demands concerned the authority of Te Rohe Pōtae Māori within the boundary and were therefore contingent on its confirmation. None of those demands contemplated the court being involved to any extent.

Wahanui was supported by other leaders who spoke, including those of Ngāti Hikairo, who appeared eager to join the initiative that was being proposed. All insisted that whatever agreement they reached at that time, the leaders would need to return to their communities to gain their consent.

#### **8.5.5.2 What did the Crown and Te Rohe Pōtae Māori agree to?**

In response to Wahanui's proposal, Bryce – in the 1 December 1883 hui – agreed that the external boundary could be surveyed, but said that this could only be achieved through an application to the court. He suggested that Ngāti Maniapoto alone make such an application. In the debate that followed, Bryce continued to

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605. 'The Native Minister and the Kingites', *New Zealand Herald*, 1 December 1883, p 6 (doc A41, p106; doc A78, pp 940–941).

606. Transcript 4.1.8, p 119; doc A78, pp 454–456, 496.

insist that the Native Land Court would need to have a role in whatever process ensued. To this extent, the Crown is correct in submitting that Bryce ‘explained that there would need to be an investigation into their title in order for a Crown grant to issue’, and that, as a matter of law at that time, ‘final boundaries and ownership would necessarily have to be established by the Court.’<sup>607</sup>

But Bryce got only part of what he wanted. Te Rohe Pōtae leaders agreed to take his advice, and make an application to the court, in order to have their external boundary confirmed. But Bryce did not succeed in persuading Ngāti Maniapoto to make that application alone, and nor did he succeed in persuading them to allow the court to determine title to their land. Rather, the application was from a range of chiefs representing Ngāti Maniapoto, Ngāti Raukawa, Ngāti Tūwharetoa, and Whanganui, who signed (with support from Ngāti Hikairo) on the understanding that they were only agreeing to an external boundary survey, which would be followed immediately by the issue of a Crown grant without any title investigation. Bryce may have initially believed he had obtained a different outcome under which they had applied for title determination, but there is little to indicate that the chiefs agreed. The suggestion, reported in settler media, that Ormsby read out a document supporting the Native Lands Amendment Act 1883 and the Native Committees Act 1883 appears inconsistent with the understandings the chiefs took from the meeting.

The outcome of this meeting was confirmed when the assistant surveyor-general, Stephenson Percy Smith, returned two weeks later. The exchange of letters between Smith and the rangatira set out in more precise terms what had been agreed between the chiefs and Bryce: the Government would carry out an accurate survey of the external boundary of the tribes’ rohe in order that a Crown grant could be issued to them, including their iwi and their hapū (‘ki a matou iwi me o matou hapu hoki’). There was an agreement to allow the exploratory railway survey to continue, and contingent agreement on the part of some (but not all) Te Rohe Pōtae Māori to allow the trig surveys to resume.

Bryce considered that the letters confirmed a victory for his position, because he had secured what was for all intents and purposes an application from the tribes to commence the court’s proceedings in Te Rohe Pōtae, in addition to the continuation of the railway and trig surveys. But despite Bryce’s assertions, what was in fact achieved through these discussions was a compromise. Bryce agreed that the Crown would carry out a survey of the external boundary of Te Rohe Pōtae and that no other proceedings in the Native Land Court would occur while that work was carried out. And he had no choice but to accept that the application would be made collectively by the leaders of Ngāti Maniapoto, Ngāti Raukawa, Ngāti Tūwharetoa, and northern Whanganui iwi, rather than by Ngāti Maniapoto alone; and that the survey would contain the lands of those tribes that fell within the aukati, and not just those of Ngāti Maniapoto alone. The determination of ‘tribal’ boundaries, and the means by which that would occur, would not be considered until after the external boundary survey had been completed.

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607. Submission 3.4.301, pp 56, 57.

The evidence, then, does not support the Crown's contention that Te Rohe Pōtae Māori made the application in the hope that 'the Court would recognise their title';<sup>608</sup> or that 'the Rohe Pōtae leadership knew they were taking risks with the application for a survey and title investigation,' as this was the only way to 'take control of the title determination process and extract concessions from the government'.<sup>609</sup> On the contrary, they proceeded on the basis of clear assurances that the agreement was for an external boundary survey, after which a Crown grant would be issued to all of the applicants. Had Bryce been successful in persuading them to take their land to the court for iwi and hapū titles to be determined, there would have been little need to survey the external boundary; the proceedings of the Native Land Court would have followed almost immediately, such had been Bryce's prior insistence on pushing the work through.

Rather, the chiefs submitted an application to the court for the survey of their external boundary. They did so because Bryce had led them to believe that submitting an application was the only way to trigger the process for obtaining such a survey. This arrangement was confirmed in the exchange of letters between the chiefs and Smith, which constituted an agreement between Te Rohe Pōtae Māori and the Crown on the process that would be entered into from that point. The Government would undertake the survey work, to be paid for by Te Rohe Pōtae Māori; in the meantime, the Crown would hold back any further applications to lands inside the boundary. How title determination would proceed would await further discussions once the external boundary survey had been completed.

#### **8.5.5.3 *Did Bryce knowingly mislead Te Rohe Pōtae Māori?***

There is a genuine question as to whether Bryce acted in good faith during these negotiations, and whether he ever intended to put in place changes necessary to bring the agreed process into effect. The claimants believe that the Crown, and Bryce in particular, misled them.

They submitted that Bryce led Te Rohe Pōtae Māori to believe that the Crown would recognise their external boundary and their authority within it, and encouraged them to apply to the court on that basis, when the court had no power to fix an external boundary as they intended. They also submitted that Bryce led Te Rohe Pōtae Māori to believe that native committees would play a significant role in determining iwi and hapū titles when the government law did not provide for that. And they also submitted that Bryce promised to withhold Native Land Court applications within their territory, but later accepted competing applications.<sup>610</sup>

The Crown submitted that the issue was whether there was 'machinery to make all the land within the area delineated within the survey inalienable, and to provide for governance within that area'.<sup>611</sup> It submitted that Bryce considered the legislation he promoted 'could be used together to approximate the result that was

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608. Submission 3.4.301, p 55.

609. Submission 3.4.301, p 61.

610. Submission 3.4.128(b), pp 18, 21; submission 3.4.128, p 10.

611. Submission 3.4.301, p 57.

sought by the Four Tribes'. Yet, the Crown also acknowledged that 'the law in place at the time would need further amendment to support the whole package Rohe Pōtae Māori envisioned'.<sup>612</sup> The 'only available step' to Māori, in order to achieve the change they desired, 'was to continue putting forward what they wanted to the government'.<sup>613</sup>

We will consider the claimant arguments in turn. On the first point, Bryce actively and repeatedly encouraged Te Rohe Pōtae leaders to place their lands before the court, on the basis that this was the only way for them to obtain an external boundary survey. In fact, as he knew, application to the court was the beginning of a process of title determination, and therefore – under the law at the time – the beginning of a process of breaking down Te Rohe Pōtae Māori land interests into tradeable shares. It was entirely possible for the Crown to survey the boundary without the court's involvement, and to then return to negotiations with Te Rohe Pōtae leaders about how to proceed from there. This is what Te Rohe Pōtae leaders said they wanted. Bryce withheld information about the mechanism needed to advance negotiations towards their ultimate goal – Crown recognition of their authority. On this basis, he misled Te Rohe Pōtae leaders. As a result, they made an application they might not otherwise have made. He subsequently presented the tribes' Native Land Court application as something they quite clearly did not intend it to be: an application for the court to determine title to their lands.

The immediate effect of the application was to increase tensions among the tribes that bordered Te Rohe Pōtae. As we saw earlier, other tribes – Ngāti Hauā and Ngāti Mahuta of Waikato in particular – feared the application was an attempt by Ngāti Maniapoto to assert control over contested lands. As we will see, concerns about Ngāti Maniapoto motivations would continue to cause concerns for Waikato and some elements of Ngāti Tūwharetoa, and would eventually contribute to the decision by Tūwharetoa to make its own application to the court.

Regarding the claimants' second point, Bryce responded to Taonui's suggestion that Te Rohe Pōtae Māori could appoint a representative committee from among themselves to determine iwi and hapū titles, by telling those assembled that native committees could inquire into titles. On this point, Te Rohe Pōtae leaders were aware that the current law did not provide such powers: Wahanui had protested that the Native Committees Act failed to provide the powers that Te Rohe Pōtae leaders sought. For Bryce's assurance to have been made in good faith, he must have had some intention to bring it to fruition. Yet the evidence is that he did not. As we noted in section 8.3.4 and will discuss in more detail in section 8.7), Bryce subsequently argued that native committees were never intended to be a forum for Māori to determine title, and allowing them to do so would be a disaster. He was similarly dismissive of the notion that native committees could or should be used as a basis for Māori self-government.

Regarding the claimants' third point, Bryce did give an assurance that he would hold back Native Land Court applications within the boundary (as the

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612. Submission 3.4.301, pp 57, 58.

613. Submission 3.4.301, p 58.

Government was empowered to do under section 38 of the Native Land Court Act 1880), and the evidence is that he did so during his remaining term of office. He did tell Te Rohe Pōtae leaders that he could not hold back Native Land Court applications permanently, and this was a transparent attempt to increase the pressure on them to make an application to the court. The Crown did subsequently accept applications for the Taupouiatia and Waimarino blocks, which had substantial areas of land within the boundary. We will discuss those applications in section 8.9.4.

Bryce's actions were in keeping with the way he had approached the opening of Te Rohe Pōtae in preceding months, most recently illustrated through his attempt to establish Kāwhia township as an outpost of Crown control on the edges of Te Rohe Pōtae. While he negotiated with Te Rohe Pōtae leaders, he also took every opportunity available to him to increase pressure on them to accept the Crown's laws, institutions, and public works. In taking this approach, Bryce maintained that the Government would not act in a manner that was contrary to law; in particular, it would not seize any land. But it would assert the Crown's authority where it could practically do so. He described his actions publicly as 'an assertion of the Sovereign rights of the Queen without any recognition of the pretensions of the Maori potentate' – that is, the Kīngitanga. This was a stark assessment given his main point of interaction at that time was with the Te Rohe Pōtae leadership, who were asserting the need to have their rights and authority properly recognised by the Crown.

The view of the colonial Government at the time – as expressed by Bryce during the negotiations – was based on their understanding of the legal rights and authority that the Crown had acquired upon its assertion of sovereignty in 1840. This view was echoed by the Crown in this inquiry: the Crown had acquired sovereignty, by which it meant the paramount civil authority, including the authority to determine which institutions would be needed to exercise government in any particular territory. The Crown submitted that the consent of Te Rohe Pōtae Māori was not legally required in order for the Crown to exercise authority in the district after 1840 – only the likelihood of civil unrest stood in the way.

Bryce talked, and sometimes acted (as in Kāwhia), in a way that reflected these views. He continued to view the opening of the district as he had previously: Te Rohe Pōtae would be broken down, and Crown institutions would prevail, and he therefore did as much as possible to limit the terms of the negotiations to the specifics of the railway while also maintaining pressure on them. But, despite continued talk of asserting the Crown's authority, Bryce had limited options. Unless he was prepared to use force to open the district, with the associated costs and risks (which were likely to have been much greater than they had been at Parihaka), he had no choice but to continue to acknowledge the reality that he needed to engage with Te Rohe Pōtae leaders through dialogue, and to secure their consent for any particular course of action the Crown wanted to take in their rohe. It was only through ongoing discussion that the negotiations could peacefully advance towards the Crown's desired outcome. If nothing else, the exploratory railway

surveys indicated that the Government continued to rely on Te Rohe Pōtae leadership to expedite the work by keeping their communities on side.

As Rewi also indicated at the hui, exactly how questions over the railway and land would play out would need to wait for further discussions during and after the external boundary survey. The various leaders first had to gain agreement to the survey from their people, and the survey would need to be completed before any process of title determination took place.

In sum, Bryce did mislead Te Rohe Pōtae Māori during the December 1883 negotiations, both with respect to the steps that were necessary to obtain a survey of their external boundary and with respect to his intentions regarding the empowerment of native committees to play a significant role in determining iwi and hapū titles. He also sought to pressure Te Rohe Pōtae leaders to make an application for title, by telling them he could not hold back competing applications, and that they therefore risked being relegated to the status of counter-claimants if they did not take the initiative themselves; in this, he sought to encourage divisions among tribes that had hitherto worked together. In these respects, the Crown breached its Treaty obligation to negotiate honestly and in good faith, and therefore breached the principle of partnership. Although these breaches had immediate effects – leading Te Rohe Pōtae Māori to apply to the court when that was not what they had wanted, and increasing tensions between the tribes – those effects were not irreversible, as we will discuss below.

#### **8.5.5.4 *What was the effect of the agreement?***

Notwithstanding Bryce's failure to negotiate in good faith, the December 1883 survey agreement was another important step in advancing the parties' relationship that had been established in March 1883. It helped to advance the objectives of both parties, within the negotiating parameters that had been set down in March, and it therefore represented a further step towards both parties working out how the Treaty would be brought into effect in the district.

In the months that had followed, Te Rohe Pōtae leaders had set out what they sought in exchange for the opening of their territory: the Government's recognition and provision for the exercise of their authority. This was not a compromise of their existing rights, but rather the application of those rights in the new circumstances of the colony. They saw that they could achieve their goal by reaching agreement with the Crown for its recognition of their authority – specifically by enacting laws that would recognise their authority to determine the rohe of the various iwi and hapu within their delineated external boundary, and give Māori communities control and authority over the management and future disposition of their lands. They also wanted to be given the authority to prevent certain social ills – such as drunkenness – which at that stage they associated with Native Land Court hearings.

While the Crown's initial legislative response to the petition was in breach of the Treaty, and while the Crown failed to negotiate openly and in good faith, there was still the possibility that matters could be put right through further negotiations.

The December 1883 survey agreement saw Te Rohe Pōtae Māori allow the Crown to continue its exploratory survey in exchange for having their external boundary surveyed, and contingent agreement on the part of some to allow the continuation of trig surveys. Thus, while there was some distance before the ultimate objectives of either side could be reached, the positions of both sides had advanced.

By December 1883, therefore, Te Rohe Pōtae Māori and the Crown had established a process by which they could continue to work together, albeit with conflicting goals. Te Rohe Pōtae Māori believed they had won agreement for the conduct of an external boundary survey, which would be followed by a Crown grant, with further discussions to follow. Their ability to take further steps would depend on the Government completing the boundary survey, and Bryce also being willing to amend the Native Committees Act or provide some other means by which they could decide iwi and hapū rohe among themselves. The Government, meanwhile, believed it had taken a significant step towards the opening of the district to the railway and settlement. And both parties knew they would need to keep negotiating if they were to achieve their goals.

In reality, Bryce was willing to hold back court application for a time, but he did not intend to increase the powers of native committees or otherwise providing for Te Rohe Pōtae Māori to manage tribal divisions among themselves; nor is there any evidence that he intended to amend the law to provide for a Crown grant to the five tribes on completion of the survey, though that is what Te Rohe Pōtae leaders were led to believe. Bryce appears to have hoped that the court process would ultimately take its course and that the district's lands would be divided up without the Crown conceding any more authority to Te Rohe Pōtae Māori. So long as the boundary survey was completed and the boundary was not compromised, it remained possible for the Crown and Te Rohe Pōtae Māori to come to some mutually acceptable arrangement over the district's lands and governance. But such an arrangement would require compromise, and in particular it would require the Crown to be willing to accept Te Rohe Pōtae leaders' demands for self-determination in respect of land. Whether that would occur would depend on subsequent events.

### 8.6 THE IMPLEMENTATION OF THE 1883 AGREEMENTS TO MID-1884

Following the December 1883 agreement, the Crown began to advance the boundary, trig, and exploratory railway surveys, and also took steps to resume the Kāwhia–Raglan road and explore a route for a road from Kāwhia to Alexandra. The boundary survey was expected to take over a year, while the trig survey was expected to take 18 months, which likely meant that both would be completed in 1885.<sup>614</sup>

Wahanui and Taonui supported the Crown in these endeavours, amid increasing concern from Māori communities along the border about where this work

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614. 'The Survey of the King Country', *New Zealand Herald*, 20 December 1883, p 5.



was leading. Many Māori became concerned about the Government's intentions and feared that the surveys were intended to open the district for settlement. Some also came to fear that the boundary survey was intended to define Ngāti Maniapoto lands to the exclusion of other tribes. These concerns were not confined to Māori who had not been involved in the negotiations – Rewi Maniapoto would soon withdraw his name from the December 1883 external boundary survey application and join Tāwhiao in renewing calls for the Crown to accept Māori self-government. Rewi and others who had been involved in the December 1883 agreement also took action to stop the trig surveys.

Wahanui sought to soothe the concerns of Māori communities, while also explaining the true purpose of the boundary survey. A district native committee, known as the Kawhia Native Committee, was established, and began to prepare for its anticipated role in determining land titles. Neither the committee nor Wahanui was helped by the Government, which encouraged Māori to resolve their differences in court, took no steps to empower the committee to inquire into titles as anything other than an advisor to the court, and, in April 1884, adopted a new Māori land policy aimed at supporting Crown purchasing along the railway area.

As we will see, all of these events combined to create real strain on relationships among Te Rohe Pōtae iwi, and to call into question whether the Crown–Māori relationship could progress beyond the agreement of December 1883 towards a more substantive arrangement in which kāwanatanga and tino rangatiratanga would both have a place within the district.

### **8.6.1 Implementation of survey work, late 1883 to early 1884**

Work on the various surveys commenced almost immediately after the external boundary agreement was reached. Six additional surveyors were put to work: three on the external boundary, and three on the trig survey.<sup>615</sup> Rochfort, who was already in Kihikihi, was able to continue with the exploratory railway survey, which had been completed as far as Taumarunui and was finished by early February 1884. In the meantime, supplies began to be transported to the various parts of the rohe where the other surveys would begin.<sup>616</sup>

Laurence Cussen was responsible for the trig survey, which was to involve extensive work across the whole territory, including the erection of various trig stations. He began work in late December 1883 at Mount Kakepuku, near Kihikihi. There, he encountered opposition even before a single station had been erected. When crossing to the north side of the Pūniu River, a group of Māori women took the surveyors' gear. When the first station was erected on Mt Kakepuku, it was pulled down by the chief Pahe, who was identified as being of 'Ngawairoa' (possibly Ngāti Ngāwaero of Ngāti Maniapoto). Crown agent George Wilkinson wrote to Bryce on 4 January to inform him of the situation, and Taonui and other Ngāti Maniapoto leaders telegraphed Bryce saying they had gone to Kakepuku to calm

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615. Document A78, p985.

616. Document A78, p990.

the situation and would assist with the various surveys in train. Bryce nonetheless rebuked Wilkinson for not having taken immediate action.<sup>617</sup>

Wilkinson speculated that the opposition may have been on account of rumours circulating about government and survey activities, including speculation that the Government intended to tie up Te Rohe Pōtae land under the Native Reserves Act. There was also speculation that the Government had paid Wahanui for his work in reaching the agreement, though there is no evidence for this.<sup>618</sup> These actions signalled that there was ongoing dissatisfaction with the decisions that had been reached at Kihikihi among some communities, particularly Waikato and Ngāti Hauā groups who had not been involved in the application.

Similar concerns also began to be expressed by leaders who were directly involved in the application. On 4 January, Hitiri Te Paerata and two other chiefs of Ngāti Raukawa wrote to the Government asking whether they could apply to the Native Land Court to 'define the boundary between us and Ngatimaniapoto'.<sup>619</sup> Te Paerata had been one of the principal signatories to the application and had then spoken in support of it in the subsequent meeting with Bryce on 19 December. Marr argued that Te Paerata's letter reflected the influence of William Grace, the private land agent (and former government agent: see section 7.4.2) living at Kihikihi, who had opposed the 1883 petition and was motivated to break up the external boundary and bring the land to the court.<sup>620</sup> But it could have equally been an attempt on Te Paerata's behalf to test the Government's understanding of the recent agreement, much like Rewi was about to do.

### 8.6.2 Rewi withdraws from the application, January 1884

Following the December agreement, some leaders communicated directly with the Government to indicate their willingness to help the surveyors in their work. In January, Paiaka, a rangatira of the Tūhua region in Upper Whanganui, wrote to Bryce to say that the Tūhua chiefs had now agreed to the railway survey being carried through and were working with Ngāti Maniapoto to help with the survey of the line (though they continued to oppose gold prospecting).<sup>621</sup> Similarly, on 7 January Rewi Maniapoto wrote to Bryce encouraging the completion of the exploratory railway survey, in the hope that he might ride on the railway before he died.<sup>622</sup>

Rewi's support did not, however, last long. On 14 January, he wrote to Bryce asking about rumours that the Government was encouraging applications for land within the external boundary. He said he had heard from Hopa Te Rangianini that the Government had agreed to Hauāuru making an application to the court for lands within the boundary: 'is this true or false because it does not agree with your word to me that we two should water the tree so that it would grow well'. Rewi

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617. Document A78, pp 993–997.

618. Document A78, p 995.

619. Wilkinson to Native Office, 4 January 1884 (doc A41, p127).

620. Document A78, p 1007.

621. Document A78, p 1003.

622. Document A78, p 990.

reminded Bryce that all they had agreed to were the various surveys currently being undertaken – the trig surveys, and the exploratory survey for the railway line, and that for the external boundary.<sup>623</sup>

Bryce replied on 20 January, telling Rewi that he should ‘not listen to reports’ and that instead he would ‘find my word will remain unbroken’. ‘What was said at the meeting in your house was right[:] first the external boundary[,], second Hapu boundaries[,], last Individual boundaries’.<sup>624</sup> As explained in section 8.6, Te Rohe Pōtae leaders had only agreed to the survey of the external boundary, which had been confirmed in the exchange of letters with Smith. As he had done during the hui itself, Bryce continued to maintain that the agreement was more far-reaching than this.

Bryce’s minimal attempts to reassure Rewi contrasted with the extensive views on the situation he had only just provided to the governor. On 11 January, he had responded to a request from the British Government to provide a response to a letter that had been written on behalf of the four Māori members of the House of Representatives criticising the native land legislation and seeking imperial intervention to provide Māori with greater means of self-government, particularly in areas such as Te Rohe Pōtae. In refuting these claims, Bryce argued that Māori in areas such as Te Rohe Pōtae were sick of isolation and were eager to engage with the wider colony. He maintained that the idea that Māori could determine title was ‘utterly impracticable’: ‘decisions would be very rarely arrived at and scarcely ever accepted’, due to ‘suspected partiality’. The court had, he said, been reformed at the insistence of critics and would ‘in future be assisted by Native Committees, elected for the purpose by the Maoris’. The idea of providing Māori with ‘separate legislation’, he said, ‘scarcely requires comment’. Due to the increasing numbers of Pākehā, he said, it was ‘self-evident that the Maoris must cast in their lot with the Europeans, accepting their institutions and laws’.<sup>625</sup>

He had said none of this to Te Rohe Pōtae leaders during the two December 1883 hui; on the contrary, he had told Te Rohe Pōtae Māori at Kihikihi that arrangements had been made for native committees to ‘inquire into titles’. There is no evidence of him qualifying this statement in any way. This statement was inaccurate in terms of the powers actually granted to the committees under the Native Committees Act 1883, as Wahanui had pointed out in his response to that Act. But it nonetheless suggested that Bryce supported native committees playing the type of role that Te Rohe Pōtae leaders had sought. The idea that it was ‘utterly impracticable’ for Māori to determine their own titles would have met with strong opposition from Te Rohe Pōtae Māori. As it was, his response was not forwarded to the Secretary of State for the Colonies until 1 March and did not become public until much later.<sup>626</sup>

623. Rewi Maniapoto to Bryce, 14 January 1884 (doc A41, p127).

624. Bryce to Rewi Maniapoto, 20 January 1884 (doc A41, p127).

625. Bryce to Governor, 11 January 1884, AJHR, 1883, A-1, p12.

626. Document A78, p1023.

Bryce's response to Rewi – if it reached him in time – appears to have done little to assuage Rewi's growing concerns. A large hui was held at Whatiwhatihoe on 25 and 26 January, which Rewi attended, along with Tāwhiao, Te Wheoro, Hauāuru, and other leaders. Also in attendance were Hirini Taiwhanga, a Ngāpuhi leader and campaigner for Māori rights under the Treaty (and future member of the House of Representatives), and J R McBeth, a Pākehā affiliated to the Aborigines Protection Society.<sup>627</sup>

Rewi was said to have been angered by reports that Bryce was gloating about how the Government would use the Te Rohe Pōtae application to the Native Land Court to pursue the opening of the district. Rewi was reported to have said that he would no longer cause trouble for his 'child', Tāwhiao, and henceforth would be 'one with Tawhiao and the Waikato'. He planned to send Bryce a telegram setting out his objections to the Government's position and requesting that his name be withdrawn from the application.<sup>628</sup> Marr suggested that Rewi was less intimately involved in negotiations with the Government and therefore had 'more freedom to publicly record his anger with the government' than other rangatira such as Hitiri and Wahanui, who in her view had similar feelings.<sup>629</sup> While the Government determined its response to Rewi, Tāwhiao began to make preparations to travel to England, so he could appeal directly to the Crown to encourage the colonial government to honour the Treaty.

### 8.6.3 Rewi and Tāwhiao assert right of self-government, January–February 1884

Rewi's letter, dated 26 January, was sent to Bryce with an accompanying telegram in which Rewi stated that the letter 'explain[s] the cause of my anger.'<sup>630</sup> Tāwhiao sent his letter at the same time, and it was virtually identical to Rewi's. Both emphasised the nature of the exchange that was currently being negotiated: the Government was seeking the construction of the main trunk railway through the territory; Māori sought powers of self-government. While the original te ro Māori version does not appear to have survived, the translation of Rewi's letter read:

Friend, in consequence of misrepresentations published by the newspapers regarding the application made by the Maoris for the exterior boundary of the King Country, I, Rewi Maniapoto, make known that I withdraw my name from the application for the survey. I also wish to make known that the application made by the Maoris referred to the exterior boundary only, we did not intend that the King Country should be put through the Native Land Court as stated in the newspapers. I will also inform you that I object altogether to railways being made through our lands and townships established upon them until we have obtained self government. I am

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627. Document A41, p 129.

628. 'Important Native Meeting at Whatiwhatihoe', *Waikato Times*, 29 January 1884, p 2 (doc A78, pp 1016–1017).

629. Document A78, p 1016.

630. Rewi to Bryce, telegram, 29 January 1884 (doc A78, p 1018).

quite certain that all the Maori tribes agree to my 'tikanga'. We are very desirous of obtaining self government. You are anxious for railways; give us what we desire and we will give you what you want. If my name is signed to any other document let it be struck out. From Rewi Maniapoto.<sup>631</sup>

A few days later, the newspapers began publishing slightly varying translations of these letters. Each version, however, emphasised the same message: Te Rohe Pōtae Māori would only agree to the construction of the railway if the Government provided them with meaningful measures of self-government. While the essential exchange that was under negotiation had never been put so clearly, the principle was consistent with the June 1883 petition, in which Te Rohe Pōtae leaders had sought recognition of the external boundary and statutory protection for their rights of self-government within that boundary, particularly with respect to land.

No other Te Rohe Pōtae leaders chose to follow Rewi's course of action in withdrawing their names from the application, even though they supported his message about self-government. One report suggested that a 'form of withdrawal' had been circulated among the chiefs, but none had chosen to sign it.<sup>632</sup> Their focus remained on ensuring the Government upheld its side of the agreement and completed the external boundary survey. Hopa Te Rangianini wrote to Bryce on 28 January to say that the Government still had the support of Ngāti Maniapoto and asked that the external boundary survey be expedited.<sup>633</sup>

Wahanui similarly wrote to Wilkinson on 30 January, assuring the Government that they continued to support the agreement for the boundary survey. He pointed out that Rewi had been the first to sign the December 1883 agreement, and had done so out of friendship for the Government. The Government might want to consider this, he said. Marr suggested this 'barbed' remark was intended to make the Government consider how it had lost Rewi's support so quickly.<sup>634</sup>

Wilkinson later claimed that Rewi's actions ought to be put down to being 'an old man and very impressionable', and that Rewi had told him he did not know his own mind and should be called 'kopikopiko noa' (wandering backwards and forwards).<sup>635</sup> Settler newspapers also echoed these views. *The Evening Post*, for example, dismissed Rewi as 'weak and silly' and 'old' (though he had not been too old to convene the hui at which the survey agreement was reached), and called for Bryce to show his displeasure at Rewi's 'bad faith and treachery'.<sup>636</sup> In fact, Rewi had been responding to what he saw as Bryce's bad faith. And in so doing, he had publicly reinforced the message that Te Rohe Pōtae Māori had only agreed to the survey of the external boundary and had not made an application for title determination by the court – how title would be determined was for further discussion once the boundary was confirmed.

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631. Rewi Maniapoto, letter, 26 January 1884 (doc A78, p 1018).

632. Document A41, p 130.

633. Document A41, p 130.

634. Document A78, p 1019.

635. Document A78, p 1020.

636. 'Native Affairs', *Evening Post*, 30 January 1884, p 2.

Rewi's letter had the desired effect. In early February 1884, the Native Under-Secretary T W Lewis asked Bryce what action should be taken in respect of Te Paerata's letter of 4 January 1884, which had asked for Ngāti Raukawa tribal boundaries to be confirmed. Lewis commented that it appeared to represent an application for a division of land between the tribes and to 'portions of the large block'. Bryce decided that it was not advisable to take any action 'at present' because of a 'recent event' – Rewi's decision to withdraw from the survey application.<sup>637</sup> Bryce's response to Rewi on 11 February was brief and dismissive. He questioned why Rewi had taken this course of action, given he had only recently asked Bryce to expedite the railway survey. He asked whether Rewi did not have the strength to 'brush off the flies' that were settling on his body, and why he mistook the buzzing of those flies 'for the whispering of the Gods'.<sup>638</sup> By this time, however, Rewi was preoccupied with other matters. On 13 February, he accompanied Tāwhiao to Auckland in preparation for Tāwhiao's visit to England.

#### **8.6.4 The implementation of the native committees regime, March 1884**

Bryce soon set about putting the native committees regime into action. On 24 January 1884, a notice (dated 16 January) was published in the *New Zealand Gazette* setting out the native committee districts and returning officers for the elections of members. The boundaries of the new district roughly followed those of the June 1883 petition (map 8.1), except that the committee district included an area north of the Pūniu bounded by the confiscation line and the Waikato River.<sup>639</sup> Marr explained that it began at Aotea Harbour in the north-west, then followed along the northern confiscation line to Maungatautari in the east, then went south, via the Waikato River and Lake Taupō, to Ruapehu, before turning west to White Cliffs.<sup>640</sup> As Marr noted, this area covered some 3.5 million acres, and included the lands of multiple tribal groups, who were to be represented by 12 members. Though the name 'Kawhia Native Committee' was clearly not representative of the district as a whole, Marr recorded that there was no opposition from Māori.<sup>641</sup>

##### **8.6.4.1 The election of the Kawhia Native Committee**

The Native Committees Act contained no provision for ensuring that committees represented all of the iwi and hapū of their districts. Nor did it provide for elections to be held by popular vote among all of the people. Rather, the Native Committees Act provided for 'elections' to be held in a single place. Once a native district was proclaimed, a returning officer or government agent was required to place notices around the district giving at least 21 days' notice that an election would be held. The notices were to set out the date of and venue for the election. On election day, the returning officer would remain at the venue from 10am to

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637. Document A78, pp 1013, 1017–1018; doc A41, p 127.

638. Document A78, p 1018.

639. 'Native District Committees Proclaimed', 24 January 1884, *New Zealand Gazette*, no 8, p 111.

640. Document A78, pp 1040–1041.

641. Document A78, pp 1040–1041.

4pm and receive nominations. There would be no vote; the 12 people who received the most nominations would be elected.<sup>642</sup> When these provisions were debated in the Legislative Council, one member claimed that the regulations for the election of committees were much more detailed than the regulations for the election of members of Parliament.<sup>643</sup>

Elections for the Kawhia Native Committee were held at Alexandra<sup>644</sup> on 3 March 1884, with the Government agent George Wilkinson serving as returning officer. He called for nominations in the morning. The *Waikato Times* named 15 people as being nominated<sup>645</sup>, though it later revised this upwards to 19.<sup>646</sup> After the close of the poll, Wilkinson declared the 12 candidates with most nominations to be elected.<sup>647</sup> Those elected were listed in the minutes of the committee's first meeting as: Hone (John) Ormsby, Hone Te One, Whaaro, Karaka Tarawhiti, Hone Wetera, Te Aroa, Ngakuru, Te Para, Kiekie, Matakītaki, Te Paitai, and Taniora.<sup>648</sup>

None of the historians provided detailed evidence about the whakapapa of committee members. From what we can determine from claimant evidence, it seems likely that at least four were of Ngāti Maniapoto (Ormsby, Whaaro (Te Wharo), Te Aroa, and Taniora);<sup>649</sup> three were of Ngāti Tūwharetoa and/or northern Whanganui iwi (Kiekie, better known as Te Herekīkie; Ngakuru, also known as Ngahuru Te Rangikāiwhiria; and Matakītaki);<sup>650</sup> two were of Ngāti Hikairo (Hōne Wetera and Hone Te One);<sup>651</sup> and one was of Ngāti Korokī (Karaka Tarawhiti).<sup>652</sup> We cannot determine the origins of Te Para and Te Paitai. The *Waikato Times* later reported that one of the committee's members was a young man of Ngāti Raukawa, though we cannot be sure who.<sup>653</sup> Among those who were nominated

642. Native Committees Act 1883, ss 4–6.

643. 'Native Committees Bill', 29 August 1883, NZPD, vol 46, p 343.

644. 'Alexandra', *Waikato Times*, 4 March 1884, p 2.

645. 'Kawhia Maori Licensing Committee', *Waikato Times*, 4 March 1884, p 1. The *Times* listed those nominated as: Hone Te One, Hone Punii, Karaka Tarawhiti, Te Paitai, Whaaro, Taniora Te Aroa, Ngakuru, Herikīkie, Matakītaki, Te Para, Hone Wetera, Te Ranginui Paunini, Hopere Te Potou, Te Pihua, Hetera Paerata. 'Hone Punii' appears to be John Ormsby.

646. 'Alexandra', *Waikato Times*, 8 March 1884, p 1.

647. 'Alexandra', *Waikato Times*, 8 March 1884, p 1.

648. Document A78, p 1042.

649. John Ormsby was the son of a European schoolmaster and a Ngāti Maniapoto woman. Te Wharo (aka Te Whaaro) was a Ngāti Maniapoto rangatira of the upper Mōkau River who had been involved in the March and December 1883 hui (doc A28, p 309; doc A78, pp 757, 939, 953; see also p 967). Te Aroa is likely to be Te Aroa Haereiti of Ngāti Te Kanawa, Ngāti Peehi and Ngāti Kinohaku, who lived at Marokopa and Hangatiki: doc s3, pp [3]-[4]; doc M32, p 96; doc 111, p 10. Taniora may have been the prominent Mōkau rangatira Taniora Whararua: doc F9, pp 8–9; doc A28, pp 62, 177.

650. Kiekie was Te Herekīkie (his full name was used in the *Waikato Times* list of nominees ('Kawhia Maori Licensing Committee', *Waikato Times*, 4 March 1884, p 1). Matakītaki is likely to be Matakītaki Te Ngārupiki (Ngāti Hāua) of northern Whanganui: transcript 4.1.7, pp 31, 58, 65–66; doc A108(b), p 8.

651. Document 111, p 20.

652. Document M18(a), p 40; see also transcript 4.1.5, p 247.

653. 'The Natives and Mr Bryce's Promises', *Waikato Times*, 10 June 1884, p 1.

but not elected was the senior Ngāti Raukawa rangatira Hitiri Te Paerata.<sup>654</sup> At the committee's first meeting, Ormsby was designated as chair.<sup>655</sup>

The *Waikato Times* reported on election day that Māori were taking little interest, though Wahanui had brought a group of people from Mōkau to take part.<sup>656</sup> A few days later, the *Times'* correspondent heavily criticised the conduct of the election, describing it as 'simply a farce':

The district itself is a very large one, and the election was, or is rather supposed to give the various tribes residing in it, to a great extent, local self-government, but as the election was conducted, the whole was simply a farce, comparatively few of the natives interested knowing anything of the matter, through the insufficient notice and publicity not having been made. The idea of one polling place only, the nomination and election of the candidates the same day, held at one end of the district, was an absurdity, and so the natives regard it.<sup>657</sup>

The correspondent criticised Wilkinson for 'alone conducting the election, acting as returning officer, poll clerk, and scrutineer all in one'. As a result, 'those opposed to the measure (Tawhiao's party)' regarded the Committee 'as having been nominated by the Government'.<sup>658</sup>

In his report to the Government in May, Wilkinson observed (contrary to what the *Waikato Times* had reported) that Ngāti Hauā and other Waikato iwi had refused to take part, whereas Ngāti Maniapoto took 'a great interest' in the elections, nominating nearly all of the committee's members, who were chosen carefully to represent 'different districts within the boundaries'. In his view, 'the fact that the Waikatos neither nominated, voted, nor in any way took part in the election will, I think, militate against its being a success at present'. Due to this limitation, Wilkinson predicted that the committee would ultimately prove to be a failure:

Their great wish is to be allowed to decide upon, or rather hold, a preliminary investigation of their own claims to the large block that is now being surveyed, upon which they would make a recommendation to the Native Land Court; but I am very dubious as to their being the proper tribunal to adjudicate, even in a preliminary form, on that block, especially as their opponents and counter-claimants, Waikato and Ngatihaua, would not be represented on the Committee.<sup>659</sup>

It is not clear whether Wilkinson intended his reference to 'Ngāti Maniapoto' to mean only that tribe, or to refer more generally to those who had supported the survey. As noted above, the committee also included members from Ngāti

654. 'Kawhia Maori Licensing Committee', *Waikato Times*, 4 March 1884, p 1.

655. Document A110 (Joseph), p 404.

656. 'Alexandra', *Waikato Times*, 4 March 1883, p 2.

657. 'Alexandra', *Waikato Times*, 8 March 1884, p 1.

658. Document A41, p 139.

659. 'Reports from Officers in Native Districts', AJHR, 1884, G-1, p 11.



Hikairo, Ngāti Tūwharetoa, and Whanganui. It also included a mix of younger and more senior leaders, and can therefore be seen as reasonably representative of those who supported the survey and engagement with the Government – and also of those with interests in the vast majority of the district's lands, the contested area in the north representing only a small part of the district.<sup>660</sup> The refusal of Ngāti Mahuta and Ngāti Hāua to take part, and the non-election of Hitiri Te Paerata of Ngāti Raukawa, undermined any hope that it represented all iwi with interests in the district.<sup>661</sup>

Wilkinson attributed the result to a combination of factors. On the one hand, he said, 'I found a great deal of ignorance existing in the minds of the Natives regarding the principles under which the elections had to be conducted.' But he also acknowledged that the election process laid down in law was scarcely satisfactory, with a single polling place in a district of 3.5 million acres. He suggested that, in future, 'should it be necessary to hold any more elections for a similar purpose, more facilities be given for recording votes by fixing more polling-places within the different districts.'<sup>662</sup>

#### **8.6.4.2 Bryce's views on title determination**

While the Government was willing to point to the committee's establishment as evidence that it had begun reforming the Native Land Court to be more responsive to Māori needs, it had little interest in making the committee regime work in a meaningful way. As noted, Bryce had told Te Rohe Pōtae leaders at the December 1883 Kihikihi hui that the Native Committees Act had given native committees the means to 'inquire into titles', and that a committee would be appointed to assist the court. Exactly how that would work in practice was unclear, however, as the 1883 Act only made provision for the committees to make recommendations to the court. The court was under no obligation to act on the recommendations or even take them into account, and it could continue to hear cases in the absence of a committee altogether.

Bryce's 11 January 1884 memorandum to the governor (section 8.6.2) revealed more of his thinking in this regard. While he promoted the Native Committees Act as a Government initiative in response to criticisms of the court, he also dismissed the idea that Māori could or should be given powers to determine their own titles, or that they should have more general powers of self-government. On 11 February, Bryce wrote another (private) memorandum to Jervis setting out his views on the Kīngitanga and Te Rohe Pōtae. He again claimed that providing Māori with powers to determine title would 'simply result in hopeless confusion', under which title would never be determined. The idea was promoted by those who 'had a confused desire to revert to Maori customs', or by those who had no title themselves and therefore wanted to delay title determination indefinitely.

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660. Document A78, p1042.

661. Document A78, pp1042–1043. Ngāti Mahuta claimed interests in northern Kāwhia, and Ngāti Hāua claimed interests in the north-east of the district: see AJHR, 1884, G-1, pp 9, 11.

662. 'Reports from Officers in Native Districts', AJHR, 1884, G-1, p11.

Bryce was similarly dismissive about providing Māori with a system of local self-government, describing it as an 'absurdity'. He said it assumed that Māori were gathered in one part of the country, whereas in fact they were scattered all through it. The part of the country being spoken of as a 'retreat' for Māori was owned by a relatively small number, who would not allow others to settle there and share ownership in the land. He repeated the advice that the best hope for Māori was to 'frankly accept European institutions and laws'.<sup>663</sup>

On 1 March, Jervois forwarded Bryce's first memorandum to the British Government and repeated the advice that the request for Māori to be empowered to determine their own titles was 'absolutely impracticable' and 'highly undesirable'. Under the native land system, he said, ownership of land remained essentially as it had been before the Treaty of Waitangi, and legislation had put in place a range of protections for Māori. He noted that the Native Committees Act 1883, in particular, 'provided that in certain districts the title to Native land may be investigated by an elective committee of Natives'. Much like Bryce, the governor did little to explain what function the committees could have in investigating titles when all powers of decision-making resided in the court.<sup>664</sup>

Jervois also reflected the views Bryce put to him in the February memorandum in rejecting the idea that Māori could be empowered to 'make laws for Māori guidance'. 'It would be impossible to give effect to such a proposal', he said, because it 'rests on the assumption that the Maoris have retired into the interior and aggregated themselves in one particular part of the country'.<sup>665</sup> In effect, the argument was that areas such as Te Rohe Pōtae, which essentially remained in Māori control, could not be granted powers of self-government because of the extent of Pākehā population that had already been established elsewhere in New Zealand, and that Māori in less populous areas would not be willing to accommodate Māori from locations where Pākehā were in the majority, as if these were the only options. The governor said nothing about whether or how Māori in places such as Te Rohe Pōtae could exercise self-government over their own lands and people while making provision for any settlers who might settle on terms suitable to them.

In keeping with this view of the situation, the Government turned its attention to promoting the foothold it had obtained in Te Rohe Pōtae at Kāwhia, and did so by arranging for Governor Jervois to visit there. Jervois arrived there on 15 March and was greeted by a number of Ngāti Hikairo chiefs, who put forward a range of issues that concerned them, including their desire to lease land rather than sell it, and the control of liquor. The governor's visit was received positively by the Kingitanga, as it presented Māori with an opportunity to discuss their issues directly with the Queen's representative. Kingitanga leaders had long sought such

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663. Document A78, p1025.

664. Despatches from the Governor of New Zealand to the Secretary of State, 1 March 1884, AJHR, 1884 I, A-1, p 10.

665. Despatches from the Governor of New Zealand to the Secretary of State, 1 March 1884, AJHR, 1884 I, A-1, p 11.

a meeting – as discussed, Tāwhiao and McLean had agreed for the governor to visit Kāwhia at their 1875 Waitomo hui, but this never eventuated.<sup>666</sup>

#### 8.6.4.3 *Tāwhiao's preparations for travelling to England*

Meanwhile, the final details of Tāwhiao's visit to England were confirmed at the annual Maehe. Tāwhiao's travelling party included Wiremu Te Wheoro, the Whanganui rangatira Topia Tūroa, Patara Te Tuhi (known as Tāwhiao's secretary), and Hori Ropia, with a Mr Skidmore acting as interpreter. On 17 March, they arrived in Auckland. There they visited former governor and premier, George Grey, who was willing to give letters of introduction, but warned the party that their efforts would be futile.<sup>667</sup>

As part of their preparations, the party had produced a petition that they planned to give to the British Government. The petition began by setting out the petitioners' understandings of the Treaty's guarantees and outlined the various actions they considered the colonial government had taken in breach of those guarantees, including the Taranaki and Waikato wars, and the confiscation of land. The petitioners went on to describe the introduction of the Native Land Court as a measure designed to 'destroy the rights of the Maoris over their own land', through which 'the Maoris were denied all authority'. They objected to the limited number of Māori representatives in Parliament, and the fact that the position of Minister of Native Affairs was filled by a Pākehā (noting that when Te Wheoro raised the issue in Parliament, Bryce said that 'the office should never belong to the Maoris'). They asked the Queen to grant five requests:

- ▶ The establishment of 'a Government to your Māori subjects' so that 'within the limits of Maori territory . . . they may have power to make laws regarding their own lands';
- ▶ That there be appointed a Māori commissioner who 'shall act as mediator between the Maori and European races' on matters such as leasing of land and to provide advice to the governor in the event of a conflict between laws passed by the Māori and colonial governments;
- ▶ That the 'greater portion of taxes levied on your Maori subjects be returned to them, to enable them to carry on their government';
- ▶ That Māori be 'permitted to direct their own affairs' in respect of land matters;
- ▶ And that 'lands wrongly obtained by the Government be returned to us'.<sup>668</sup>

With final preparations complete, the party departed Auckland on 1 April, arriving in Britain in mid-May.

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666. Document A78, p1028.

667. Document A78, pp1035–1036.

668. 'Despatches from the Secretary of State to the Governor of New Zealand', AJHR, 1885, A-2, pp3–5.

**8.6.4.4 Wilkinson's views on Tāwhiao's petition**

In his annual report to the House of Representatives, Wilkinson commented at some length on Tāwhiao's plans, advising the Government to give no support to Tāwhiao or his petition. In Wilkinson view, Māori had established the Kingitanga with the aim of 'preserving themselves as a race, and retaining a certain territory intact for the benefit of all, over which our laws, which they thought were detrimental to them, should not have effect . . . It was more a progressive measure for themselves than an aggressive one against us.' But a combination of the Government's aggressive reaction and lawlessness among some Kingitanga supporters had led to conflict, which Tāwhiao and his supporters regretted. Tāwhiao nonetheless remained committed to the original position that Māori should have their own King and make laws for themselves: 'They really want to be left alone, and to manage their own affairs without any assistance from us.' In recent years, Wilkinson said, Kingitanga leaders had believed that such an outcome might be possible through their negotiations with the Government. More specifically, they had believed that the Government was 'anxious to make terms with them', and 'in return for their allowing us to put roads and railroads through their territory, we would grant them an independent authority.'<sup>669</sup>

It was 'only quite recently' that the Kingitanga leaders had 'given up all hope' of obtaining this outcome from the New Zealand Government, and had decided instead to appeal directly to the Queen, not understanding the constitutional position under which the colonial Parliament made laws for the colony without interference from either the governor or the Queen. Wilkinson estimated that 'no more than one thousand' out of New Zealand's 40,000 Māori would support having Tāwhiao as their King in preference to their own rangatira. Ngāti Maniapoto, Wilkinson said, would now have nothing to do with him. The Government should therefore 'refuse to give the King party what they want, and put up with their opposition and reproaches', rather than giving in and causing 'a multitude of troubles'. As we will see, the Government would follow this advice.<sup>670</sup>

**8.6.5 Wahanui's ongoing efforts to implement the 1883 agreements, March–May 1884**

Through the early part of 1884, Wahanui and other leaders continued to assist the work of the surveyors by visiting groups in the border regions. By mid-March 1884, however, the strain caused by ongoing uncertainty about the purpose of the various surveys and the Government's intentions was beginning to tell. On 16 March, the Kāwhia leader Hōne Wetere obtained a letter from a chief called Pikia. Pikia had received a letter from another leader, Rau Taramoa, who said that Wahanui was beginning to face difficulties over the various surveys underway. There were concerns that large amounts of money were being spent on trig surveys and roads, and that the survey of the external boundary was not being completed. Bryce asked that Wetere be informed that the external boundary survey

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669. 'Reports from Officers in Native Districts', AJHR, 1884, G-1, pp 11–12.

670. 'Reports from Officers in Native Districts', AJHR, 1884, G-1, pp 11–12.

was close to completion.<sup>671</sup> During March and April, several communities would express their opposition to the surveys and their uncertainty about the intentions of the 1883 petitioners and of the Government. Wahanui and Taonui faced a significant challenge smoothing over concerns and keeping the December 1883 agreement on track, especially as communities responded to fears that their lands might come under threat.

#### **8.6.5.1 Further opposition to Cussen's trig surveys, March–April 1884**

Meanwhile, Cussen shifted his trig survey operations from the north-east of the rohe to the Taupō region, on account of expected opposition from Ngāti Raukawa and Ngāti Hauā over the trig surveys. He arrived in Taupō on 21 March 1883. The assembled Ngāti Tūwharetoa leaders, including Te Heuheu and Matuaahu Te Wharerangi, did not initially allow him to proceed with the survey, but were persuaded to do so when a letter from Bryce was presented to them.<sup>672</sup>

Cussen received what he described as ‘more serious and troublesome opposition’ when he moved into the Tūhua district. He reported that the local people there had heard the ‘Government would take large areas of land from them to pay for the trig. survey’, the maps would be used for determining title, land would be rated, and that the Government would ‘lock up’ the land until it had acquired it for itself. A local committee had been formed to manage their particular issues. ‘They decided to prevent us from putting any more stations on their land; they would allow none of their people to accompany me or assist in any way, and no information, such as names of rivers, hills, &c., was to be afforded us.’ Cussen reported that they were advised on this course of action by Te Herekiekeie of Ngāti Tūwharetoa, who worked with the chairman of the local committee, Te Hiahia.<sup>673</sup> Te Herekiekeie had been one of the signatories of the December 1883 letter to Smith authorising the boundary survey; his involvement is another example of growing concern among Te Rohe Pōtae leaders about the Government’s intentions, coupled with what Marr described as ‘confusion and concern’ over the trig surveys. These involved extensive work throughout the territory, not just along the boundary, the scale of the work taking even Wahanui by surprise.<sup>674</sup>

In another example of the concerns that Māori communities were feeling, the Government on 6 April received an undated letter from Toakohuru Tāwhirimatea and 101 others from Whanganui, asserting a separate Whanganui tribal boundary which extended into the territory contained by the external boundary described in the 1883 petition and survey agreement. Tāwhirimatea was of the Ngāti Rangitauwhata and Ngāti Reremai hapū of Ngāti Hāua, and had interests in the Waimarino and south-west of Taumarunui which appear to have overlapped the petition area boundary.<sup>675</sup> These petitioners claimed to repudiate the ‘tribal

671. Document A78, pp 997–998.

672. ‘Report on the Surveys of New Zealand for the Years 1883–1884,’ AJHR, 1884, C-1, p 30.

673. ‘Report on the Surveys of New Zealand for the Years 1883–1884,’ AJHR, 1884, C-1, p 30.

674. Document A78, pp 985, 992, 1001.

675. Waitangi Tribunal, *He Whiritauonoka*, vol 2, pp 558, 562.

boundary made by Wahanui and Manga (Rewi)'. As Marr said, this letter, with its reference to a 'tribal boundary' appears to have reflected a belief that the application for the external boundary survey on behalf of all groups with interests was in fact intended as a survey on behalf of Ngāti Maniapoto alone.<sup>676</sup> Bryce annotated the letter from Tāwhirimatea and others by directing that the authors be 'informed that their proper course is to prefer whatever claims they may have to the Native Land Court when it sits to determine the title to the block.'<sup>677</sup>

#### **8.6.5.2 Wahanui and Taonui attempt to assuage concerns, March–April 1884**

But it was clear that the Government still needed the support of Te Rohe Pōtae Māori leaders in order to complete the surveys. Facing opposition from the local Tūhua committee, Cussen wrote to Wahanui and Taonui 'informing them of the state of affairs'. Wahanui very quickly arrived in Tūhua, where he discussed the various issues raised by the committee. Cussen reported that Wahanui 'succeeded in arranging matters, and the work was allowed to go on again, after a fortnight's delay'.<sup>678</sup> This was confirmed in a letter sent by three Tūhua rangatira to Bryce on 20 April. They were named as Kiekie (presumably Te Herekiele), Himona, and Ngaparu (possibly Ngahuru te Rangikaiwhiria). They said that they no longer had opposition to the Government and that they would assist in work on the 'powhita' (possibly an abbreviation or misspelling of 'porowhita', or circle, in reference to the external boundary), which was described in the translation as 'land comprised in the outside boundary'.<sup>679</sup>

Wahanui had written to Governor Jervois on 9 April asking him to visit Te Rohe Pōtae leaders in Alexandra. His request was perhaps prompted by the governor's recent visit to Kāwhia. He may have also wanted to promote another initiative that had recently been set in train: a petition to control the distribution of liquor in Te Rohe Pōtae, which had been put together on 1 April and was beginning to be circulated throughout the region for signatures. But Bryce asked the governor not to go, expressing his concerns that Te Rohe Pōtae leaders would discuss 'political business', and that Bryce himself was unable to attend. The governor replied to Wahanui on 12 April outlining the reasons put forward by Bryce for declining the invitation.<sup>680</sup>

Wahanui remained mindful of the range of pressures that continued to bear upon communities in various parts of the rohe. On 26 April he wrote to the Government asking for it to stop gold prospectors from going to the Tūhua region. He said he planned to call a general meeting, including the people of the upper Whanganui, to discuss matters of concern to them. There is no evidence of a Government response.<sup>681</sup>

676. Document A78, pp1010–1011.

677. Document A78, p1012.

678. 'Report on the Surveys of New Zealand for the Years 1883–1884', AJHR, 1884, C-1, p30.

679. Document A78, pp1001, 1046.

680. Document A78, p1032.

681. Document A78, pp1004, 1043.

As noted in section 8.6.2, the Government had earlier been put on notice about the issue of gold prospecting by Paiaka's letter of January 1884. Paiaka had said the people of Tūhua had agreed to the railway survey, but that one surveyor was found looking for gold and was also suspected of investigating the territory for a possible roadway. Paiaka asked the Government to prevent such people from entering their territory. Bryce annotated the letter dismissing these concerns: government surveyors were not asked to look for gold, and in any case it was unlikely that gold would be found.<sup>682</sup> Again it is not clear whether Bryce's response was communicated to Paiaka. However, the issue did not let up, and in mid-May Wilkinson reported that two men had been caught prospecting for gold in the Tūhua ranges and had been brought out to Alexandra.<sup>683</sup> This was another example of the aukati remaining in force for all except the government surveyors who were authorised to be in the area.

### 8.6.5.3 *The 'blue ribbon' petition, April 1884*

While the surveying work continued, Te Rohe Pōtae Māori advanced their other initiative of the period – the 'Blue Ribbon' petition seeking control of alcohol distribution in Te Rohe Pōtae. It was named 'Blue Ribbon' on account of the support and promotion it received from leading members of the Gospel Temperance Mission, also known as the 'Blue Ribbon' movement. The petition was strongly supported by the senior Ngāti Maniapoto leaders. By May 1884, the petition had been signed by the key rangatira: Wahanui had signed at Alexandra; Rewi at Kihikihi; and Taonui at Mohaonui, near Ōtorohanga. In the June 1883 petition, they had signalled their opposition to the consumption of alcohol as one of the social ills they had come to associate with the Native Land Court. Having Te Rohe Pōtae declared as a 'dry' zone under the Act was also another means by which their external boundary could be recognised, as it would involve official recognition of their territory for the specific purpose of preventing the sale of alcohol.<sup>684</sup>

The petition (dated 1 April 1884) was presented to Governor Jervois in Auckland on 15 May, mainly by Pākehā members of the Temperance Mission. By that time it had been signed by 1,500 Māori of Te Rohe Pōtae. In it, the petitioners asked the governor to invoke section 25 of the 1881 Licensing Act, which would have the effect of prohibiting publicans' licences in the district. This area was described as 'extending to Waipa, Kawhia, Mokau and all its boundaries.' According to Marr, Wahanui asked that the boundary be the same as the petition area, and Bryce agreed, meaning that from this time the control of alcohol distribution and the external boundary became closely linked.<sup>685</sup>

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682. Document A78, p1003.

683. Document A78, p1004.

684. Document A78, pp1029–1030.

685. Document A78, pp1029–1030.

**8.6.5.4 Ongoing opposition to the surveys, May 1884**

Meanwhile, communities along the boundary continued to express their concerns about the boundary survey. In particular, the idea that external boundary survey was intended for all Te Rohe Pōtae tribes was increasingly challenged by Māori who rejected the external boundary, presumably out of concern that it divided their territories and that they might be excluded from any Crown grant or title award that followed the boundary survey. On 2 May, Tāwhirimatea of upper Whanganui wrote a second letter to the Government saying that his people were willing to take their land inside 'Wahanui's boundary' ('te rohe potae a Wahanui') to the court. They asked to be informed when a court sitting would take place. Native Affairs Under-Secretary T W Lewis advised that the writers should be informed they would receive notice in the event that the court would sit, and that they should be placed on the list to be notified. Bryce approved this on 7 May.<sup>686</sup>

At about this time, the *Waikato Times* reported a rumour that Wahanui was planning to place the entire area enclosed by the petition area boundary under the Native Reserves Act.<sup>687</sup> It appears this rumour was circulated by the private land agent William Grace, who wrote to the chief judge of the Native Land Court shortly before the newspaper report expressing concern that such a measure would lock up the land against settlement.<sup>688</sup> On 20 May, the Ngāti Maniapoto rangatira Te Rangituatea and others wrote to the Government concerning land in the Waipā Valley east of Ōtorohanga which was 'within the external boundary that is now being surveyed and which will shortly be adjudicated upon.' Responding to the rumour, they said they objected to having their lands placed under the Native Reserves Act. Rather, they wanted to have 'control of our lands so that we can have them reserved[,] lease them or do whatever we like with them[,] not leaving it for you or your office to deal with them.'<sup>689</sup> The letter is an indication of the degree of speculation and confusion that was emerging about the intentions of Wahanui and others involved in the June 1883 petition. It is unclear what response, if any, Te Rangituatea had from the Government at this time. Bryce's approach on similar occasions had been to suggest that the court would resolve all disputes, even though this was clearly not the petitioners' intention.

On 28 May, Te Papanui Tamahiki and others of Ngaitaraakiahi hapū of Ngāti Raukawa wrote to Bryce saying that they 'stood aloof from the Petition of Wahanui and the four tribes.' They said that 'our district is for us alone to administer':

We do not approve of any one man administering our land; and the law provides that it is not allowable for any man to assume control over the district of any other person or hapu. Moreover the external boundary would be of no advantage and we definitely withdraw the land we are interested in from that block.<sup>690</sup>

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686. Document A78, p1012.

687. 'Te Awamutu', *Waikato Times*, 12 April 1884, p2 (doc A41, p140).

688. Document A78, p1000.

689. Document A41, p140.

690. Document A41, p132.



Again, this suggested that the purpose of the 1883 petition was not understood. In commenting on the letter, Lewis suggested that Tamahiki's concern was all the more reason to put their claims before the court: 'they are quite right in supposing that no one can assume control over their lands without their consent'. However, it would be another 21 months before Lewis' recommendation was approved and the Native Land Court began hearings on northern Whanganui lands.<sup>691</sup> By that time Bryce was no longer the Native Minister.<sup>692</sup>

### **8.6.6 The Government's new land policy and Māori responses, April–June 1884**

While some Te Rohe Pōtae communities were showing their concern about the Government's activities in the district, and some were expressing fears that the boundary survey might harm their land rights, the Government pushed ahead with its plans to proceed with the railway and open the district for settlement. The Government announced that its plan was not only to open the district, but to do so through a programme of large-scale Crown purchasing. It intended to support this by restoring a form of 'pre-emption', under which direct private purchasing of Māori land would be prohibited; all transactions in Māori land would be made either directly with the Crown or through Crown-controlled boards. This would allow the Government to control the timing and manner of settlement, and also to profit from purchase and onsale of Māori land, and use that profit to fund the railway. In the Government's view, since it was investing in the railway it, and not the traditional landowners, should retain the profit.

Te Rohe Pōtae leaders had not been consulted about any of these policies. They had been led to believe that the Government's principal concern was to secure their agreement to the railway, not to push ahead with opening the district through Crown purchasing of Māori lands; indeed, they had made their opposition to land sales very plain in their June 1883 petition. Not only was the Government pressing ahead with a new land-buying policy, it was doing so without having implemented the reforms they had sought with respect to title determination and land administration. They responded to the Government's new policy with considerable frustration and some anger. Wahanui travelled to Wellington, where he forcefully objected to what he characterised as duplicitous behaviour by Bryce, and Rewi and Ngāti Raukawa expressed their dissatisfaction by opposing the trig surveys.

#### **8.6.6.1 The Government's land buying policy, April–May 1884**

In April 1884, the Government announced its intention to restore the Crown's right of pre-emption over Māori lands throughout New Zealand. This right, set out in article 2 of the English version of the Treaty, had provided that the Crown

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691. The Native Land Court began hearings for the Waimarino block on 22 February 1886: doc A50, pp 261–262, 266.

692. Document A41, p 132.

would be the sole purchaser of Māori lands in the colony.<sup>693</sup> Pre-emption had been abandoned in the 1860s in favour of a policy of free trade in Māori lands once title had been determined.<sup>694</sup> The Government initially did little to explain the reasons for its policy. The *New Zealand Herald* suggested it would win public favour if it was accompanied by plans (and funds) for extensive Crown purchasing in the district.<sup>695</sup> Reflecting this new approach, the premier, Harry Atkinson, said (in early May) that ‘the only legitimate way of dealing with the matter’ of unoccupied Māori lands was the restoration of pre-emption.<sup>696</sup>

The Government did not consult Wahanui over the implications of this new policy for the district. It did, however, send Edwin Mitchelson – the new Minister of Lands – on a tour of the district. Prior to the trip, Bryce sent letters introducing Mitchelson to the district’s rangatira.<sup>697</sup> Mitchelson arrived in Te Rohe Pōtae in early May. From Kihikihī he travelled to Mōkau, where he was met by Wetere Te Rerenga. Mitchelson then travelled to Waitara, took a train to Stratford, and walked to a trig station outside of the township. From there he could see part of the southern boundary line of the aukati.<sup>698</sup>

Mitchelson used the trip and the presence of a reporter to publicise the Government’s policy of pressing ahead with the main trunk railway and opening the district to settlement. In early June, it was reported that he would propose to Parliament that two of the routes that had been explored were feasible: the central route through Taumarunui to Marton, and the western route through Ōhura to Stratford. Mitchelson said he would advocate for both lines, though if Parliament was not willing to support that he would prefer the ‘Stratford line.’<sup>699</sup>

While the estimated cost of these projects would be huge, the *New Zealand Herald* reported that Mitchelson regarded it as ‘amply justifiable’ by the resources and lands the lines would open up. The newspaper also reported that Mitchelson would urge the Government to secure land on both sides of the railway ‘so as to receive the increment of value that the railway would give them, instead of the natives or speculators getting an immense unearned increment.’<sup>700</sup> The policy, in

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693. The legal theory behind pre-emption was that only the Crown had the right to convert customary title to freehold title. This was intended to protect indigenous people, and also to allow the Crown to fund settlement through the purchase and on-sale of land: Waitangi Tribunal, *Report of the Waitangi Tribunal on the Waiheke Island Claim*, 2nd ed (Wellington: Waitangi Tribunal, 1989), pp 35–36; Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim* (Wellington: Waitangi Tribunal, 1987), p 204; Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, p 24; Rose Daamen, *Rangahau Whanui National Theme D: The Crown’s Right of Pre-emption and Fitzroy’s Waiver Purchases*, Waitangi Tribunal Rangahau Whanui Series (Wellington: Waitangi Tribunal, 1998), pp 1–14; Richard Boast, *Buying the Land, Selling the Land: Governments and Maori Land in the North Island 1865–1921* (Wellington: Victoria University Press), 2008, chapter 1.

694. Native Lands Act 1862, ss 2–7, 17; see also Native Lands Act 1865, ss 21–29.

695. Document A41, pp 132–133.

696. Document A41, p 133.

697. Document A78, p 1046.

698. Document A78, pp 987, 1046–1047.

699. ‘The Railway Routes’, *New Zealand Herald*, 9 June 1884, p 2; doc A78, pp 1047–1048.

700. ‘The Railway Routes’, *New Zealand Herald*, 9 June 1884, p 2; doc A78, pp 1047–1048.

other words, was to open up as much land as possible through Crown purchasing, a proposition that had not been previously explained to Te Rohe Pōtae leaders. Furthermore, the policy involved the Crown buying that land and on-selling it at sufficient profit to fund the railway. This, too, had never been put to the district's rangatira.<sup>701</sup>

One reason for this new focus on profiting from the railway was the deteriorating economic situation. By April 1884, according to one historian, the Atkinson ministry was beginning to be 'tainted by the deepening depression', which in turn had a significant impact on public finances. The Government responded by increasing taxes and reducing public spending, a combination that 'alienated many of its supporters'.<sup>702</sup> Although historians continue to debate the extent of the economic crisis New Zealand faced at the time, it was certainly a period of economic stagnation, and was perceived by all in dire terms.<sup>703</sup> The railway was seen as a means of stimulating the stagnant economy, but it was an enormously costly one. At a time of retrenchment in other public services, the Government therefore sought to justify this major investment by transferring the costs onto Māori.<sup>704</sup>

In late May, the Government had announced further details about the land policy. Speaking at a rally in Auckland, Atkinson said that 'the question of how the Māori lands are to be dealt with, how the Māori lands are to be obtained for settlement' was one of 'equal, if not of greater, importance' than the construction of the main trunk railway.<sup>705</sup> He said it was impossible

for the present arrangement to continue if this trunk line is to be made through native country, because it is quite certain that if it were open to everybody, that many would go and buy up the land through which the railway will run or adjacent to it. It would necessarily fall into the hands of speculators, and so instead of the country obtaining the advantage which they ought to obtain . . . it would come into the pockets of private individuals.<sup>706</sup>

The Government's new Māori land policy had four main elements. Private individuals would be prevented from being able to purchase or lease Māori land directly; the Crown would retain a right of purchase land directly from Māori; Māori would also be able to place land with Crown land boards, which would conduct any negotiations on their behalf; and for any lands sold, reserves would

701. Document A78, pp1047–1048.

702. Timothy McIvor, *The Rainmaker: A Biography of John Ballance, Journalist and Politician, 1839–1893*

(Auckland: Heinemann Reid Ltd, 1989), p 119 (doc A41, p 132).

703. See Jim McAloon, 'The New Zealand Economy, 1792–1864', in Giselle Byrnes (ed), *The New Oxford History of New Zealand* (Melbourne: Oxford University Press, 2009), p 213; WJ Gardiner, 'A Colonial Economy', in WH Oliver (ed), *The Oxford History of New Zealand* (Oxford: Oxford University Press, 1981), pp 57–86.

704. Document A78, pp1047–1048.

705. 'Address by the Premier', *New Zealand Herald*, 20 May 1884, p 5; doc A41, p 133.

706. Document A41, p 134.

be provided for Māori. Atkinson said that such changes were necessary for the benefit of the country as a whole, so as to 'open up these waste lands' in the central North Island and 'for the settlement of a thriving population.'<sup>707</sup> Whereas Bryce's 1883 reforms to Native Land Court processes had stopped private interests making advances on Māori lands before the court's title investigation (section 8.4.6), the Government's new policy meant that the Crown was to be provided with a distinct advantage in purchasing land direct from Māori.<sup>708</sup>

These policies were put forward in the governor's speech to the opening of the new session of Parliament in early June. The governor said that the time had come when a 'very material change' in dealing with Māori lands was needed. The governor noted that new legislation would be introduced which acknowledged that the abandonment of Crown pre-emption had not worked as hoped – direct dealing in Māori land had resulted in injustices.<sup>709</sup> Despite the governor's speech, the *New Zealand Herald* also reported that the Government had decided not to put the Bill forward before that year's general election.<sup>710</sup>

### **8.6.6.2 Te Rohe Pōtae Māori respond to the new policies, May–June 1884**

Given the Government's lack of response to Wahanui on issues that were concerning him, and the Government's new policy on land issues, it is perhaps not surprising that Wahanui decided he needed to take action to engage the Government directly. In late May, he wrote to Bryce to say he would travel to Wellington in order to attend the new session of Parliament. On the way south he stopped at Wanganui, where he met with the former member of the House of Representatives John Ballance (who would soon be re-elected and replace Bryce as Native Minister), as well as Bryce's private secretary. He arrived in Wellington on 9 June, shortly after the opening of Parliament, accompanied by Māori member of Parliament Wi Parata. Wahanui soon began meetings with various officials and politicians. When he met with Governor Jervois later in June, Wahanui noted that he had read his speech regarding the Government's new land policy. He said that though he enjoyed meeting and speaking with the governor, the Government's intentions for Māori land 'fall like lead upon my heart' – 'your written words are not like your spoken ones.'<sup>711</sup>

Wahanui's sentiments were soon echoed by a series of petitions sent by Te Rohe Pōtae Māori objecting to the Government's new land policy: one from Wetere Te Rerenga and others, one from Rewi Maniapoto and others, and one from Mohi Te Rangitautia and others.<sup>712</sup> Although the original does not appear to have survived, Rewi's petition was reported to contain strong objections to the Government's plans to control the sale of Māori lands, and asked to be given the opportunity to

707. Document A41, pp 133–134.

708. Document A78, p 1049.

709. Document A78, p 1051.

710. 'Political News – The Native Land Bill', *New Zealand Herald*, 29 May 1884, p 5; doc A41, p 136.

711. Document A78, p 1053.

712. Document A78, p 1053.

express the views of Te Rohe Pōtae Māori on the proposed Bill before it became law.<sup>713</sup>

### 8.6.6.3 *The early work of the Kawhia Native Committee, May–June 1884*

The Kawhia Native Committee held its first meeting on 10 June 1884 and immediately turned its attention to questions of how land titles would be determined once the external boundary survey was completed.<sup>714</sup> As discussed previously, Te Rohe Pōtae leaders understood that a Crown grant would follow the boundary survey, and Bryce had said that native committees would be able to ‘inquire into titles’, leading Te Rohe Pōtae leaders to understand that iwi and hapū subdivisions would be left to them to work out with the committee.<sup>715</sup>

Te Rohe Pōtae leaders, and committee members, were aware that the Native Committees Act provided the committees with very limited powers. They could hold investigations to identify the rightful owners of land and could put that information before the court, but the court was not obliged to take it into consideration. Ultimately, the court, not the committees, would make all decisions.<sup>716</sup> According to Husbands and Mitchell, ‘The Committee’s first resolution was to ask the Government for greater powers especially that the Committee should manage the Rohe Pōtae block and that all land claims should come to the Committee before going to the Court.’ At the committee’s second meeting, ‘it called for its decisions to be the equivalent of those of a judge (Kaiwhakawa Tuturu) and not to be able to be overturned by judges.’ Members of the Committee also objected to the Crown’s plan to restore pre-emption and to the fact that ‘a few owners had the power to deal with a block of land without broader consent.’<sup>717</sup>

In keeping with his understanding of the December 1883 agreement, Wahanui and other Te Rohe Pōtae leaders began to make arrangements for hapū with land claims before the Court to withdraw them and instead place their lands before the Kawhia Native Committee for investigation.<sup>718</sup> Some Māori (presumably from Ngāti Raukawa) attempted to have a rehearing of the Maungatautari block transferred from the court to the Kawhia Native Committee, but the court refused, causing ‘[g]reat dissatisfaction.’<sup>719</sup> As noted in section 8.5.3, the Maungatautari case provided one explanation for the divisions that had emerged between Kīngitanga iwi during this period. It was Rewi who had made the rehearing application in March 1883 on behalf of Ngāti Raukawa (from whom he could claim senior descent). This was an extension of his ongoing concerns with securing Ngāti Raukawa interests

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713. ‘Maori Petition Against the Native Lands Bill’, *Bay of Plenty Times*, 12 June 1884, p 1; doc A78, p1054.

714. Document A79, p 66; doc A78, p1043.

715. ‘The Native Minister and the Kingites’, *New Zealand Herald*, 1 December 1883, p 6.

716. Document A78, p1043.

717. Document A79, p 66.

718. Document A78, p1043.

719. ‘The Liquor Traffic in the King Country’, *New Zealand Herald*, 2 May 1884, p 5 (doc A78, p1044).

in those lands, and with shoring up Te Rohe Pōtae Māori control of lands immediately outside the district (see chapter 7). Once the Kawhia Native Committee had been established, he and others may have preferred it to consider the block.<sup>720</sup>

Wahanui also held a meeting with northern Whanganui iwi to persuade them to withdraw all existing applications to the court, while Ngāti Maniapoto held a hui at Te Kūiti in early June.<sup>721</sup> There, according to Wilkinson, ‘it was decided that the applications previously sent in for hearing of the Ngatimaniapoto country in the Land Court should be withdrawn, in order that it might be dealt with by the Native Committee first.’<sup>722</sup> Loveridge interpreted this to mean that Ngāti Maniapoto had ‘abandoned’ the December 1883 agreement, which he regarded as an application for title. On the basis of his evidence, the Crown submitted that ‘the Four Tribes’ had decided ‘not to apply to the Native Land Court for an external boundary survey, contrary to the undertaking it made in December 1883.’<sup>723</sup>

Husbands and Mitchell, on the other hand, concluded that Ngāti Maniapoto had merely withdrawn the handful of Native Land Court applications that they had filed before the December 1883 negotiations.<sup>724</sup> Bryce had mentioned these applications at the December 1883 hui (section 8.5.3) and had agreed to hold them back in return for Te Rohe Pōtae leaders filing an application for the entirety of their lands. He had also said that native committees would be able to inquire into titles. By withdrawing applications from the court, Ngāti Maniapoto were acting entirely in accordance with what Bryce had told them in December 1883. Their understanding of the December 1883 agreement was that the external boundary would be surveyed and a Crown grant would then be issued to all of the five tribes. They had deliberately left open the question of how iwi and hapū titles should be determined, but Bryce had indicated that the native committees would be the proper forum for such inquiries. John Ormsby would later explain to Bryce’s successor, John Ballance, that this was exactly the reason for Ngāti Maniapoto withdrawing applications from the court. Prior to the establishment of the Kawhia Native Committee, Ormsby said, ‘some chiefs, owners of the land, had already sent applications in to the Native Land Court for hearing’. ‘The reason those applications were sent in at that time was that there was no other course open to them; but, after the Native Committees were elected, then it was considered that those applications should be recalled, and the matters left to the Native Committees to deal with.’<sup>725</sup>

This is not to say that there was unanimous support for the Kawhia Native Committee among all Te Rohe Pōtae communities. As Wilkinson had observed, Ngāti Hauā and Ngāti Mahuta had refused to take part in committee elections. Also, in early June, the *Waikato Times* reported objections concerning the extent

720. Document A12, pp 218–224.

721. Document A78, p1043.

722. Wilkinson to Bryce, 4 June 1884 (doc A41, p 140; doc A90, p 46).

723. Submission 3.4.6, p 14.

724. Document A79, p 77.

725. ‘Notes of Native Meetings,’ AJHR, 1885, G-1, p 18 (doc A79, p 77).

to which the Kawhia Native Committee was appropriately representative of all groups in the rohe. The newspaper noted that ‘no less than eight’ of the committee were ‘of Wahanui’s party, whereas there is only one person representing Ngatiraukawa. The representative of the Ngatiraukawa interest is a young man, upon whom his people do not care entirely to depend.’<sup>726</sup>

The *Times* was responding to a letter from Whiti Patato (and ‘Ngatiraukawa katoa’). Patato was an elderly Ngāti Raukawa rangatira with interests in Wharepūhunga.<sup>727</sup> He appears to have feared the supposed advantage that claimants related to Ngāti Maniapoto would obtain when the land came before the court, and also to have been concerned about the Government’s new land policy:

[K]aore au i pai kia uru taku takiwa ki a te Wahanui whakahaere me ahau me taku iwi kaore i uru ki tana pitihana. He ahakoa i rongono ano matou i te korero a te Paraihe i te timatanga ki a matou ano te mana o matou whenua a rite tonu te ture mo o matou mo nga Pakeha hoki, i naianei e hanga ana te ture hou e te kawanatanga mo matou nei whenua e tango ana ki (sic) a ia anake te mana, ma tana ringaringa anake e raweke a matou nei whenua. Kaore rawa e marama tenei tikanga a te kawanatanga.

I am not happy that my district should come under Wahanui’s management; neither I nor my people took part in his petition. Although we all heard Bryce’s word at the beginning, to the effect that we should have the control over our lands, and that the law for us should be the same as for the Europeans, the Government are now making a new law about our lands, and are taking the sole control and sole disposal into their own hands. We cannot understand this action of the Government.

Patato noted that he had written to Bryce, but had received no response. As a consequence, he and his people had now taken to ‘stopping the trig survey of the Government in my district.’<sup>728</sup>

#### **8.6.6.4 Ngāti Raukawa oppose surveys, June 1884**

Patato kept his word. At the beginning of June, Cussen moved back to the north of the district to resume the trig survey. He reported that he sent a party of surveyors to Wharepūhunga, in the Wharepapa district, about 30 kilometres from Kihikihi: ‘they were met by sixteen of the Ngatiraukawa [Ngāti Raukawa], who were camped on the ground to obstruct the survey they ordered my party off at once.’<sup>729</sup> Cussen then went there himself with five Māori ‘who were interested in the land’. They said they had been sent there by Whiti Patato and would take the surveyors off the land if they refused to leave; they also said that Rewi and Hitiri Te Paerata had written to the tribes telling them to stop the survey.<sup>730</sup>

726. ‘The Natives and Mr Bryce’s Promises’, *Waikato Times*, 10 June 1884, p 2.

727. Document A60, pp 1214–1216.

728. ‘The Natives and Mr Bryce’s Promises’, *Waikato Times*, 10 June 1884, p 2.

729. ‘Report on the Surveys of New Zealand for the years 1883–84’, AJHR, 1884, C-1, p 30.

730. ‘Report on the Surveys of New Zealand for the years 1883–84’, AJHR, 1884, C-1, p 30.

Cussen then met with Ngāti Raukawa at Kihikihi, with both Rewi and Te Paerata in attendance. Rewi reportedly denied that he had sent a letter encouraging opposition to the surveys, but Te Paerata admitted that he had. His reason for doing so was that ‘as the Government intended to lock up their land under the pre-emption right, he wished all surveys to cease until the intentions of the Government were made known to Maoris’. Cussen said that as a result of the meeting, opposition was removed and the surveys were allowed to continue.<sup>731</sup> Wilkinson said that rumours continued to circulate that Wahanui would receive considerable advantage over other leaders as a claimant in the event that Te Rohe Pōtae lands came before the court; he added that Te Paerata’s letters appeared to be in William Grace’s handwriting.<sup>732</sup>

According to Marr, [t]he fact of Grace writing the letter for them meant little by itself, as the chiefs often asked Grace to act as a scribe for them. However, in this case, Wilkinson thought Grace had gone further, promoting the complaints himself and encouraging the chiefs to sign. Marr speculated that it was in Grace’s interests, as a private land agent, to encourage internal dissent among Te Rohe Pōtae tribes, thereby increasing the likelihood that each would take its own case to the court.<sup>733</sup>

Whether or not Grace was involved, Te Paerata’s concerns (as recorded by Cussen) aligned closely with those set out by Whiti Patato in his letter to the *Waikato Times*. Both emphasised the uncertainty created by the Government’s proposed new land policies. Patato’s opposition stemmed from ongoing misunderstandings of the December 1883 external boundary survey agreement. This was a misunderstanding that Bryce failed to correct when given the opportunity; as we have seen, his approach, when Māori wrote to him expressing concerns about the boundary survey, was to tell them that land disputes could be resolved in court. In fact, Patato’s concerns were closely aligned with Wahanui’s: the purpose of surveying the external boundary was to allow Te Rohe Pōtae Māori to determine their interests to land inside. Yet, from Patato’s perspective, Wahanui (along with Taonui) were supporting the Government (and by inference its land purchasing policies), as shown by Wahanui’s support for the various surveys underway throughout the rohe. Indeed, Cussen noted that ‘Wahanui and Taonui have consistently helped on the work throughout. Taonui himself accompanied me to Te Kuiti, and there appointed men to take us over the Tuhua country. He told me to send for him at any time he could be of service to us.’<sup>734</sup>

While the trig surveys had proceeded with some difficulty, the boundary survey was advanced in fairly quick time. That work, which had begun on 8 January, was largely completed by 30 July.<sup>735</sup> There were, however, some significant gaps. Surveyors refused to include the Mokau-Mohakatino and Mohakatino-Parininihi

731. ‘Report on the Surveys of New Zealand for the years 1883–84’, AJHR, 1884, C-1, p 30.

732. Document A78, p1002.

733. Document A78, pp1002–1003.

734. ‘Report on the Surveys of New Zealand for the years 1883–84’, AJHR, 1884, C-1, p 30.

735. ‘Survey of Maori Land in the King Country: Reports from the Chief Surveyor, Auckland, Relative to’, AJHR, 1885, G-9, pp1–3.



land blocks which had been before the Native Land Court in 1882 (as discussed in section 7.4.4.5). Those blocks were clearly included within the 1883 petition area (see map 8.1), but were excluded from the area surveyed. From the surveyors' point of view, they were not defining an area in which Māori would retain their autonomy and authority; they were preparing a land block for court.<sup>736</sup> Wahanui and other Te Rohe Pōtae rangatira do not appear to have become aware of the omissions until late in 1885; as discussed in section 8.9.2.1, they then expressed considerable frustration.<sup>737</sup> By this stage, however, Bryce and his ministerial colleagues faced more immediate problems. A series of no-confidence votes resulted in a decision (by 17 June) to dissolve Parliament and go to the electorate.<sup>738</sup> The election was held on 21 and 22 July.

### 8.6.7 Treaty analysis and findings

Under the December 1883 agreement, Te Rohe Pōtae leaders consented to a survey of the external boundary of their combined territory, on the expectation that the Crown would then confirm their ownership. This was confirmed in an exchange of letters between them and the Government. They also appear to have agreed to the trig survey and to a resumption of railway exploration. They did not consent to the Crown taking any other action in the district. Their clear expectation was that further negotiations would follow on from completion of the boundary survey. Those discussions would concern the means by which iwi and hapū boundaries would be determined. As they had signalled in the June 1883 petition, they expected that Te Rohe Pōtae iwi would be left to manage this process themselves and would then be left to control their own lands. This was the price they would ask for their consent to the railway.

In section 8.5.5, we found that Bryce had misled Te Rohe Pōtae Māori during negotiations over the December 1883 agreement, by telling them that a Native Land Court application was the only means by which they could have the boundary surveyed. We also found that he had told them that native committees could inquire into land title, when in fact they could not. But, notwithstanding these actions, we found that it was still possible for the negotiations to get back on track towards a mutually acceptable outcome if the Crown completed the boundary survey and then was willing to re-engage over the question of how land titles could be determined in a manner that was consistent with the right of Te Rohe Pōtae Māori to manage their own lands.

Almost immediately after the December 1883 agreement had been reached, the Government took steps to begin the external boundary survey and also to start the trig survey and resume the exploratory railway surveys. These events caused considerable concern for Te Rohe Pōtae communities, particularly those along the boundary, who expressed concern that the boundary overlapped their tribal or hapū rohe and appear to have feared that the survey would lead to title being

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736. Document A78, p989.

737. Document A78, pp989–990, 1212.

738. Document A78, p1055.

awarded to Ngāti Maniapoto or other iwi or hapū that were party to the petition. Some responded by obstructing the surveys.

Bryce contributed to those communities' fears by presenting the December 1883 agreement, on some occasions at least, as an application for the court to begin a title determination process, instead of being for the boundary survey only (as clearly set out in the letters between Smith and Te Rohe Pōtae leaders). When groups who had concerns about the application raised them with Bryce, he told them that the best way to secure their rights would be through an application to the Native Land Court, but only when the time was right. In this way, he encouraged communities with interests in Te Rohe Pōtae to compete in court, instead of resolving their differences through dialogue. In both respects, Bryce's actions contributed to tensions between the June 1883 petitioners and other communities with interests in Te Rohe Pōtae, and by so doing made it more difficult for the petitioners to achieve their ultimate goals, many of which were shared with those outside the boundary.

It is not clear to us, however, that Bryce deliberately set out to misrepresent the nature of the December 1883 agreement. As we mentioned in section 8.5.3.4, on one occasion he publicly said that he was sorry that people did not understand the nature of the agreement and made clear that the application had been for a boundary survey. It appears that confusion emerged at least in part because Bryce and Te Rohe Pōtae leaders had conflicting expectations about the process that would follow the boundary survey. They agreed that iwi and hapū rohe would be defined, along with individual interests. Bryce appears to have assumed that the court would conduct this process, but this is not in fact what was agreed. Te Rohe Pōtae leaders had deliberately left open the question of how titles were to be determined, while indicating that it was a process that they expected to manage themselves.

Although they faced considerable challenges during this period, Te Rohe Pōtae leaders – in particular Wahanui and Taonui – continued to uphold their side of the agreement. They visited communities who were concerned about the surveys, persuading them not to obstruct the surveyors. But the district's leaders also continued to make clear that they expected more from the Government if negotiations were to progress. Rewi put this in plain terms, telling the Government that Te Rohe Pōtae Māori would not agree to the construction of a railway through their territory until their self-government had been guaranteed.

Although Te Rohe Pōtae leaders regarded the Native Committees Act 1883 as deficient, they nonetheless accepted Bryce's assurances that native committees were able to inquire into land titles and took this as meaning that the next step after the boundary survey would be determination of iwi and hapū titles by the committee. When the Kawhia Native Committee first met, it began to take steps in this direction, which included calling for more suitable powers. Te Rohe Pōtae communities also took steps to support this goal by withdrawing their existing Native Land Court claims, on the basis that the committee, not the court, would inquire into title.

But, having said that native committees could inquire into titles, Bryce did nothing to ensure that they could. He made no effort to increase the powers of native committees as Wahanui had asked and the Kawhia Native Committee also sought. On the contrary, he dismissed the possibility that committees could play any such role, except as an advisor to the court. Addressing the British government, Bryce was dismissive of the idea that Māori could or should be able to have control over the process by which their land interests would be decided, and instead insisted that they would need to come under the authority of the institutions of the colony. This contrasted starkly with the messages he had given at the Kihikihi hui in December 1883.

While the election of the Kawhia Native Committee highlighted some of the challenges that might be involved in having Te Rohe Pōtae Māori determine land ownership among themselves, these were not insurmountable. They at least partly reflected the flawed process by which the Government conducted the elections, which had been set out in statute and followed by Wilkinson, and which led to a result that some saw as unrepresentative. More broadly, they reflected the divisions that could arise among Māori communities whenever there was a possibility of land being placed before the court. The decade-long dispute over Maungatautari had done harm to relations between Waikato tribes and their Ngāti Maniapoto and Ngāti Raukawa Kīngitanga allies. We have already found that Bryce misled Te Rohe Pōtae leaders in December 1883 over his intentions with respect to land title determination. During the first half of 1884, he continued to conceal his real intentions on this matter, thereby reducing the prospect of any agreement ultimately being reached under which the Government would recognise the authority of Te Rohe Pōtae Māori over their lands, as required under the Treaty.

Instead of making an effort to accommodate Te Rohe Pōtae leaders' demands, the Government moved in the opposite direction. In April 1884, it decided to adopt a new policy under which all transactions in Māori land would be controlled by the Crown. This policy was to apply nationwide, but it was explicitly intended to support a programme of land purchasing which focused on areas surrounding the proposed railway routes, including Te Rohe Pōtae. The Government's goal was to buy Māori land and onsell it at sufficient profit to fund the railway. It reasoned that since it was funding the railway, which would increase land prices, it and not Māori landowners deserved the profit.

It adopted this policy without consulting Te Rohe Pōtae leaders, either about the detail or about the underlying purposes. At the time, Te Rohe Pōtae leaders had consented only to surveys, not to the railway or to settlement. They had indicated they would not give their consent if the Crown did not recognise their authority over land, and they had also indicated they were not averse to settlement so long as they could control its manner and timing. The Government, nonetheless, pushed ahead with development of a policy that was aimed at allowing it to control the manner and timing of settlement, and to ensure that settlement happened on a large scale, and that the Crown profited from it. Wahanui travelled to Wellington to protest at what he saw as the Government's duplicity. The policy was

so at odds with what Te Rohe Pōtae Māori sought, and so far removed from what had previously been agreed, that Te Rohe Pōtae leaders would have legitimately expected to be consulted before the Government began to make public announcements to its settler constituents. In the event, the Government lost office before it could bring the policy into effect.

By June 1884, the relationship between the Crown and Te Rohe Pōtae Māori was looking increasingly tenuous. For the most part, the Crown was carrying out the specific terms of the December 1883 agreement – it was completing the boundary, though even on this point it wavered by leaving Mokau-Mohakatino and Mohakatino-Parininihi out and failing to inform Wahanui of this fact. Wahanui and most other Te Rohe Pōtae leaders were (despite some misgivings) supporting the surveys that were under way, though Rewi and Ngāti Raukawa were not.

In sum, the distance between Te Rohe Pōtae Māori and the Government grew following the December 1883 agreement. Te Rohe Pōtae leaders had agreed to the survey on the expectation that it would become a first step towards Crown recognition of their authority, as they had sought in the June 1883 petition. Instead, the Crown made decisions that suggested it had no intention of providing that recognition. Bryce made clear that he had no intention of empowering the Kawhia Native Committee to fulfil the role that Te Rohe Pōtae leaders expected of it, those expectations being based at least in part on his December 1883 comments. He contributed to tensions among Te Rohe Pōtae Māori by continuing to advise them to take their land claims to court, even after the district's leaders had made clear that they wished to have such disputes resolved among themselves and without the court's involvement. Without consulting, his Government adopted a land purchasing policy which assumed it had a right to retain any growth in value that the railway brought to Te Rohe Pōtae Māori lands. And, without informing Te Rohe Pōtae leaders, the Crown's surveyors chose to exclude Mōkau lands from the boundary, and therefore to dishonour the plain terms of the December 1883 agreement. This last action was a direct breach of the Crown's duty to act in good faith, and of the principle of partnership. Overall, the Crown's Māori land policies as they applied to Te Rohe Pōtae were aimed at serving the interests of settlement in a manner that did not give due regard to the rights of Te Rohe Pōtae Māori, and were therefore a breach of the principle of equal treatment.

Te Rohe Pōtae leaders had set themselves a goal of defining their territorial boundary and achieving statutory protection for their authority within that boundary. As discussed in section 8.4, that goal was consistent with their rights under article two of the Treaty. Whether it remained achievable would depend in part on how they managed relationships among themselves, and more particularly on their ability and willingness to hold a unified line against allowing the court into their lands. But it depended to a greater degree on the Crown's willingness to support their goals both by enacting appropriate laws and through its approach to settlement of the district. For any final agreement to be reached over the railway and Te Rohe Pōtae Māori authority, the Government's policy direction would have to change. In the event, the Government was unable to implement its policies

before an election was called and it lost office, creating new opportunities for the Crown and Te Rohe Pōtae leaders to negotiate.

### 8.7 THE FIRST LAND REFORMS OF THE STOUT–VOGEL GOVERNMENT, JULY–DECEMBER 1884

Following an unclear election result in late July, control of the House changed hands several times before a new ministry was sworn in on August 16, with Robert Stout as premier, Julius Vogel as treasurer, and the Wanganui member of the House of Representatives. John Ballance as Native Minister. Like its predecessor, the Stout–Vogel Government (as it is generally known) wanted to press ahead with construction of the railway, with the extension of Crown institutions (particularly the court) into Te Rohe Pōtae, and with the opening of the district for European settlement. The railway and settlement were seen as being urgently needed responses to the recession that had gripped the colony.<sup>739</sup>

While the new ministry shared the same broad objectives for Te Rohe Pōtae as its predecessor, its tactical emphasis was different and was not always clear due to differences among Ministers. As discussed in the previous section, the Atkinson Government had adopted a policy of opening the district for settlement by buying significant areas of land along the railway line. It also hoped to use profits from purchase and onsale of Māori land to fund the railway. This policy took it for granted that Te Rohe Pōtae leaders would consent to the railway line, or that the Government would press ahead anyway. Ballance also seems to have assumed that consent for the railway had been obtained even though it had not. But he took a different approach to the promotion of settlement along the railway line. Instead of opening those lands through Crown purchasing, his initial view was that, in the right conditions, Māori would voluntarily open their lands for private settlement. This would reduce the need for the Crown to raise funds for investment in land. It would also mean that Māori, not the Crown, would profit from land sales, thereby increasing the likelihood that Māori would see the policy as fair.<sup>740</sup> This, in Ballance's view, was crucial. If Māori saw the Crown as treating them unfairly, they would be unlikely to subdivide their land and make it available for settlement, and the Government's settlement goals would therefore be delayed, possibly by years. In coming to this view, Ballance appears to have been informed by the more aggressive approach Bryce had taken, which had caused considerable frustration and suspicion among Te Rohe Pōtae and other Māori.<sup>741</sup>

Ballance's approach created new opportunities for Te Rohe Pōtae leaders to influence the Crown's legislative plans. Wahanui travelled to Wellington and met

739. Document A41, p147; doc A78, p1055.

740. Document A41, pp147–149. For discussions of Ballance's more conciliatory approach, see Editorial, *Marlborough Express*, 15 September 1884, p2; 'On Native Affairs', *Wanganui Herald*, 27 September 1884, p2; 'On Native Affairs', *Wanganui Herald*, 27 September 1884, p2; 'Native Affairs', *Marlborough Express*, 15 September 1884, p2.

741. Document A41, pp147–149.

Ballance, once again setting out the conditions on which Te Rohe Pōtae Māori would consent to the railway. He was also granted leave to address the House of Representatives and the Legislative Council – an unprecedented event for someone who was not a member of either House. His speeches (set out in full in appendix 8.2) explained the continued desire of Te Rohe Pōtae leaders to reach agreement with the Crown on arrangements that would recognise their boundary and protect their authority within it. He said that Te Rohe Pōtae leaders sought an end to the Native Land Court, for hapū and iwi to be left with authority to determine land titles and administer their own lands, and for land to be alienated only by lease. Until satisfactory laws were passed, they would not consent to any land transactions, or to the railway. In his speech to the Legislative Council, Wahanui introduced the term ‘mana whakahaere’ (translated at the time as ‘full control and power’) to describe the authority he sought for his people with respect to their lands. In essence, Wahanui’s speeches were a reiteration of their demands to the Crown to honour the terms of the June 1883 petition and, by so doing, to give effect to the right of tino rangatiratanga enshrined in article 2 of the Treaty.

Wahanui, along with other Te Rohe Pōtae Māori, also brought a new issue to the table: control of liquor. The arrival of the armed constabulary in Kāwhia in October 1883 (and, in particular, the opening of an armed constabulary canteen) had increased access to alcohol in the town and surrounding areas, and Te Rohe Pōtae leaders were concerned about the potential for harm to their own people.<sup>742</sup> They therefore asked the Government to prohibit all sales of alcohol within their boundary.

As we will see, Ballance and his Government colleagues were willing to negotiate, but only up to a point. When Ballance brought new Māori land legislation to the House, it did nothing to address Māori concerns about the Court and provided only limited support for collective decision-making by owners. It prohibited private alienation of land, but allowed for continued Crown purchasing. In the face of opposition from Wahanui and other Māori leaders, the Crown deferred much of this planned legislation so it could consult further. But it was not willing to delay its railway plans, even though Te Rohe Pōtae Māori had yet to consent. Nor – in spite of clear opposition from Māori – was it willing to give up its own right to purchase Māori land.

### **8.7.1 The Stout–Vogel Government’s land settlement objectives, August–November 1884**

#### **8.7.1.1 *The governor’s speech about the railway, August 1884***

The Stout–Vogel Government’s railway and land purchasing intentions were set out in a speech to Parliament by Governor Jervois on 19 August. The North Island Main Trunk Railway, the governor said, would be a ‘colonial work of vast importance, which must be hastened to a conclusion with the utmost possible

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<sup>742</sup> Wilkinson had discussed this in his mid-year report to the House of Representatives: ‘Reports from Officers in Native Districts,’ AJHR, 1884, G-1, p 6.

expedition.<sup>743</sup> This, he made clear, was not simply a question of completing the rail connection between Auckland and Wellington, but of settling the lands along the line, including this district. The Government's view, he said, was that lands adjacent to the railway should be set aside for settlement by European families 'upon conditions calculated to ensure their prosperity, the area for each family being limited', and that North Island Māori lands 'should be put to productive use as rapidly as possible'.<sup>744</sup>

The governor gave two means by which the Government hoped to achieve its settlement ambitions. On the one hand, he said that the Government would seek authority 'to acquire extensive blocks of [Māori] land' along the line of the railway.<sup>745</sup> But, on the other hand, he also said that the Government was willing to see Māori offer land for settlement. It was therefore 'very desirable' that the Government adopt 'the best means of enabling the Natives to dispose of their lands, when they desire to do so', and correspondingly 'useless' to implement laws that Māori would refuse to use.<sup>746</sup>

Though the Government opposed much existing Māori land law, it proposed to defer any substantive consideration of Māori land laws until 1885, so it could consult and reach agreement on proposals that would satisfy Māori while also serving the colony's settlement goals. Nonetheless, the Government was determined to press ahead with the railway as quickly as possible, and therefore, the governor said, a temporary law might therefore be necessary for the railway route.<sup>747</sup> One of the assumptions implicit in the Government's argument was that Māori could be satisfied with laws that also served the Crown's settlement goals. As discussed in previous sections, Te Rohe Pōtae Māori were willing to see settlement occur, but only if laws were in place to protect their collective authority in respect of both title determination and land administration, and then only by leasing. As we will see, the Crown was willing to make only small concessions towards these objectives.

In this speech, expert witnesses saw a significant change in the Government's approach to Māori land. According to Marr, whereas Bryce had taken an 'abrasive' approach and had negotiated only when absolutely necessary, the new Government was signalling a more consultative approach, in which Māori could expect a meaningful say on matters affecting them.<sup>748</sup>

### **8.7.1.2 Determining the railway route, August–September 1884**

At the time of the governor's speech, the Crown had obtained the consent of Te Rohe Pōtae leaders to conduct surveys and do no more. It had not delivered on any of the policies they had sought in the 1883 petition as preconditions for their

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743. 'Governor's Speech', 19 August 1884, NZPD, 1884, vol 48, pp 5–7; doc 125, part 3, pp 142–243; see also doc A41, p 147; doc A67, pp 63, 108; Waitangi Tribunal, *Te Kāhui Maunga*, vol 2, pp 376–377.

744. 'Governor's Speech', 19 August 1884, NZPD, 1884, vol 48, pp 5–7.

745. 'Governor's Speech', 19 August 1884, NZPD, 1884, vol 48, pp 5–7.

746. 'Governor's Speech', 19 August 1884, NZPD, 1884, vol 48, pp 5–7.

747. 'Governor's Speech', 19 August 1884, NZPD, 1884, vol 48, pp 5–7.

748. Document A78, p 1060.

consent to the railway. Nonetheless, the Government pressed on with its railway and settlement plans. On 12 September, a select committee was established to determine the best route. The committee considered four routes, all with Te Awamutu as their northern starting point. Three traversed Te Rohe Pōtae, linking Te Awamutu to Te Kūiti: the central route then continued south through the Tūhua lands, joining the existing railway at Marton; and the western and coastal routes linked to Stratford, via Ōhura and Awakino respectively. The remaining (eastern) route largely bypassed Te Rohe Pōtae, linking to Napier. Whereas the Crown had already acquired Awakino land some decades earlier, the central and western routes were entirely on Māori land, at least in this district.<sup>749</sup> The committee applied four main criteria. First, the route should open up as much land as possible for settlement by smallholding farmers. Secondly, it should be as direct as possible. Thirdly, in order that trains be able to maintain reasonable speeds, it should not be too steep. Fourthly, it should so far as possible accommodate any existing settlements.<sup>750</sup>

#### **8.7.1.3 Wahanui's negotiations with Balance, August–September 1884**

Wahanui had responded to the defeat of Atkinson's Government by returning to Wellington, arriving in late August. He met the opposition member of the House of Representatives Sir George Grey before the end of the month, and spent some time familiarising himself with Government policies and legislative proposals.<sup>751</sup> On 17 September, he appeared before the select committee that had been appointed to determine the railway route. There, he emphasised that Te Rohe Pōtae Māori had not asked for the railway and had agreed only to the Crown exploring options for the railway route. Once the Crown had decided which route it wanted to pursue, he reminded members of the House of Representatives, it would then have to seek the consent of affected Māori. This was consistent with the Te Rohe Pōtae Māori understanding of the March and December 1883 agreements and with the undertaking given by Bryce in March 1883 that he would not build roads or other public works without seeking consent. Wahanui furthermore explained that consent for the railway would be given only once the Crown had put in place satisfactory laws for the protection of Māori lands. This, too, was consistent with the stance taken by Te Rohe Pōtae leaders in previous negotiations and in the June 1883 petition. Even if satisfactory laws were put in place, Wahanui continued, consent could only be given after he had consulted with his people and obtained their agreement. As he put it:

The little matters that I brought down in my calabash to have put right have not been attended to; and before replying to your question [about the best route] I would

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749. 'Report of the Select Committee for the North Island Main Trunk Railway: Together with Minutes of Proceedings and Evidence and Appendix', 9 October 1884, AJHR, 1884, 1-6, p vi, appendix.

750. 'North Island Trunk Railway, 22 October 1884, NZPD, vol 49, p 596.

751. Document A78, pp 1061-1062.



like to have my own matters put right. It will not do for me to give way all at once without some concessions on the other side.<sup>752</sup>

If the Government would assist Wahanui to achieve his goals, he said he would do all in his power to help it to bring the railway to fruition.<sup>753</sup>

Wahanui also met Ballance (possibly on several occasions) during September, to negotiate the terms on which consent for the railway might be given. There is no detailed record of these negotiations. However, Wahanui later said that he and Ballance had discussed the railway, the court, the powers of native committees, gold mining, and liquor licensing.<sup>754</sup> On 26 September, Wahanui wrote to Ballance. Without giving details on what had been agreed, Wahanui indicated that Ballance's answers had been satisfactory and asked that the Government set out its intentions in writing in order to avoid any future misunderstandings. Wahanui reiterated: 'the Native Land Court should not deal with any lands within the exterior of the territory owned by me and my four tribes, so that we may have time to frame a law satisfactory to both races and to secure the repeal of the bad laws that are now in force.'<sup>755</sup>

It is not clear from the very limited evidence available whether Ballance and Wahanui discussed the Crown's land settlement goals or the prospect of Crown purchasing of land surrounding the railway line. Te Rohe Pōtae Māori had already made clear that they would contemplate settlement of their lands if (and only if) their conditions were met. In effect, their stance was that hapū and iwi should control any settlement process. Although the governor had spoken of extensive Crown purchasing along the railway line, there is no evidence that Ballance put this prospect directly to Wahanui or other Māori leaders. Rather, his subsequent statements indicated that he had led them to believe that they would retain control of the pace and manner of settlement (see section 8.8.2.2).

Wahanui's negotiations with Ballance occurred against a backdrop of continuing concern among Te Rohe Pōtae tribes, and in particular those that occupied the borders of the 1883 petition area, about conflicting claims to land. Whereas iwi and hapū were united by their opposition to the court and their desire to retain authority over their own lands, they were also facing the reality that anyone could make a claim, justified or not, which could then force them into court to defend their land interests.

In mid-September 1884, shortly before Wahanui appeared before the select committee, Te Heuheu Tūkino and 21 others of Ngāti Tūwharetoa wrote to the premier (Stout) expressing concern that 'te rohe potae a Wahanui' (Wahanui's external boundary) encroached upon land belonging to Ngāti Tūwharetoa.<sup>756</sup> Te

752. 'Report of the Select Committee for the North Island Main Trunk Railway', AJHR, 1884, 1-6, p16; doc A78, p1069; doc A41, p149.

753. 'Report of the Select Committee for the North Island Main Trunk Railway', AJHR, 1884, 1-6, p16; doc A78, p1069; doc A41, p149.

754. Latest Parliamentary, *Auckland Star*, 22 September 1884, p2; doc A78, pp1068-1069.

755. Wahanui to Native Minister, 26 September 1884 (doc A78, p1064).

756. Document A78, p1063.

Heuheu had raised similar concerns in August 1883 and March 1884, as we have noted, and some Whanganui groups had also raised similar concerns in May 1884. As discussed previously, these petitions were based on a view that ‘te rohe potae a Wahanui’ was intended to define Ngāti Maniapoto lands for purposes of seeking title – a view that reflected Bryce’s public comments as reported in settler newspapers. Wahanui had always taken care to explain that the external boundary was intended to define an area in which Māori authority would endure for all tribes, and had sought and obtained consent from leaders whose communities lived along the boundary, including those of northern Whanganui and Ngāti Tūwharetoa. The Native Minister responded to Te Heuheu’s letter with an assurance that the survey of ‘Wahanui’s boundary’ had no effect on the title to the land, which would be determined by the court.<sup>757</sup> This would have done little to soothe Te Heuheu’s concerns or to correct false impressions about the purpose of the boundary.

Kāwhia leaders were also becoming anxious to resolve their differences about land. At a public meeting in early October, Hōne Wetere of Ngāti Hikairo (a member of the Kawhia Native Committee) sought feedback on a proposal to hold a Native Land Court hearing in Kāwhia to finally resolve land troubles that were causing ‘jealousy’ in the area. These presumably referred to the long-standing dispute between Ngāti Hikairo and Ngāti Mahuta over areas of northern Kāwhia. Wetere told the meeting that he and another Ngāti Hikairo rangatira, Hōne Te One (also a Kawhia Native Committee member), had received a letter from Wahanui that urged Kāwhia Māori to avoid the court and all land transactions, at least until new laws could be put in place:

Be strong and carry out the wishes of all Maoris with regard to the manner of settling land disputes. A new Government has just been formed. I have only lately been permitted to have a say on the subject. Fighting, as we generally do about land divisions, only help, to bring on a land court. This we should struggle against.<sup>758</sup>

Wahanui said he had sought the Government’s assurance that it would accept land claims only from those with mana, not from ‘outsiders’, and ‘[t]o the best of my belief the Government have already taken notice of this objection’:

They, however, say that they cannot do away altogether with the system of Land Courts, but have promised to allow us to decide some land cases among ourselves, and if we fail to do so they must. In the meantime do not let or lease any land. Government says that after the [parliamentary] session is over they will go into particulars and see what can be done to please the Maoris.<sup>759</sup>

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757. Document A78, pp1063–1064.

758. ‘Native Wants in Kawhia: Public Meeting’, *Waikato Times*, 7 October 1884, p3; doc A78, pp1067–1068.

759. ‘Native Wants in Kawhia: Public Meeting’, *Waikato Times*, 7 October 1884, p3; doc A78, pp1067–1068.

Wahanui added that, from what he could see, the Government was committed to making good laws. It appears, therefore, that Wahanui and Ballance discussed the prospect of iwi determining land titles among themselves, with the Native Land Court acting as an appeal body only. Wahanui may have believed that, by this means, the court could be kept out of Te Rohe Pōtae altogether, since the court would enter only if iwi and hapū failed to resolve their issues among themselves.

Wahanui did not explicitly refer to the Kawhia Native Committee filling this land title determination role. However, Bryce had promised that native committees would be able to inquire into (if not determine) titles, and the Kawhia Native Committee had sought additional powers to allow it to effectively conduct this role (see sections 8.5.3 and 8.6.4.1). As we will discuss in section 8.8.2, empowerment of the Kawhia Native Committee to determine land titles as a court of first instance would become a significant part of the subsequent agreement between Ballance and Te Rohe Pōtae leaders over the railway.

In response to Wahanui's letter, Wetere told the meeting that he favoured having rangatira committees adjudicate and settle land claims, with the Native Land Court playing a role only if the committee could not come to a decision. Hone Kaora (John Cowell) also supported this approach, saying that committees were 'far more competent' to adjudicate on title than European judges, who inevitably favoured claimants with 'most assurance and least honour'. A committee of rangatira would have personal knowledge of ancestral and tribal connections, and would not be misled as the court could be.<sup>760</sup> The meeting resolved to take steps to have Kāwhia land claims adjudicated as soon as possible, through the Kawhia Native Committee.<sup>761</sup>

Wahanui, meanwhile, remained in Wellington. He does not appear to have regarded his discussions with Ballance as final. In October, he reported to the Kawhia Native Committee that he had not yet reached agreement with the Government, but hoped to do before leaving Wellington. Even then, he had made clear that no agreement could be final until his people had been consulted – as would occur in 1885.<sup>762</sup>

#### **8.7.1.4 Proposal to provide for Māori authority, September 1884**

As Wahanui was negotiating with the Government, some members of the House of Representatives were turning their attention to questions of how Māori concerns could be addressed. During September, a paper by the former member William Rees was tabled in the House. It described the current state of Māori land law as a 'scandal' which had arisen because Parliament and the courts insisted on treating Māori tribal land as if it were owned by individuals, instead of 'the heritage of the

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760. 'Native Wants in Kawhia: Public Meeting', *Waikato Times*, 7 October 1884, p3; doc A78, pp1067–1068.

761. 'Native Wants in Kawhia: Public Meeting', *Waikato Times*, 7 October 1884, p3; doc A78, pp1067–1068.

762. Document A78, p1065.

tribe or hapū.<sup>763</sup> The Treaty of Waitangi, he said, assured Māori of their right to possess and use land as a tribe. He proposed that Māori be empowered to manage their own lands through tribal committees, in a manner similar to boards of directors acting on behalf of corporate shareholders – who, like Māori, owned assets collectively but not as individuals.

If the law enabled them to deal with their lands after the ownership has been determined, regarding the tribe as one person; if they were assured by law that no dealings with individual Natives would be henceforward allowed; if they were, also, assured that full power to deal with their lands would be given to the whole people, speaking and acting by their chosen representatives, and that full power would be granted to them thus to do what they chose with their own as long as they injured no other persons, the Maori question and the Maori difficulty would be at once a thing of the past.<sup>764</sup>

Rees said he had consulted extensively with Wahanui and numerous other leading rangatira and was convinced that Māori lands would be opened for settlement if Māori were genuinely empowered to manage land collectively, perhaps acting with advice from the Native Land Court or Public Trustee. He warned, however, against any proposal that required Māori to give the Crown power to administer sales or leases. He suggested that a hui be called at the borders of Te Rohe Pōtae, at which his proposal could be discussed by all of the country's leading rangatira and, if approved, brought into law.<sup>765</sup>

There is no evidence of the Government taking any action on Rees' proposal. Nor did it offer support when the Eastern Maori member of the House of Representatives, Wi Pere, proposed legislation in late September to provide for hapū and iwi to manage land collectively. Pere's Native Lands Act Amendment Bill 1884 provided for a panel comprising a judge and three Māori assessors to make the initial title determination for each district. Once owners were named, they would select a committee to act on their behalf, determining hapū, whānau, and individual interests, and overseeing all land administration and alienation functions including sale, lease, raising mortgages, making reserves, and farming the land. No individual would be able to alienate land.<sup>766</sup> The Government offered no support for these measures, and instead proceeded with Ballance's Bill, which provided for minimal iwi and hapū influence, and instead provided for Crown control of all land alienation.<sup>767</sup>

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763. 'Native Land Laws: Memorandum on, by WL Rees', AJHR, 1884, G-2, p1. Also see 'Political Gossip', *Auckland Star*, 19 September 1884, p 2; doc A78, pp1062–1063.

764. 'Native Land Laws: Memorandum on, by WL Rees', AJHR, 1884, G-2, pp 4–5.

765. 'Native Land Laws: Memorandum on, by WL Rees', AJHR, 1884, G-2, p 5.

766. Native Lands Act Amendment Bill 1884; doc A78, pp1062–1063.

767. Document A78, pp1062–1063.

**8.7.1.5 The railway route and new land policy, October–November 1884**

The Government offered no support for Pere's Bill. Instead, it proceeded with its plan for further consultation, with temporary legislation covering the railway area. On October 9, the railway select committee recommended that the Government build the North Island Main Trunk Railway along the central route, from Te Awamutu to Marton. The committee had been chaired by the Minister for Public Works, Edward Richardson. He summarised the committee's reasoning in the House, stressing that this route had the best balance of all the criteria taken into account. It was the most direct route, had fewer engineering difficulties, would result in the opening of more land for settlement than any other line, and had potential for branch lines, all at reasonable cost.<sup>768</sup>

On the same day, Ballance introduced the Native Land Settlement Bill to the House of Representatives. During September, Ballance had told the House that the Government planned to prohibit land dealings in an area 10 miles on either side of the railway line.<sup>769</sup> But the Bill, as introduced, applied to a far larger area, of some 4.5 million acres, encompassing the 1883 petition area and a considerable amount of land to the south.<sup>770</sup> The Bill's purpose, as set out in the preamble, was to temporarily prevent private purchasing of Māori land in the railway area (and any other area proclaimed by the governor), while nonetheless promoting settlement.<sup>771</sup>

The Bill prohibited all private land transactions within the affected area, and instead established a process by which Māori landowners could apply to the Crown to sell, lease, or reserve land on their behalf. The transactions would be managed by a commissioner assisted by two Māori 'assessors'. All would be appointed by the Crown. In effect, Ballance's intention was that the Crown would act as agent for the owners in any private sales or leases.<sup>772</sup> The Crown was to be exempt from this purchasing system, and instead was able to purchase directly from owners, either individually or collectively.<sup>773</sup>

If the land had been through the court, the owners were those named on the title, and any individual owner could offer land for sale or lease. If the land had not been through the court, the owners were defined as the 'leading chiefs of the tribe or hapu . . . but not to the exclusion of any individuals jointly interested' in the land. If title had not already been determined, any application for the land to be dealt with under the Act would also be treated as an application for the court to investigate title.<sup>774</sup> In effect, then, rangatira or hapū acting collectively could

768. 'North Island Trunk Railway, 22 October 1884, NZPD, vol 49, pp 596–598.

769. 'Parliamentary News', *New Zealand Herald*, 19 September 1884, p 5.

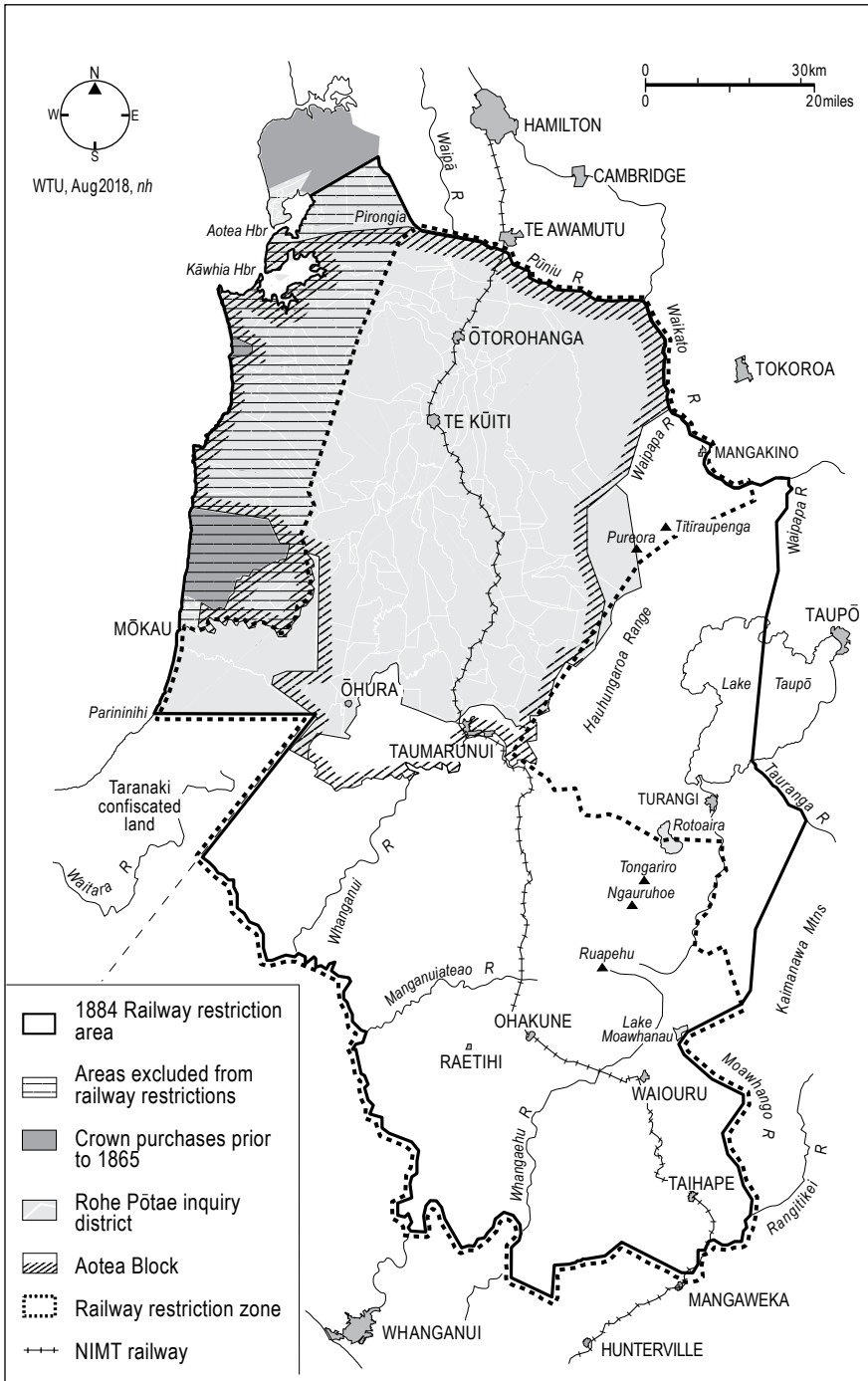
770. Native Land Settlement Bill 1884, cl 5–7, sch; Native Land Alienation Restriction Act 1884, schedule; doc A78(a), vol 4, pp 1729–1735; doc A78, p 1091; doc A90, p 43.

771. Document A78, p 1073.

772. Native Land Settlement Bill 1884, cl 8, 10–13; doc A78, pp 1078, 1091; doc A78(a), vol 4, pp 1729–1735.

773. Native Land Settlement Bill 1884, cl 28; see also doc A78, pp 1073–1076, 1079–1080; doc A41, pp 152–153; doc A67, pp 63–65.

774. Native Land Settlement Bill 1884, clauses 10, 13.



Map 8.2: 1883 petition area, 1884 restriction area, and Te Rohe Pōtāe inquiry district

trigger the sale or lease process, but individuals would ultimately have the right to sell or lease.

The Bill fell a long way short of what Te Rohe Pōtae leaders had sought in the 1883 petition and since. It did nothing to resolve Te Rohe Pōtae Māori concerns about the Native Land Court, nor to respond to the demand that Māori be able to determine title among themselves. Nor did it guarantee the right of hapū and iwi to make collective decisions about land administration – it merely provided for the possibility that owners could decide collectively to sell or lease, without preventing individuals from taking that step. It did not prohibit all sales, Crown and private, as Te Rohe Pōtae leaders had sought. And nor did it provide for titled land to be leased in an open market; instead, it granted the Crown a privileged market position by virtue of its position as both land purchaser and agent for the owners.

Of the 4.5 million acres covered by the Bill (see map 8.2), the Crown either owned, leased, or was negotiating to buy some 1 million acres, all of which lay outside the inquiry district. The remaining 3.5 million acres – broadly corresponding with the 1883 petition area – was still in Māori ownership and had not yet gone before the court.<sup>775</sup> It is not clear why Ballance felt the need to prohibit private purchasing in this vast area, as the Native Land Laws Amendment Act 1883 already barred all private purchasing until 40 days after title had been ascertained, and the Crown was already negotiating to purchase almost all of the land that had been through the court.<sup>776</sup> Ballance told the House that he had initially considered imposing restrictions on the lands immediately adjacent to the proposed railway route, before deciding that a much larger area should be covered. In this, he claimed to have Wahanui's support, though this was only partially true as we will see in the next section.<sup>777</sup>

### 8.7.2 The Native Land Alienation Restriction Act 1884, October–November 1884

Ballance's proposed legislation was explicitly intended not only to advance the railway but also to advance settlement of Te Rohe Pōtae. Te Rohe Pōtae leaders had never been consulted about any settlement programme, let alone given their consent. While they were not opposed to settlement, they were anxious to ensure that they could control its manner and timing, in order to ensure that it served their people's interests, as was their right under the Treaty of Waitangi. In their representations to the Crown, they had offered no more than the possibility of some land being offered for leasing in an open market if satisfactory laws were put in place.

On October 24, while Ballance's Bill was still under consideration, Richardson delivered the annual Public Works Statement to the House. His speech emphasised the Government's view that the railway must be completed as quickly as possible.<sup>778</sup> Although Te Rohe Pōtae Māori had not consented to the railway,

775. 'Native Lands Settlement Bill', 1 November 1884, NZPD, vol 50, pp 312–317.

776. Native Land Laws Amendment Act 1883, s 7.

777. 'Native Lands Settlement Bill', 1 November 1884, NZPD, vol 50, pp 312–317; doc A67, p 65.

778. 'Public Works Statement', 24 October 1884, NZPD, vol 50, pp 87–88; doc A90, p 49.

Richardson said he had issued instructions for a detailed survey of the preferred route, and he hoped to issue tenders for construction of the first section south of Te Awamutu within 'a few weeks'. He said he would leave to Ballance 'the task of obtaining land along the line'.<sup>779</sup> Richardson did not specify whether he expected Ballance to acquire land for settlement, or merely land for the railway. But the general tone of his speech certainly implied that the Government was determined to settle the whole country. Richardson spoke of railways, bridges, and roads as part of a great colonising task, which would take several generations and would require considerably more immigration from Britain. The Government's task was to 'steadily pursue the functions of colonization as fast as . . . our means permit'.<sup>780</sup>

#### **8.7.2.1 Wahanui's speech to the House of Representatives, 1 November 1884**

Wahanui and other Māori leaders were dismayed with Ballance's Bill. They had consistently told the Government that no decision would be made about the railway, let alone about settlement of the land alongside the railway, until satisfactory land laws were enacted. Now, the Government was proceeding with legislation intended to open the district's land for settlement, without having first addressed their concerns about land title determination, the court, collective management by hapū, or protection from sale.

In response to a petition signed by, among others, Whanganui rangatira Te Keepa, Kawhia Native Committee chairman John Ormsby, and Eastern Maori member of the House of Representatives Wi Pere, Wahanui was granted leave to address the House of Representatives.<sup>781</sup> He did so on 1 November, just before the Bill received its second reading (see appendix 11 to this chapter).<sup>782</sup> Wahanui spoke in Māori, with Captain Gilbert Mair translating.<sup>783</sup> Wahanui told the House he had been sent by his people for two causes. The first was to retain sole authority over their lands:

Te take tuatahi ko to matou oneone, te whenua o a matou tupuna tae iho ki ahau me toku iwi. E ki tuturu ana ahau, ko to matou whakaaro e penei ana ma matou anake e whakahaere aua whenua.

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779. 'Public Works Statement', 24 October 1884, NZPD, vol 50, pp 87–88; doc A90, p 49.

780. 'Public Works Statement', 24 October 1884, NZPD, vol 50, pp 87–88; doc A90, p 49.

781. 'Native Land Settlement Bill', 1 November 1884, NZPD, vol 50, p 555; doc A41, p 155; doc A78, pp 1072, 1077, 1089–1090.

782. 'Native Lands Settlement Bill', 1 November 1884, NZPD, vol 50, pp 316, 555–556. Also see doc A41, pp 154, 159; doc A78, pp 1077–1078.

783. Document A110 (Meredith), p 668.



The first subject on which I shall speak concerns our lands – the ancestral lands of myself and my people. [I say firmly that our thinking is like this: the administration of those lands is for us alone.]<sup>784</sup>

The second was to ensure that the Native Land Court was not allowed into the district:

Tuarua, kaore matou e pai kia haere mai te mana o te Kooti Whenua Maori ki runga ki aua whenua, i te mea he whenua papatupu era no matou ake kaore ano kia ekengia e te mana Pakeha, kaore ano kia pa noa tona ringaringa, kaore ano kia takahia noa e te waewae o te Pakeha. Kaore ano kia whai hoko, reti ranei, aha ranei. Koia ahau e ki nei: Waiho kia matou te tikanga me te whakahaere inaianei, muri iho ma matou tahi ko te Kawanatanga e ata whakaaro he ture hai whakahaere.

We are not happy for the authority of the Māori Land Court to come into force over those lands, because they are our own customary lands. As yet no European's authority has yet been exercised over them, his hands have not touched them, his feet have not even trampled them. He has not achieved any sales or leases yet. So therefore I say, leave to us the rules and the management now, and later, together with the government, we will carefully consider a law for their administration.<sup>785</sup>

Wahanui explained that he opposed Ballance's proposed legislation, which he saw as an attempt by the Crown to obtain the district's land.

No te tirohanga atu ka kite ahau i nga niho roroa niho kokoi o taua taniwha kei te upoko, kei te waha hoki me te tara hoki kei tona hiku; mohio ana ahau ko ana niho kokoi rawa hei horo i nga tangata, me te tara hei whakamate i te whenua. No toku kitenga i enei niho tuatini, ka mahara ahau, kei te he.

When I looked at it I saw great sharp teeth in the head of this taniwha [monster], in its mouth also and a spike in its tail, knowing that those very sharp teeth were for swallowing up men, and the spike to destroy the land. When I saw these many teeth I thought, this is wrong.<sup>786</sup>

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784. 'Nga Korero Paramete: 1881–1885'; *He Reo Tūre No te Taha Kāwana/Language of the Crown*, New Zealand Electronic Text Collection, <http://nzetc.victoria.ac.nz/tm/scholarly/tei-NZPaVo1NgaK-t1-g1-t4-body1-d3-d2-d1.html>, accessed 22 February 2018; 'Native Lands Settlement Bill', 1 November 1884, NZPD, vol 50, pp 312–317; see also doc A110, pp 668–672; doc A41, p 156. Amendments to translation by the Waitangi Tribunal.

785. 'Nga Korero Paramete: 1881–1885'; 'Native Land Settlement Bill', 1 November 1884, NZPD, vol 50, pp 555–556 (appendix); *He Reo Tūre No te Taha Kāwana/Language of the Crown*, New Zealand Electronic Text Collection, <http://nzetc.victoria.ac.nz/tm/scholarly/tei-NZPaVo1NgaK-t1-g1-t4-body1-d3-d2-d1.html>, accessed 22 February 2018; 'Native Land Settlement Bill', 1 November 1884, NZPD, vol 50, p 555. Also see doc A110, pp 668–672; doc A41, p 156. Translation by the Waitangi Tribunal.

786. 'Nga Korero Paramete: 1881–1885'; 'Native Land Settlement Bill', 1 November 1884, NZPD, vol 50, p 555. Translation by the Waitangi Tribunal.

The ‘teeth’ Wahanui referred to were the Bill’s land administration functions, which effectively gave the Crown control over sales and leases of Māori land. As Rees had warned, Wahanui and other Māori leaders saw nothing to recommend such a measure. The sting in the tail was the Crown’s exclusive right to purchase land within the 4.5 million-acre zone.

Wahanui asked the House not to pass the Bill, and instead to pass legislation that would recognise and protect his people’s authority. He reminded the House of the constitutional relationship between Māori and the Crown, saying that Tāwhiao had gone to Britain to ask the Queen to honour her obligations and make fair laws, but had been told to deal with the colonial authorities, and that was why Wahanui was now appealing to the House. He described the relationship in terms which suggested that, although Parliament had the power to make laws, Te Rohe Pōtae Māori retained the ultimate authority over their lands:

Titiro ia ki te wati kei toku ringa e mau ana, noku tenei wati. Mehemea ka pakaru, maku e mau atu ki te watimeke kia mahia, me toku tohu atu hoki nga mate ki a ia, a mana e mahi i runga i taku i tohu ai. Kei te otinga ka hoki mai ano toku wati ki au: kei au anake te tikanga. Na e pa ana tenei kupu whakarite naku ki toku whenua.

This watch which I hold in my hand is mine; and, if it requires repairs, let me take it to the watchmaker and have it repaired. I will explain to the watchmaker what requires to be done to it, and then he can repair it according to my direction. Then, when he has repaired it, he returns it to me, and I pay him for it, and then it is mine to do what I please with. I apply this idea to my land and I think it is a parallel case to my land. I do what I like with it, and when it needs repairs I do not ask anybody, but take it straight to the watchmaker, and he does what is necessary. That is the principle upon which we wish to deal with our land.<sup>787</sup>

Although Wahanui did not explicitly refer to the Treaty, he was clearly expressing his understanding of the relationship between kāwanatanga – the power granted to the Crown to govern and make laws – and the commensurate obligation on the Crown to use that power to actively protect the tino rangatiratanga of Māori communities over their territories and resources. Wahanui asked Parliament not to be swept away in its desire to obtain land for settlement, and instead to preserve Māori authority. Specifically, he said: ‘Me titiro mai ki taku e pai ai, me ta toku iwi i hiahia ai, ara, kia waiho te tikanga me te whakahaere mo a matou whenua kia matou anake.’<sup>788</sup> This was a direct appeal for iwi to retain full control of land – both in terms of law (tikanga) and in terms of governance and management (whakahaere). However, Mair translated him as saying: ‘I claim the consideration of this House, and ask it to give effect to my wish and the wish of my people, and that the

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<sup>787</sup>. ‘Nga Korero Paramete: 1881–1885’; ‘Native Land Settlement Bill’, 1 November 1884, NZPD, vol 50, p 556.

<sup>788</sup>. ‘Nga Korero Paramete: 1881–1885’.

authority over our lands may be vested in our Committee.’ Mair, in his translation, was presumably referring to the Kawhia Native Committee.<sup>789</sup>

#### **8.7.2.2 Ballance’s response to Wahanui, 1 November 1884**

Addressing the House in response, Ballance said that Wahanui’s opposition arose more from ‘want of familiarity’ with the Bill’s provisions ‘than from anything contained in them’. Ballance said that Wahanui, if he truly understood the Bill, would see its protective intent. The Bill, he said, was based on two principles. The first was that it prohibited all private dealings in Māori land within the affected area. Ballance said that the Government had initially intended to prohibit dealings only within a certain distance of the line, but had decided to extend the prohibition to cover all dealings in land that the railway would benefit. Ballance said that Wahanui had supported the prohibition on private transactions in ‘the whole of the Waikato, including his lands’. He made no mention of Wahanui’s opposition to the Crown’s purchasing right. The second principle, Ballance said, was that the Crown would act as agent for Māori landowners in any sales or leases of their land, administering the land for the owners’ benefit. Ballance acknowledged that this was one of the ‘teeth’ that Wahanui had spoken of. He said it was a ‘tentative’ proposal only and had been intended to ensure that Māori could get the best prices for their land.<sup>790</sup>

He acknowledged that Māori landowners would be unwilling to hand their lands over Crown appointees and would instead want their lands dealt with by a body made up mainly of their own representatives. He also acknowledged that Wahanui and other Māori leaders wanted ‘the power to deal with their own lands’ and were seeking ‘the fullest privileges of self-government with respect to dealing with their own lands.’<sup>791</sup> He said there were two views of land administration: first, those who sought the free-trade in Māori land; and secondly, those who sought ‘tribal’ Māori control of land under the ‘united intelligence of the tribe in council’. In his view, individualisation had done Māori a great deal of harm, and tended only to accelerate the transfer of land from Māori to private Europeans: ‘Our object is not to divide and conquer; our object is not to wrest from the Natives their land without their full and intelligent consent.’ He therefore indicated his support, in principle at least, for tribal control over Māori land. But – notwithstanding the suggestions already made by Wahanui and other Te Rohe Pōtae leaders, and by Wi Pere and Rees – he said that no appropriate policy had yet been brought forward.<sup>792</sup>

He said that Māori were pressing for native committees to be used for land administration, but the native committee movement was ‘in its infancy’ and not yet ready to take on the land administration role. However, ‘when the time comes’, Parliament should be prepared to hand control of land over to boards made up mainly of elected Māori representatives, and to grant them ‘extensive powers with

789. ‘Native Land Settlement Bill’, 1 November 1884, NZPD, vol 50, p 556.

790. ‘Native Lands Settlement Bill’, 1 November 1884, NZPD, vol 50, pp 312–313.

791. ‘Native Lands Settlement Bill’, 1 November 1884, NZPD, vol 50, p 312.

792. ‘Native Lands Settlement Bill’, 1 November 1884, NZPD, vol 50, pp 314–315.

respect to the administration of land.<sup>793</sup> Ballance, here, was referring not to owner committees (as proposed by Rees and Pere), nor to existing native committees. Rather, he was proposing that the commissioner and assessors already provided for in his legislation be renamed a 'board', but with greater Māori representation.<sup>794</sup>

With respect to determination of land titles, Ballance acknowledged that the Native Land Court 'has not given satisfaction' to Māori people, and said this was principally because the court was individualising title whereas Māori traditionally held land in common. However, with 'a few amendments', he said, the court remained the best tribunal for determining title to Māori land, whether it was awarding that title to iwi, hapū, or individuals. Native committees could not carry out this function, he said, because committee members would inevitably have interests in the land they were adjudicating on. Only the court, he said, could conform to 'the principles . . . of English jurisprudence' by being 'above suspicion' and immune from 'intimidation' and 'bribery'. Notwithstanding those reservations, he said that committees with 'slightly larger powers' could perform some 'useful functions', possibly acting 'as a Court of first instance', with the court hearing appeals.<sup>795</sup> As discussed earlier, Wahanui and other Māori leaders had criticised the Native Committees Act 1883 because it failed to empower Māori communities to determine title among themselves, or to administer land transactions.

Though he was not willing to offer what Wahanui sought – an end to the court, and tribal control over title determination and land administration – Ballance nonetheless recognised the strength of Māori opposition to all parts of the Bill other than 'the prohibition clause'. He also saw that 'Wahanui's great influence among his own people would be much lessened' if Parliament enacted laws that he had opposed and his people had not yet discussed among themselves. With little more than a week left in the parliamentary session (Parliament rose for the year on November 10), Ballance therefore proposed to withdraw all parts of the Bill relating to the administration of sales and leases of Māori land (including those relating to the planned role of the commissioner and Māori assessors), leaving those provisions to the next parliamentary session in 1885.<sup>796</sup>

Ballance subsequently introduced amendments removing all of the land administration clauses. Six new clauses were inserted, prohibiting all private alienation of Māori land in the 4.5 million acre restriction zone.<sup>797</sup> All that remained of the original Bill was its final provision, clause 7, which provided that nothing would preclude the Crown from negotiating to purchase or otherwise acquire Māori land in the area covered by the Bill.<sup>798</sup> Ballance acknowledged that the Crown's immediate requirement was to acquire 3,360 acres of land along which the railway would

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793. 'Native Lands Settlement Bill', 1 November 1884, NZPD, vol 50, p 312.

794. 'Native Lands Settlement Bill', 1 November 1884, NZPD, vol 50, p 313.

795. 'Native Lands Settlement Bill', 1 November 1884, NZPD, vol 50, pp 315–316.

796. 'Native Lands Settlement Bill', 1 November 1884, NZPD, vol 50, pp 316–317; doc A78, pp 1084–1085.

797. 'Native Lands Settlement Bill', 1 November 1884, NZPD, vol 50, p 317.

798. 'Native Lands Settlement Bill', 1 November 1884, NZPD, vol 50, pp 312–317.

run, and he believed Māori would freely offer that land. He gave no reason for the Crown retaining purchasing rights over a vastly greater area.<sup>799</sup>

It is quite clear from Ballance's speech that he saw the constitutional relationship in quite a different light from Wahanui. Ballance made no reference to Wahanui's watchmaker analogy and did not appear to regard the Crown as having any obligation to enact the laws that Wahanui sought. Rather, he appears to have regarded Māori as possessing property but not political rights with respect to their territories, and to have a right to be consulted. After announcing his amendments, Ballance and other Ministers insisted that their sole purpose was to prevent land speculation in the railway area until a new system of Māori land administration that met with Māori approval could be put in place.<sup>800</sup>

### **8.7.2.3 Views of other members, 1 November 1884**

After Ballance had spoken, Wi Pere gave his views. He said that all previous laws affecting Māori land had been made by Europeans, and '[t]he result of these laws has been that all Māori lands have passed away'. Like Wahanui, he objected to the court and individualisation of title, and to the Crown retaining control of land transactions. He said that all authority should rest with owners, with representative committees acting on their behalf. The Government could assist, but not have control over Māori lands. In the immediate future, he said, the only good that could be done for Wahanui's land was to 'stop the Court . . . stop the surveys . . . and stop the selling and leasing'. Only once 'a good law' was passed, designed by Māori and confirmed by Parliament, should there be any further move towards land title determination or land transactions.<sup>801</sup>

In the colony's history, he said, the Crown had never allowed Māori to make their own laws. Europeans had made the laws and had obtained 30 million acres of Māori land. They 'ought to be satisfied with that land for the present', and leave remaining Māori land to be administered by Māori. He said that Wahanui was saying to the Government: 'keep back your dogs from coming and killing my sheep', because he (Wahanui) no longer had power to restrain Europeans who wanted to come into the district and cause trouble. Put another way, he was asking that 'a fence be placed round his land, and, if the gate is to be opened to let any one in upon the land, let it be done by the owner of the soil: let him open the gate himself'.<sup>802</sup>

Bryce also spoke. He criticised Ballance for having already failed to obtain significant areas of land along the railway. While he did not think that Māori land should be treated differently from European land, he nonetheless thought that 'if land belonging either to the Maoris or to Europeans is to have its value so largely enhanced by public works executed at the general expense of the colony,

799. 'Native Lands Settlement Bill', 1 November 1884, NZPD, vol 50, pp 312–317.

800. Document A78, pp 1091–1092, 1102; doc A67, pp 66, 69–70, 127–128.

801. 'Native Lands Settlement Bill', 1 November 1884, NZPD, vol 50, pp 317–318.

802. 'Native Lands Settlement Bill', 1 November 1884, NZPD, vol 50, p 318.

that land should contribute something special towards the cost of those works.<sup>803</sup> Here, he was reasserting the policy that he and other members of the Atkinson Government had advocated before the election. Although Ballance did not support this approach, some members of the Government did, as we will see.

Bryce also spoke about land title determination, saying it was 'impossible' to recognise communal title, as that 'would simply bar the utilization and settlement of the land' and settlement of land was essential for the good of the colony and the Māori people. Native committees could make some contribution to land title determination by arranging for Māori to meet and make their own arrangements for land title before presenting the result to the court. But they could not themselves ascertain or individualise title, because such an approach would be 'beyond their conception'. It was therefore 'entirely hopeless to expect that any Māori Committee could progress in the settlement of title if left to themselves'. Jealousy of one another, and the tendency to *taihoa* – wait a while – would cause the settlement of title to be 'indefinitely delayed'.<sup>804</sup> In making these comments, Bryce confirmed what Māori leaders had suspected – that he had never intended native committees to have full powers over land title determination, nor full powers over land administration. For Bryce, as for most other non-Māori members of the House of Representatives, the overriding priority was to obtain Māori land for settlement by Europeans, and Māori wishes would be accommodated only to the extent that they did not impede this goal.

Though Bryce did not comment in detail on the Bill's withdrawn provisions, he did observe that Ballance's proposal to allow Māori to sell land either directly to the Government or through a Crown-controlled commissioner was likely to lead to dissatisfaction. He recommended that land be sold only through the commissioner.<sup>805</sup>

#### **8.7.2.4 *Wahanui's continued objection, 6 November 1884***

After Ballance's amendments were made, Wahanui and five other leaders petitioned the Legislative Council. They said it was 'a matter of life and death' to Māori that their concerns about land legislation be addressed. They remained very concerned about Ballance's proposed land law:

the Maori people are now threatened with law of which they have never heard, which law may swallow up all their land and so destroy them, wherefore we are in great fear and trouble and to you, the fathers of the people, we now call that you may hear our cry and shelter us from the evil which is swiftly coming upon us.<sup>806</sup>

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803. 'Native Lands Settlement Bill', 1 November 1884, NZPD, vol 50, p 321; see also doc A78, pp 1087–1089.

804. 'Native Lands Settlement Bill', 1 November 1884, NZPD, vol 50, pp 321–322.

805. 'Native Lands Settlement Bill', 1 November 1884, NZPD, vol 50, p 322.

806. 'Wellington', *Nelson Evening Mail*, 7 November 1884, p 3; doc A78, p 1090; doc A110, p 672.

Wahanui spoke to the Legislative Council on 6 November 1884. He reiterated the utmost importance of Te Rohe Pōtae Māori retaining their self-government.

Tuatahi, ko te tino take o aua hiahia kia tau ano ki au te mana whakahaere i toku whenua, i raro ano i te mana o te Kawana. Kahore ano kia pa noa te ringa o te pakeha ki enei whenua.

The first, the principal, object that I have in view is that I should have the full control and power over my own lands, subject to the authority of His Excellency the Governor. These lands, so far, have not been touched by the hands of Europeans.<sup>807</sup>

This was Wahanui's first recorded use of the term 'mana whakahaere' to describe the authority he sought for his people. As noted in section 8.7.2.1, he had previously used the term 'whakahaere' in conjunction with 'tikanga', to refer to full authority over both law and administration.

Wahanui said the Bill, as introduced, had a whole body covered in niho (teeth), and a tara (thorn or spike) in its tail. The Government had now removed most of the teeth, with the exception of one. His objection (whakakino) to that remaining tooth was great, and he appealed (inoi) to the council not to proceed with it.<sup>808</sup> Though Wahanui did not specify which clause he was referring to, legislative councillors and other contemporary observers were in no doubt that he meant clause 7, which preserved the Crown's right to purchase.<sup>809</sup>

Wahanui repeated his demand that the Native Land Court must have no jurisdiction within Te Rohe Pōtae, at least until the Government and Māori had agreed on satisfactory laws. He said he was not opposing the Government, but wished to work with them to make satisfactory arrangements.

Tuarua, e hiahia ana ahau kia whakamana te Komiti, kia tukua ma te Komiti e whakahaere katoa nga mahi i runga i nga whenua i roto i taua takiwa.

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807. 'Nga Korero Paramete: 1881–1885', *He Reo Tūre No te Taha Kāwana/Language of the Crown*, New Zealand Electronic Text Collection, <http://nzetc.victoria.ac.nz/tm/scholarly/tei-NZPaVo1NgaK-t1-g1-t4-body1-d3-d2.html>, accessed 26 February 2018; 'Native Land Alienation Restriction Bill', 6 November 1884, NZPD, vol 50, p 427; doc A110, pp 672–673; doc A78, pp 1093–1094.

808. 'Nga Korero Paramete: 1881–1885', *He Reo Tūre No te Taha Kāwana/Language of the Crown*, New Zealand Electronic Text Collection, <http://nzetc.victoria.ac.nz/tm/scholarly/tei-NZPaVo1NgaK-t1-g1-t4-body1-d3-d2.html>, accessed 26 February 2018; 'Native Land Alienation Restriction Bill', 6 November 1884, NZPD, vol 50, p 427; doc A110, pp 672–673; doc A78, pp 1093–1094.

809. 'Legislative Council', *Southland Times*, 7 November 1884, p 3; 'Legislative Council', *Daily Telegraph*, 7 November 1884, p 3; 'Legislative Council', *Nelson Evening Mail*, 7 November 1884, p 4; doc A78, pp 1090, 1093.

Secondly, I should wish that my Committee — that is, the Native Committee — should be empowered, so that all dealings and transactions within that proclaimed district should be left in the hands of that Committee.<sup>810</sup>

Wahanui may have discussed empowerment of the committee in his negotiations with Ballance, but this appears to have the first time he raised the prospect publicly. Previously, he had asked more generally for iwi and hapū to retain control of their lands.

Wahanui said he made his requests of Parliament in the belief that its work was tapu (sacred) and should be carried out in a spirit of truth (pono) and justice (tika).

Tuatoru, e hiahia ana ahau kia pai te hanga i nga ture mo nga iwi e rua, kia rite tahi te whakahaere mo te iwi Maori me te iwi Pakeha, kia pai ai te noho tahi i roto i nga tau e haere ake nei.

Thirdly, I wish that the laws for the two peoples should be carefully framed, so that the arrangements for the Māori and Pakeha peoples are the same, so that living together in the future will be satisfactory.<sup>811</sup>

#### 8.7.2.5 *The Legislative Council's response, 7–8 November 1884*

Members of the Legislative Council generally accepted the prohibition on private land dealings as a necessary step to prevent speculation along the railway route. However, several members could see no reason why the Crown needed to retain purchasing rights over the entire 4.5 million acres if it only wanted land for the railway corridor.<sup>812</sup> The legislative councillor Walter Mantell said he feared the Crown was returning to 'the good old system' of using pre-emptive powers to acquire 'the largest possible amount of [Māori] land for the least possible price'. He urged the Government to amend clause 7 to make it clear that it intended purchasing only in a narrow area along the railway line, and also to ensure that the Government could acquire land only by negotiating openly with the acknowledged leaders of an iwi or hapū.<sup>813</sup>

The former premier, Daniel Pollen, said he could see no reason for the Crown to have exclusive purchasing rights over such a large area of land. The Crown's record

810. 'Nga Korero Paramete: 1881–1885', *He Reo Tūre No te Taha Kāwana/Language of the Crown*, New Zealand Electronic Text Collection, <http://nzetc.victoria.ac.nz/tm/scholarly/tei-NZPaVo1N-gaK-t1-g1-t4-body1-d3-d2.html>, accessed 26 February 2018; 'Native Land Alienation Restriction Bill', 6 November 1884, NZPD, vol 50, p 427.

811. 'Nga Korero Paramete: 1881–1885', *He Reo Tūre No te Taha Kāwana/Language of the Crown*, New Zealand Electronic Text Collection, <http://nzetc.victoria.ac.nz/tm/scholarly/tei-NZPaVo1N-gaK-t1-g1-t4-body1-d3-d2.html>, accessed 26 February 2018; 'Native Land Alienation Restriction Bill', 6 November 1884, NZPD, vol 50, p 427. Translation by the Waitangi Tribunal.

812. 'Native Land Alienation Restriction Bill', 6 November 1884, NZPD, vol 50, pp 431–433; doc A67, pp 69, 72. Also see doc A41, p 160 n; doc A78, pp 1096–1097.

813. 'Native Land Alienation Restriction Bill', 6 November 1884, NZPD, vol 50, p 433.



of dealing with Māori land was as bad or worse than that of private individuals, and Parliament was now being asked to approve a wide purchasing power without having any opportunity to debate the Crown's intended purchasing policy.<sup>814</sup> He said that Māori wanted no more than 'to restore to the tribes and the hapus of tribes authority over the tribal estates', and Wahanui's clear wish was that 'no dealings whatever' should be permitted within the lands he was responsible for, at least until that authority was restored. Dr Pollen therefore recommended that the Bill be amended to limit the Crown's purchasing rights.<sup>815</sup>

Another legislative councillor, George McLean, said he felt no alarm about clause 7 because he did not believe that Parliament would ever again tolerate large-scale Crown purchasing of Māori lands. He accepted that the measure was temporary, and that the Government intended clause 7 only to allow it to acquire land for the railway, and to secure some additional land at discounted rates in acknowledgement of the 'enormous' benefit the railway would bring to Māori landowners.<sup>816</sup>

Notwithstanding the concerns expressed by the likes of Pollen and Mantell, the council voted to allow the Bill, subject to an amendment requiring that any Crown purchases must be made from the owners as identified by the district's native committee.<sup>817</sup> One newspaper claimed that this amendment was made at Wi Pere's prompting.<sup>818</sup> If adopted, this would have gone some way towards easing Māori concerns, as it would have allowed the committee to ensure that iwi and hapū could make collective decisions. According to the legislative councillor Wi Tako Ngātata, Wahanui supported the amendment.<sup>819</sup>

### **8.7.2.6 The railway and Ballance's land legislation proceed, 7–10 November 1884**

As the Legislative Council was debating this Bill, the House of Representatives was debating another measure affecting Te Rohe Pōtae – the Railways Authorisation Bill. This measure formally authorised the construction of the North Island Main Trunk Railway along the central route from Te Awamutu to Marton. The Bill received its second and third readings on November 6, and came into effect the following day, allowing the Crown to begin active preparations for construction of the railway.<sup>820</sup> As noted earlier, Te Rohe Pōtae Māori had not yet consented to the railway, and had insisted they would not do so until satisfactory laws were enacted for the protection of their land and authority.

814. 'Native Land Alienation Restriction Bill', 6 November 1884, NZPD, vol 50, pp 431–433.

815. 'Native Land Alienation Restriction Bill', 6 November 1884, NZPD, vol 50, pp 431–433.

816. 'Native Land Alienation Restriction Bill', 6 November 1884, NZPD, vol 50, pp 434–435.

817. Document A78, pp1096–1097; 'Native Land Alienation Restriction Bill', as amended by the Legislative Council, 5 November 1884; doc A78(a), vol 4, pp1727–1728. Also see 'Native Land Alienation Restriction Bill', 7 November 1884, NZPD, vol 50, p 482'; 'Native Land Bill', *Poverty Bay Herald*, 15 November 1884, p 2; 'General Assembly: Legislative Council', *Temuka Leader*, 11 November 1884, p 2; doc A78, pp1091–1092.

818. 'Native Land Bill', *Poverty Bay Herald*, 15 November 1884, p 2; doc A78, pp1091–1092.

819. 'Native Land Alienation Restriction Bill', 8 November 1884, NZPD, vol 50, p 489.

820. 'Public Works Statement', AJHR, 1885, D-1, p 4.

On November 7, the House debated its public works programme, allocated £780,000 to railway construction nationwide, and £90,000 for purchases of Māori land, and £90,000 to assist British migrants to New Zealand. As there was no debate on the land purchasing measure, it is impossible to determine whether it was specifically intended for the railway area. The immigration budget had been a matter for some debate. The Government had, by this time, assisted 110,833 Europeans to settle in the colony (including 9,619 in the previous 2½ years) and had borrowed to fund this programme. According to some members, a large proportion of the new migrants were agricultural labourers, who remained unemployed. This, then, might explain the demand for land in Te Rohe Pōtae and other parts of the North Island. The view of Vogel, the colonial treasurer, was that immigration and public works went hand in hand in advancing the colony's prosperity, and in future it would be preferable to have a much larger settler population.<sup>821</sup>

After addressing the public works programme, the House considered the Legislative Council's proposed amendment to Ballance's land legislation. A cross-House committee, comprising Stout, Ballance, Bryce, and one other member, recommended against the amendment. Stout, on the committee's behalf, told the House that any restriction on the Crown's power to purchase land would have to be sent to London for the Queen's consent, thereby leaving the land with no protection against private speculators.<sup>822</sup> Stout also reported that the amendment was 'not justified by experience', and that native committees 'have not yet attained the position' that would justify placing them between landowners and the Crown.<sup>823</sup> He did not address the fact that it was Parliament that had created native committees and determined that their powers would not extend to control over land title determination or land administration. Nor did he address the underlying reason for the Legislative Council's amendment – to prevent the Crown from buying land without the full consent of iwi and hapū.

In response, the former governor and premier Sir George Grey said that all of the committee's reasons were 'baseless'. The effect of the Legislative Council's amendment, he said, would be to require the Crown to buy land from tribal leaders, as it had before individual title was introduced and Crown pre-emption abandoned in the 1860s.<sup>824</sup> It was taking 'no power whatever' from the Crown to require it to buy land using the system it had previously used, Grey argued. Nor, he said, could Stout justify his claim that Māori leaders were incapable of dealing with their lands. They had proved entirely capable of negotiating land arrangements

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821. 'Public Works Statement', NZPD, 1884, vol 50, p 86; 'Public Works', 6 November 1884, NZPD, vol 50, pp 461, 463; 'New Zealand Loan Bill', NZPD, 1884, vol 50, pp 364–369.

822. 'Native Land Alienation Restriction Bill', 7 November 1884, NZPD, vol 50, p 478; doc A78, p1098.

823. 'Native Land Alienation Restriction Bill', 7 November 1884, NZPD, vol 50, p 478; doc A78, p1098.

824. 'Native Land Alienation Restriction Bill', 7 November 1884, NZPD, vol 50, pp 478–479.

before individual title and free trade had been introduced.<sup>825</sup> It would be entirely possible to grant native committees full powers to control land administration within their districts, Grey continued, subject to some modest limits in the public interest – including a restriction on the amount of land a committee could sell to any individual European, and a restriction on offshore dealings to prevent sales to absentee speculators from London or elsewhere in Europe.<sup>826</sup>

Māori members of the House of Representatives spoke in favour of the Legislative Council's amendment. Te Puke Te Ao (Western Maori) said its effect was to ensure that land could not be sold except by the correct owners, and native committees were the most suitable body for determining who the owners were.<sup>827</sup> Wi Pere gave a long speech in an attempt to delay the Bill. He said the amendment was a simple one. Its effect was that the native committees would determine who owned the land, and then gather the owners in one place so they could hear the Government's proposal for purchase. He asked: 'Why should this simple proposition be opposed by the Europeans?'<sup>828</sup> He asked why the Government was unwilling to deliver what Māori sought and empower the native committees. 'Are they afraid to trust the Native people?' He added: 'If the Government wish to purchase portions of land along the line of [the] railway, then they should go to the Native Committee and make terms with them.'<sup>829</sup>

In response, Stout insisted that the Government's sole purpose was to prevent private speculation in the district. Without answering Grey's points, he insisted that, if the council's amendment was passed, the Bill would have to go to England for the Queen's assent, the Government would be unable to prevent private land speculation in the affected area, and 'the whole business of the North Island Main Trunk Railway would be stopped.'<sup>830</sup>

The House rejected the amendment, and the Legislative Council voted against pressing the issue further.<sup>831</sup> The Bill was passed into law, as the Native Land Alienation Restriction Act, on 10 November 1884.

### **8.7.2.7 The Crown grants Te Rohe Pōtae Māori requests for a liquor ban – September–November 1884**

Whereas the Crown did not deliver what Wahanui sought in respect of land, it was willing to accept another of his demands. On 8 September, while Wahanui was in Wellington, the 'Blue Ribbon' petition was presented to the governor. It had about

825. 'Native Land Alienation Restriction Bill', 7 November 1884, NZPD, vol 50, pp 478–479.

826. 'Native Land Alienation Restriction Bill', 7 November 1884, NZPD, vol 50, pp 478–479.

827. 'Native Land Alienation Restriction Bill', 7 November 1884, NZPD, vol 50, pp 479–480.

828. 'Native Land Alienation Restriction Bill', 7 November 1884, NZPD, vol 50, p 482.

829. 'Native Land Alienation Restriction Bill', 7 November 1884, NZPD, vol 50, p 480.

830. 'Native Land Alienation Restriction Bill', 7 November 1884, NZPD, vol 50, pp 485–486; doc A78, p 1102.

831. 'Native Land Alienation Restriction Bill', 7 November 1884, NZPD, vol 50, pp 485–489; doc A78, p 1102.

1,400 signatures and called for the governor to use his powers under section 25 of the Licensing Act 1881 to order that no publican licences could be issued ‘throughout our district extending to Waipa, Kawhia, Mokau and all its boundaries.’<sup>832</sup>

Te Rohe Pōtae leaders’ concerns about liquor arose from two sources. First, they were aware that Native Land Court hearings – which were becoming increasingly frequent in areas bordered their territories – were often associated with drunkenness. Secondly, the establishment of an armed constabulary camp at Kāwhia, with a liquor canteen, had created opportunities for alcohol to be onsold to Māori. Wilkinson had reported in mid-1884 that this had led to some instances of drunkenness, though for the most part the district’s leaders were eager to keep alcohol out of the district.<sup>833</sup>

During his negotiations with Ballance in September, Wahanui had discussed the petition and reiterated the desire of Te Rohe Pōtae leaders for a prohibition on the sale of spirits in their district. He also briefly raised the matter in his speech to the House of Representatives in November:<sup>834</sup>

Tetahi o aku tino tonono ki tenei Paremete, ko te hoko waipiro me arai rawa atu, kua rawa e tuku mai taua mea whakarihariha ki tomatou takiwa. E tohe ana ahau kia kaha rawa koutou, nga Rangatira o tenei Whare kia tutakina rawatia taua mea hara kei kai haere mai ki to matou takiwa ngau kino ai oku iwi.

One of my most important requests to this Parliament is that the sale of spirits should be absolutely blocked; do not allow that disgusting thing into our district. I insist that you should be strong, [oh] leaders of this House, to completely block that criminal stuff for fear that it should come into our district, hurting our people.<sup>835</sup>

During the negotiations, Ballance had been positive about the request, and in his response to Wahanui in the House Ballance publicly announced that it would be granted. In response to the petition, Ballance said, instructions had been given to bring the prohibitive clauses of the Licensing Act into effect throughout the King Country. That was being done ‘with the almost unanimous assent’ of Māori in that district.<sup>836</sup>

The Government then issued a proclamation in December 1884 forbidding the sale of liquor within what was called the Kawhia Licensing Area. This broadly coincided with the Kawhia Native Committee’s area, but with some omissions. Kāwhia township was excluded, in spite of the fact that it was the source of most concern to Te Rohe Pōtae Māori, apparently on the basis that it was occupied by Europeans and section 25 provided that proclamations could apply only to Māori land. The land between Kāwhia and Aotea Harbours was also excluded, apparently

832. Petition and covering letter forwarded to Premier, 8 September 1884 (doc A71, pp17–18).

833. ‘Reports from Officers in Native Districts’, AJHR, 1884, G-1, p6; doc A78, p908.

834. Document A78, p1078.

835. Document A110, pp668–672. Translation by the Waitangi Tribunal.

836. ‘Native Lands Settlement Bill’, 1 November 1884, NZPD, vol 50, p312.

as a result of a lack of clarity in the survey map that was used as a basis for the proclamation. And some land in the Waipā district south of the Pūniu River was also excluded.<sup>837</sup>

Ballance initially proposed that the prohibition area be called ‘King Country Licensing Area’, but the Under-Secretary for Native Affairs, T W Lewis, advised against it, in order to avoid the appearance that the Government was giving any recognition to Tāwhiao. ‘Kawhia Licensing Area’ was adopted, even though the prohibition excluded Kāwhia township.<sup>838</sup>

The proclamation meant that Te Rohe Pōtae became New Zealand’s first ‘dry’ district – no alcohol could be bought or sold within its boundaries. The *Otago Daily Times* regarded it as ‘undoubtedly a matter of great importance’ in the colony’s history.<sup>839</sup> Although the areas left outside the licensing district were relatively small, Te Rohe Pōtae leaders saw them as significant, presumably because they represented encroachments on the five tribes’ boundary, and also because they limited the leaders’ ability to protect their people from alcohol-related harm. They raised these concerns with the Government in 1885, as we will see in sections 8.8.2.2 and 8.8.4.

### 8.7.3 Treaty analysis and findings

The formation of a new Government in August 1884 appeared to hold some promise for Te Rohe Pōtae Māori. Whereas Bryce had sought to restore Crown pre-emption and push forward with his land purchasing objectives, the new Government – and in particular its Native Minister, John Ballance – promised to work with Māori to develop laws that would satisfy their concerns. But the Government was also determined to push ahead with the railway as a matter of urgency and saw this as a precursor to opening the railway lands to settlement. It saw these measures as being of vital importance to the colony’s economic prosperity and was willing to invest substantial sums of borrowed money to bring them to fruition. As Richardson and Vogel made clear, it intended not only to satisfy the land hunger of Europeans already in New Zealand, but also to fund significant numbers of assisted migrants.

Te Rohe Pōtae Māori, on the other hand, continued to comply with the terms of their previous agreements with the Crown and to press for the Crown to deliver on the terms of the June 1883 petition in a manner that gave effect to their rights under the Treaty. While they continued to raise specific concerns about the Native Land Court, title determination, management and disposition of land, and control of liquor, these were all elements of their more general desire for the Crown to use its powers of *kāwanatanga* to recognise and protect their authority in accordance with the Treaty guarantee of *tino rangatiratanga*. During this period, Wahanui

837. Document A71, pp 205–209; doc A78, pp 1106–1107; Native Office to Native Minister, 10 March 1885 (doc A71(a) (Robinson and Christoffel document bank), vol 1, pp 213–214); ‘The North Island Trunk Railway: (Report on the Ceremony of Turning the First Sod of), at Puniu, 15th of April, 1885’, AJHR, 1885, D-6, pp 3–4.

838. Document A71, pp 205–209; doc A78, pp 1106–1107.

839. ‘Editorial’, *Otago Daily Times*, 4 February 1885, p 2; doc A71, p 205.

adopted a new term – *mana whakahaere* – to describe the practical authority that Te Rohe Pōtae Māori sought.

### 8.7.3.1 *The meaning of mana whakahaere*

The Government's willingness to negotiate created new opportunities for Te Rohe Pōtae leaders to set out the conditions on which they would recognise Crown authority, accept the railway, and ultimately consider opening their lands for settlement. Wahanui was able to meet with Ballance and other members of the House of Representatives, and to address both Houses of Parliament.

The position he presented was clear, and entirely consistent with that set out in the 1883 petition. In that petition, Te Rohe Pōtae Māori had made it clear that no progress could be made towards the railway or settlement until satisfactory laws were in place. The laws they wanted would have to keep the court out of the district; provide for Māori to determine title among themselves; provide for hapū and iwi to manage land collectively; prohibit sales of land; and provide for leasing on an open market.

Wahanui's negotiations with Ballance during September 1884 modified the position of Te Rohe Pōtae Māori only very slightly. Wahanui placed increasing emphasis on the Crown passing laws that would protect Māori authority in its entirety. He sought 'te mana whakahaere i toku whenua' (translated at the time as 'full control and power over my own lands'). He also asked of Parliament: 'kia waiho te tikanga me te whakahaere mo a matou whenua kia matou anake.'<sup>840</sup> This was translated at the time as a request 'that the authority over our lands may be vested in our Committee.'<sup>841</sup> We understand it more broadly, as a demand for Parliament to provide for Māori to retain full control of their lands – both in terms of tikanga (law and underlying values) and in terms of whakahaere (political, judicial, and administrative control).

Whereas the 1883 petition had focused on general objectives, Wahanui was now also addressing the question of how those objectives could be brought to fruition in a practical sense. This inevitably required him and other Māori leaders to determine how they could work within a framework of the laws and institutions that Parliament had provided or might be willing to provide in future. During the post-election parliamentary session, therefore, the focus of Māori leaders turned towards increasing the powers of native committees to carry out the *mana whakahaere* functions they sought. Māori had not designed the native committee system, nor determined the powers that committees would have. But, since the formation of the Kawhia Native Committee, Te Rohe Pōtae Māori had sought to work within this Crown-designed system, suggesting ways in which it might be adapted to deliver the *mana whakahaere* that they sought.

With his Native Land Laws Amendment Bill, Wi Pere sought to empower committees selected by owners within each district to determine iwi, hapū, and individual interests, and to oversee land administration and alienation. When

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840. Document A110, pp 668–672.

841. Document A110, pp 668–672.

Wahanui appeared before the Legislative Council, he sought agreement for native committees to be empowered to carry out these functions. Wahanui did not see the committees as replacing the traditional authority of iwi and hapū, but as supplementing and reinforcing that authority by mediating between Māori communities and Europeans, in particular by having oversight of ‘all dealings and transactions’ while respecting the rights of iwi and hapū to make final decisions. In a sense, he presented the committees as having potential to become a partnership body.

More generally, Wahanui set out his understanding of the constitutional and Treaty relationship between Te Rohe Pōtae Māori and the Crown. Using the watchmaker analogy, he explained how their respective spheres of authority would be brought into effect, and how they would operate in relation to each other. He acknowledged that the authority he sought to have recognised in statute would be ‘i raro i te mana o te Kawana’. This was translated at the time as ‘under the authority of the Governor’, but appears to reflect a view that the Treaty provided for mana Māori to be protected by the Crown.<sup>842</sup> It was also an acknowledgement that echoed the 1883 petition’s request for Parliament to make laws that would recognise and protect Māori authority. This was not a statement of submission; rather, it was a statement in recognition of the distinct spheres of authority that existed under the Treaty, those of kāwanatanga, encompassing a right to make and enforce laws for the colony, and of tino rangatiratanga, encompassing full authority exercised by Māori over their territories.

Within those territories, Wahanui sought no less than mana whakahaere (full control and power), encompassing both tikanga (law and values) and whakahaere (political and administrative control). Wahanui referred specifically to land title determination and land administration, which were his most immediate concerns at the time. But we do not think the term ‘mana whakahaere’ can be read down to mean only that. Land, in a Māori context, is a source of mana, and therefore of political authority generally. Wahanui also referred to the exercise of tikanga – the Māori system of law and the values that underpinned it. Furthermore, by referring to matters such as liquor control, Wahanui clearly intended mana whakahaere broadly to include rights of self-government and self-determination over the full range of community affairs, consistent with the responsibilities of rangatira to protect and provide for all matters concerning the well-being of their people. He also intended for those rights of self-determination to be protected by statute, within the territory defined by the boundary.

As Wahanui saw it, the governor’s role, and therefore that of the Crown, was to use its lawmaking powers to recognise and guarantee Māori authority in accordance with article 2 of the Treaty. The Crown was responsible for fixing its broken land laws on behalf of Māori landowners, just as a watchmaker’s job was to fix a broken watch on behalf of its owners. Once the watch was fixed, it would be ‘mine to do what I please with’. This was an eloquent analogy for the Treaty

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842. Ngāti Maniapoto leaders used similar wording in the 1904 Kawenata, where they referred to the Treaty as providing for the Queen to protect the mana of Māori land and people. See section 3.4.3.

relationship, under which (as explained in chapter 3) the Crown acquired powers to make law and govern, but those powers were fettered by corresponding obligations to actively protect the tino rangatiratanga of Māori communities, including their rights to hold land and other resources communally in accordance with their traditions, and their rights to retain, use, manage, develop, or dispose of that land as they wished.

### **8.7.3.2 *The opportunity to provide for mana whakahaere***

Wahanui sought nothing that the Treaty did not offer. Yet the Crown, despite its rhetoric about working with Māori, did not deliver. Ballance consulted Wahanui, and the House of Representatives and Legislative Council offered him an unprecedented platform from which to deliver his demands, but the Bill that Ballance subsequently introduced did not address the issues Wahanui had raised. It did not address the concerns of Te Rohe Pōtae and other Māori about the Native Land Court. It did not provide for Māori to determine land titles among themselves. It did not guarantee that owners could manage and use land communally; rather, it provided only for a possibility that owners could make collective decisions about sales and leases. It did not prohibit all sales of land; instead, it granted the Crown exclusive rights to purchase in a vast area of land surrounding the railway. And it did not guarantee that land transactions would occur in an open market; instead, the Crown was to be placed in a privileged position in which it could deal directly with owners.

We acknowledge that the Government had been in office for only a few months. But the Te Rohe Pōtae petition had been delivered in June 1883. Ballance and other Ministers had had well over a year to come to grips with Te Rohe Pōtae Māori demands, even before Wahanui came to Wellington. Te Rohe Pōtae Māori had made it clear that, after recognising their boundary, the next step towards providing for their legitimate Treaty rights was to address their concerns about the Native Land Court and to empower them to determine land ownership among themselves. Although Wahanui knew of Ballance's reservations about giving the committees full responsibility to determine land titles, this continued to be what he demanded when he spoke in Parliament.

It was entirely within Government's capabilities to introduce legislation giving effect to these wishes. With respect to determination of land titles, the most obvious option by this time was to increase the powers of the Kawhia Native Committee to prepare it for the process of determining title to Te Rohe Pōtae lands. Provisions with similar effect had been proposed by Māori members of the House of Representatives in 1881 and 1882, and by McLean a decade earlier; as discussed earlier, the 1882 Bill had wide support among Parliamentarians and was only narrowly defeated in spite of Bryce's opposition (see section 7.4.4.6). As Ballance was drafting his Native Land Settlement Bill (later enacted as the Native Land Alienation Restriction Act 1884), Rees and Wi Pere were bringing forward their proposals for titles to be awarded to hapū, and for the empowerment of native committees. The Government could have incorporated some or all of these



provisions within its proposed legislation. Yet the Government included no such provisions.

If – as the Crown submitted to us – the Government did not follow this course because it was concerned about allowing the Kawhia Native Committee to determine title in a district that included several iwi with competing interests, it had other options open to it. One option, which was suggested by John Ormsby (section 8.8.2.2), was that it reconstitute the committee to more fairly represent all Te Rohe Pōtae iwi. It could also have considered other options, such as encouraging the iwi concerned to negotiate among themselves outside of any court or committee process. Māori did not lack mechanisms for managing conflicts over land and other matters. Pan-tribal hui had long been used to negotiating customary rights, as well as political alliances, including the Kingitanga. It was only after the court arrived at the district's borders that such arrangements began to fray. The rangatira behind the June 1883 petition had always acknowledged that a range of hapū and iwi held customary rights to land within the boundary of Te Rohe Pōtae. Their wish was for those interests to be settled under Māori and chiefly authority according to their tikanga, not that of the Government and the court. It was for this clear purpose that they had advanced the petition.

When debating the Native Lands Settlement Bill, a majority of the Legislative Council, and several members of the House of Representatives, clearly shared Wahanui's view that Māori could resolve such matters among themselves. The Legislative Council's proposed amendment (requiring the Crown to negotiate for land purchases only with owners as determined by the district native committee) could have had this effect, while also allowing the Kawhia Native Committee to ensure that the Crown brought land only from rangatira acting on behalf of their hapū. In rejecting the proposed amendment, the Government resorted to the constitutional argument that it could not restrict the Crown's land purchasing authority without first seeking the Queen's explicit consent. This argument did not convince Sir George Grey, who had filled the role of both governor and premier, and who saw the proposal as taking no power from the Crown. In fact, the question did not concern the Crown's powers to buy Māori land; it concerned the method by which the owners of that land would be determined.

On that point, Stout and other members of the cross-party committee objected to native committees being given that role, on the basis that the Crown was unwilling to place native committees between itself and potential land sellers. They do not appear to have considered the previous Government's assurances that native committees could inquire into titles. Wi Pere put it succinctly when he asked whether the Government was simply unwilling to trust Māori to manage their own affairs.

That is not to say that the proposals put forward by Rees and Pere, or by the Legislative Council, were perfect solutions to the problem of how Māori could take control of the land title determination process. All were based on the district native committee model, which had been developed by the Crown. What Te Rohe Pōtae Māori had initially sought was the right to determine such matters among

themselves, with the Crown providing no more than legal assurance that decisions made by Māori, in accordance with their own tikanga, would be recognised in law. The Crown had opportunities to explore options to bring such a system into effect, and declined to do so, in spite of Wahanui's clear explanations of the mana whakahaere that he sought.

Once the Crown had developed the native committee system, Te Rohe Pōtae leaders showed that they were willing to work within this framework, provided that the committees were empowered to carry out the functions that they had sought in the petition. The Crown chose not to enact legislation to grant those powers, and turned down opportunities provided by Rees and Pere, and by the Legislative Council. In this, it breached the Treaty guarantee of tino rangatiratanga and the principle of partnership.

The Government similarly declined opportunities to provide for Te Rohe Pōtae and other Māori to administer lands, in particular by declining opportunities to empower native committees to negotiate with Europeans on behalf of owners. It rejected the proposals put forward by Rees and Wi Pere, and instead proposed that land transactions be managed by a Crown appointee. In the event, these proposals were not brought into effect.

### **8.7.3.3 *The Government's railway and land policies***

The March 1883 agreement had provided that an exploratory survey would be completed and the Government would then return to negotiations. After the December 1883 agreement, the Government still did not have permission to build the railway or do anything more than complete surveys. Yet the Government nonetheless pressed ahead with plans to construct the railway. Without seeking the consent of Te Rohe Pōtae Māori to the railway, it determined the railway route, allocated railway funds, approved borrowing, began detailed surveys, and announced plans to call for tenders for construction of the railway.

It also enacted legislation that restricted the property rights of Te Rohe Pōtae Māori by prohibiting all private (but not Crown) land transactions within a 4.7 million-acre area surrounding the railway route. It did so because its intention was that railway construction would be followed quickly by land settlement. There were different views within the Government as to how that could best be achieved. All were in agreement that land prices would rise, and that it was necessary – now that the preferred railway route had been announced – to prevent speculation by private investors. Ballance's view was that Māori landowners should be paid fair prices for their land and would then be willing to open the district for settlement. Other Ministers believed that the Crown should acquire large areas of land along the railway line, onselling them at a profit to fund the railway. These tensions were not resolved during 1884.

Wahanui strongly opposed the Native Land Alienation Restriction Bill, and in particular the Crown purchasing provision. Irrespective of whether the Crown intended to take advantage of the exclusive purchasing right it was granting itself over Te Rohe Pōtae lands, it had restricted Māori property rights in order to

advance settlement of the district, and it had done so against the express wishes of Te Rohe Pōtae leaders.

By pressing ahead with preparations for the railway, and for settlement of the district, without first obtaining the consent of Te Rohe Pōtae Māori, and by enacting legislation that restricted the property rights of Te Rohe Pōtae Māori without their consent, the Crown failed to actively protect their rights in land, and breached the Treaty guarantee of tino rangatiratanga and the principle of partnership.

These breaches did not directly affect the landholdings of Te Rohe Pōtae Māori, as their lands had not yet passed through the Native Land Court and therefore could not be alienated. But they did limit the options of Te Rohe Pōtae leaders in future dealings with the Crown. As we will see, Te Rohe Pōtae Māori continued to hold out hope that the Crown would empower the Kawhia Native Committee in accordance with the demands set out in the June 1883 petition. But their stance in future negotiations was influenced by the knowledge that the Crown would not always honour agreements and was determined to give its railway and settlement objectives priority over their Treaty rights. Whereas Te Rohe Pōtae Māori had hitherto demanded their mana whakahaere as of right, in future negotiations they would be prepared to compromise.

### **8.8 THE RAILWAY AGREEMENT, FEBRUARY–APRIL 1885**

As the parliamentary session ended in November 1884, the negotiations between the Crown and Te Rohe Pōtae Māori were far from resolved. The Crown continued to press ahead with its railway plans, but knew that further work would be needed to develop legislation that would achieve its settlement goals. Te Rohe Pōtae Māori were very concerned about these actions. Not only was the Crown pressing ahead without their consent, it had failed to address their requests for mana whakahaere, failed to address their more specific concerns over statutory provisions for land title determination and land administration, and – once again – enacted legislation they opposed.

Soon after the Native Land Alienation Restriction Act 1884 was passed, Te Rohe Pōtae leaders reminded Ballance that they had not yet consented to the railway and would not consent unless their conditions were met – that is, until the Crown used its lawmaking powers to provide statutory protection for their rights of self-determination. Ballance responded by agreeing to meet and negotiate. He met Te Rohe Pōtae leaders at Kihikihi in February 1885. During these negotiations both sides gave some ground. Ballance promised Te Rohe Pōtae a substantial measure of authority with respect to land, but he remained unwilling to give in to Māori demands that the Native Land Court play no role in their district. Rather, he repeated the proposal he had made to Wahanui in September – that the Kawhia Native Committee would act as a court of first instance, with the Native Land Court playing a role only when the committee could not reach agreement. Nor was he willing to leave the Kawhia Native Committee or Māori landowners full control over land transactions, insisting instead that all transactions be managed

by a committee comprising Māori and Crown appointees (albeit, he suggested, with an elected Māori majority).

Altogether, during the Kihikihi hui Ballance made 20 promises or assurances about land title determination, land administration, and other matters such as the rating of Māori land, management of minerals and other resources, and control of liquor. Shortly afterwards, Ballance met Tāwhiao, and described his proposals as giving Māori 'large powers of self-government'.<sup>843</sup> Te Rohe Pōtae Māori did not get all that they had sought; what Ballance offered was not a fully realised Treaty relationship in which the Crown would use its powers of *kāwanatanga* to recognise their rights of *tino rangatiratanga* and (their term) *mana whakahaere*. Nonetheless, they formed the view that what Ballance offered was more than they had got from Bryce or any other Government before. They believed they had a choice: accept a compromise which was less than what they were entitled to, on the basis that it represented progress; or reject Ballance's proposals and risk the Government continuing to pursue its railway and settlement goals unilaterally, in a manner that would inevitably be less favourable to them. They chose the former option.

This section describes the negotiations in greater detail and sets out the basis on which Te Rohe Pōtae Māori subsequently gave their consent for the railway to proceed.

### **8.8.1 The Government's land settlement plans and Te Rohe Pōtae Māori concerns**

Once Parliament had risen for the year on 10 November, Wahanui left Wellington, visiting other communities, including Nelson and Auckland. Late in the month, he met Ballance in Whanganui and also attended a banquet where Ballance – speaking to a mainly European audience – elaborated on his plans to urgently complete the railway and open Te Rohe Pōtae for settlement.<sup>844</sup>

#### **8.8.1.1 Ballance outlines the Government's new policies, November 1884**

Ballance described the railway as 'a great work', which the Crown had a duty to complete 'without any delay'. The railway would 'lay open' the entire 4.5 million acres for European settlement, thereby 'dissipating the depression' and instead bringing 'grand prosperity' to the North Island.<sup>845</sup> Although he had not yet obtained consent for the railway, Ballance nonetheless announced that construction would begin in February 1885 with a ceremony to turn the first sod.<sup>846</sup> The Government was by this time undertaking practical steps to begin construction,

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843. 'Notes of Native Meetings', AJHR, 1885, G-1, p 27.

844. 'The Native Land Policy of the Government', *Evening Post*, 28 November 1884, p 2; 'Banquet to the Hon John Ballance', *The Yeoman*, 5 December 1884; doc A78(a), vol 6, pp 2921–2922. Also see doc A78, pp 1105–1106; doc A41, p 161.

845. 'Banquet to the Hon John Ballance', *The Yeoman*, 5 December 1884; doc A78(a), vol 6, pp 2921–2922; doc A41, p 161; doc A78, pp 1105–1106.

846. 'Banquet to the Hon John Ballance', *The Yeoman*, 5 December 1884; doc A78(a), vol 6, pp 2921–2922.

including sending a team of surveyors to fix the exact location of the line. The Department of Works planned to call for construction tenders in February.<sup>847</sup>

Having indicated in his speech to the House that the Crown had little desire to purchase land other than what was needed for the railway corridor, Ballance now said that it would 'of course' buy land for settlement, though it would only buy land in accordance with 'commercial principles' – that is, if the land was desirable enough that the Crown could onsell it at a profit.<sup>848</sup> However, he said his preference was to enable Māori to develop their own lands and offer them for settlement. In order to support this, he proposed a scheme that was similar in most respects to his original 1884 Native Land Settlement Bill.<sup>849</sup>

In particular, he proposed that the prohibition on private dealings already established for Te Rohe Pōtae should be expanded to cover the entire country. Whereas Bryce had previously proposed that Crown land boards be established to manage land transactions on behalf of Māori owners, and Ballance in 1884 had proposed that Crown-appointed commissioners fulfil that function, Ballance now proposed that land transactions should be managed by boards in which Māori would have 'a large share of representation'.<sup>850</sup> Under this system, Ballance said, Māori would retain 'a large degree of control' over their lands and would be able to offer those lands for sale or lease to the highest bidder. His hope was that Māori would see that the Crown meant to treat them fairly and would recognise that their interests were 'identical with the interests of colonization'.<sup>851</sup>

If they could see that the Government were not encouraging land sharks, and were not themselves anxious to be a land-shark Government but rather prepared to see the natives utilise their own lands, they would become hearty cooperators in the work of colonisation.<sup>852</sup>

Ballance's speech provides further evidence of the Government's ambivalent stance on Crown purchasing within the district. It was determined to press ahead with the railway, and with opening the land for settlement, but had not yet determined how that settlement might occur or who might manage it. Ballance's speech indicated that he remained open to the idea of Māori managing the settlement process themselves, but Crown purchasing would also be part of the equation. There is no evidence that he had made this clear to Wahanui during the September negotiations.

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847. 'Public Works Statement', AJHR, 1885, D-1, p 4.

848. 'Banquet to the Hon John Ballance', *The Yeoman*, 5 December 1884; doc A78(a), vol 6, p 2924.

849. 'Banquet to the Hon John Ballance', *The Yeoman*, 5 December 1884; doc A78(a), vol 6, p 2923.

850. 'Banquet to the Hon John Ballance', *The Yeoman*, 5 December 1884; doc A78(a), vol 6, p 2924.

851. 'Banquet to the Hon John Ballance', *The Yeoman*, 5 December 1884; doc A78(a), vol 6, p 2924.

852. 'Banquet to the Hon John Ballance', *The Yeoman*, 5 December 1884; doc A78(a), vol 6, p 2924; doc A41, p 161; doc A78, pp 1105–1106.

**8.8.1.2 *Te Rohe Pōtae Māori concerns about the railway, December 1884–January 1885***

Whereas settler newspapers claimed that Te Rohe Pōtae Māori were ‘entirely in accord’ with Ballance’s land settlement and railway plans, this was not the case. Not only had the Crown enacted legislation that Wahanui had opposed, it also pressed ahead with preparations for railway construction without first obtaining the consent of Te Rohe Pōtae leaders or resolving the issues they had raised, including those concerning land title determination, land administration, and self-government more generally. As Marr observed, the Government appeared to believe that the Railway Authorisation Act ‘was the only authority it required’, in spite of Wahanui’s clear explanations to members and Ministers about his arrangement with Bryce.<sup>853</sup> On December 3, five days after Ballance’s speech, Taonui wrote to the Minister asking why the railway was proceeding when the Crown had not yet received their consent:

Friend we are at a loss to know what wrong we and our people have done that you should have ignored us when you commenced Government works in our localities, that is, that you should have commenced the construction of the railway before coming to see us, the owners of the land, and discussing the matter fully with us in accordance with the promise made by Mr Bryce to Wahanui at Whatiwhatihoe, where he asked Wahanui to allow the preliminary survey of the line to be made. Mr Bryce assured Wahanui that it was only intended at that time to explore the line of railway and when the best route had been discovered, he would visit us again to confer with us regarding his wish to commence the construction of the railway. If Mr Bryce had at that time asked Wahanui to agree to his commencing the construction of the railway, Wahanui would not have taken upon himself the sole responsibility of acceding to his request but would have left it to the people to give their consent. Although Mr Bryce is not now in the position he then held, you have succeeded to his position to carry out his arrangements, and it would have been a graceful act on your part if you had carried out his promise as a token to us of the sincerity of your arrangements with Wahanui.<sup>854</sup>

The Crown’s agent in Te Rohe Pōtae, George Wilkinson, was sent to meet Taonui and smooth things over. After meeting Taonui, Wilkinson reported that the rangatira was amenable to the railway but had said he ‘should have been consulted’ before work went ahead. Wilkinson said this was also the view of the Kawhia Native Committee.<sup>855</sup> While Wilkinson presented Taonui’s position as one of needing to be consulted, his letter made it plain that what they expected was to be able to give their consent. This was in keeping with the agreement that was

853. Document A78, p1107.

854. Taonui to Ballance, 3 December 1884 (doc A20(a), pp 49–50).

855. Wilkinson to Under Secretary, Native Department, 19 December 1884 (doc A91, vol 1, pp84–90).

reached with Bryce in March 1883: other than the exploratory survey, no further work of any kind would be permitted without their consent (see section 8.5). The Crown nonetheless continued to make preparations for construction to begin. It placed a notice in the *Kahiti* in December, informing Māori that the central route had been selected. The same month, surveys went ahead to fix the exact route. Ballance gave instructions to build cottages for railway staff, and Wilkinson was instructed to ‘inform’ affected rangatira that this construction was occurring and tell them it was usual practice. Early in January, Wilkinson attempted to sound out Taonui and other rangatira to determine how many of their people would be available to work on the railway.<sup>856</sup>

Te Rohe Pōtae leaders continued to express concern about the Government proceeding without consent, and about the pace of those preparations. Many wrote to the Government, and others approached Crown officials in the district, seeking information about the Government’s intentions. They sought clarification, for example, about how much land would be taken for the railway, and whether they would be paid for it, and for timber and gravel used in its construction. Some were told they would be paid for the land, but only after title was determined.<sup>857</sup>

Although the Government had intended to award construction contracts in February, officials in the district advised that Ballance should meet Te Rohe Pōtae leaders before that occurred.<sup>858</sup> According to Wilkinson, Māori in the district had said they ‘were being constantly asked to agree to some new action regarding the railway but that Govt seemed to ignore them by not consulting with them as to whether these matters should be carried out.’<sup>859</sup> Wahanui arrived back in Te Rohe Pōtae late in December, and in January began a series of hui around the district, where he consulted Te Rohe Pōtae communities about the railway proposal. On 10 January, he attended a meeting at Te Kōpua which resolved not to obstruct the railway – implying that obstruction had been under consideration – and on 15 January Crown surveyors reached agreement with Māori at Te Kawa about protection of eel weirs affected by the line.<sup>860</sup>

### 8.8.2 Ballance seeks agreement to the railway, February 1885

Also in January, Ballance began a tour of Māori communities throughout the central North Island. His general aim was to discuss his proposed legislation for Māori land. With respect to Te Rohe Pōtae, he had other objectives. First, he sought ‘to obtain the consent of the chiefs and native people to the construction of the North Island Trunk line’. Then, he sought their consent ‘to the subdivision of their lands,

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856. Document A91, vol 1, pp 66–76.

857. Document A91, vol 1, pp 65–70, 82–83, 91–93; doc A78, pp 1107–1109, 1110–1112.

858. Document A91, vol 1, p 64.

859. Wilkinson to Under-Secretary, 8 January 1885 (doc A91, vol 1, p 67).

860. Document A78, pp 1111–1112; doc A91, vol 1, pp 57–63.

the individualizing of all native titles, and 'their active cooperation when the work will begin.'<sup>861</sup>

Wahanui had made it clear that Te Rohe Pōtae Māori were not interested in subdividing lands unless they could manage the process for themselves, and also that they did not favour individualised titles. Ballance himself had acknowledged the harmful effects of individualising title, yet now seemed bent on pursuing it as part of his settlement agenda.

Ballance's tour began with hui in early January at Rānana and Pipiriki on the Whanganui River. He then continued to Te Rohe Pōtae, meeting Te Kooti and his followers at Kihikihi on 3 February; Wahanui and other Te Rohe Pōtae leaders at Kihikihi on 4 and 5 February; and Tāwhiao at Whatiwhatihoe on 6 February. He then continued to the Parawai (Hauraki), Rotorua, Tauranga, and Tūranga (Gisborne).<sup>862</sup> The Kihikihi hui is particularly important for our purposes, since it was there that representatives of the five tribes set out the conditions on which they would consent to the railway, and Ballance in turn made a series of pledges to them.

### 8.8.2.1 *The Whanganui hui, January 1885*

Before reaching Kihikihi, Ballance stopped at Rānana on the Whanganui River for a two-day hui (7 and 8 January), where he met southern Whanganui leaders such as Te Keepa. So far as we can determine, none of the parties to the 1883 agreements were present, nor any of the rangatira who contested those agreements in subsequent petitions. As with Te Rohe Pōtae Māori, Whanganui leaders were concerned with their lands and with the roles of the new native committees. They asked that the boundary of Whanganui peoples be defined and that their native committee be empowered to conduct surveys, administer sales and leases, and make decisions about the railway.<sup>863</sup>

Ballance, in response, advocated for the Whanganui people to welcome settlers, who he assured them would bring prosperity, as would the railway by raising land prices. He said the native committee powers was 'a very large question' which the Government had yet to resolve. His view was that the committees 'may do a great deal of good in the ascertainment of title to land', but there might also be occasions on which committee members would have interests in the title determination. Therefore, in his view, there should be a right of appeal 'to a body above suspicion', the court. The court would also 'give legal sanction' to the committee's decisions, and Māori should therefore recognise 'that the Land Court still remains ultimately to resolve the question of title among you.'<sup>864</sup>

Once title was awarded, he said, owners would be able to elect committees which would make decisions about selling or leasing on their behalf. The

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861. 'Mr Ballance and the Waikato Natives,' *New Zealand Herald*, 27 January 1885, p 5; doc A41, p165.

862. Document A78, pp1112–1113; doc A41, p165. Also see doc A68, p13.

863. 'Notes of Native Meetings,' AJHR, 1885, G-1, p1.

864. 'Notes of Native Meetings,' AJHR, 1885, G-1, pp 2–3.



transactions would then be administered on the owners' behalf. Whereas the Native Land Settlement Bill 1885 had provided for this work to be carried out by a Crown-appointed commissioner assisted by two Māori assessors, Ballance now proposed that a board would carry out this function. The board would have the same structure – a Crown appointee and two Māori (either elected or nominated) – but the inference was that all would be equal members.<sup>865</sup>

### 8.8.2.2 *The Kihikihi hui, February 1885*

After the Rānana hui had been completed, Ballance proceeded to Jerusalem, where another meeting was held on 9 January. He then continued on to Kihikihi, where he met Te Kooti and his people on 3 February. This was followed by a meeting of Te Rohe Pōtae leaders on 5 February. Rangatira reported as attending and speaking at the hui include Wahanui, Taonui, Manga (Rewi Maniapoto), John Ormsby, Hopa Te Rangianini, Aporo Te Taratutu, and Pineha Tawhaki (aka Te Tawhaki Pineaha). All of these were of Ngāti Maniapoto. Also present, and speaking, were Hitiri Te Paerata (Ngāti Raukawa, Ngāti Tūwharetoa); Te Rangituatea (Ngāti Raukawa and Ngāti Maniapoto); Te Herekiekie (Ngāti Tūwharetoa); Te Hoti Tamehana (son of Wiremu Tamihana; Ngāti Hauā, Ngāti Hourua), Te Hauraki, James Thompson (another Tamihana), and Kingi Hori (apparently of Ngāti Tūwharetoa<sup>866</sup>).<sup>867</sup> Te Herekiekie described himself at the hui as 'one who manages matters at the Whanganui end of the block.'<sup>868</sup>

The claimant John Kaati told us this was 'not an ordinary hui', with several hundred people attending from a range of iwi, making it a considerable logistical undertaking. This attendance reflected the 'possible wide-ranging effects' on the district's Māori. The agreement reached at Kihikihi was as significant to Te Rohe Pōtae Māori as the Treaty was to Māori nationally: 'There has been no other hui in Te Rohe Pōtae of such high importance ever since, making this one the most significant hui ever held.'<sup>869</sup>

#### 8.8.2.2.1 WHAT TE ROHE PŌTAE LEADERS SOUGHT

After formal welcomes had been completed, Wahanui presented his understanding of what had so far occurred. According to the Government's official record of the meeting, he said that Te Rohe Pōtae Māori had agreed to a policy under which 'we were to hold on to the land . . . to preserve the land and the people, and to

865. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 3–4.

866. Document A53 (Stirling), vol 2, p 854.

867. The Government kept a full record of this and other hui that Ballance attended during his tour: 'Notes of Native Meetings', AJHR, 1885, G-1, pp 12–24. Also see 'The Native Minister in Waikato: Visit to Alexandra', *Waikato Times*, 5 February 1885, p 2; 'The Native Minister in Waikato', *New Zealand Herald*, 5 February 1885, p 5; 'The Native Minister in Waikato', *New Zealand Herald*, 6 February 1885, p 5. In this inquiry, several witnesses described the hui, including Dr Loveridge (doc A41, pp 165–172), Ms Marr (pp 1122–1140), and Ms Boulton (doc A67, pp 83–86, 100–105). All relied on the official report and newspaper accounts.

868. 'Notes of Native Meetings', AJHR, 1885, G-1, p 22.

869. Document H15, paras 125–130.

keep the tikanga'. But, through a combination of Government and Māori actions, that had broken up and divisions had emerged – in this, Wahanui may have been referring to the decision by Te Rohe Pōtae Māori to continue negotiations with the Government in Tāwhiao's absence. Wahanui said that Bryce 'made a compact with me, which was signed, that a search for the railway was to be made, and, if a suitable line were found, he was to return and let me know'. This decision had been made by Ngāti Maniapoto leaders, because there had not been time to consult others. Consent for the exploratory survey was given on the understanding that the Crown would return to negotiations 'before doing anything else'.<sup>870</sup>

The *Wanganui Herald* had previously used the term 'compact' to describe the 16 March 1883 agreement. So far as we can determine, this was the first time Wahanui or another Te Rohe Pōtae leader was quoted as using the term. The available records do not say whether Wahanui spoke in English or Māori, and we cannot know whether the term 'compact' was his or a translator's; nonetheless, the word suggests that Wahanui felt that a solemn agreement had been reached. He was also quoted as describing the agreement as a 'contract'.<sup>871</sup> Having established the terms of the 'compact', Wahanui then explained:

I . . . said to Mr Bryce, 'What you wish for has been agreed to; now I want you to agree to my request.' Mr Bryce asked me, 'What do you want?' I then said, 'I am going to send a petition to the House, and I want you and your Cabinet to back it up.' I went on with the petition at once, but you know yourselves what it is.<sup>872</sup>

He said that Te Rohe Pōtae leaders 'were not consulted with regard to the erection of trig stations; the consequence of this was that the Maoris got unsettled seeing what was being done, as one brother could not advise the other or tell the other anything about it'. As discussed in section 8.5, there is evidence that Te Rohe Pōtae leaders gave conditional consent to the trig survey, but it is possible that the details were not fully explained to them. As a consequence of concerns about surveys, Wahanui said, he was sent to Wellington to meet Ballance. There, he spoke with Ballance about the external boundary and also set out his expectations:

- ▶ That the Crown leave Te Rohe Pōtae Māori to sanction the railway line (meaning it would not proceed without their consent)
- ▶ That Europeans gold prospectors should not enter the district without the authority of the district's leaders
- ▶ That additional powers be given to Māori committees 'to conduct matters for the people'
- ▶ That liquor licences not be granted in the district
- ▶ That the Native Land Court not consider any Te Rohe Pōtae lands unless the district's leaders sanctioned it, and that Europeans should 'refrain from

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870. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 13–14.

871. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 13–14.

872. 'Notes of Native Meetings', AJHR, 1885, G-1, p 14.

interfering with the Maori lands, but leave the Natives to manage them themselves.<sup>873</sup>

In sum, as well as seeking confirmation of their external boundary, Wahanui had continued to seek broad powers for Te Rohe Pōtae Māori to administer their own affairs, with the Kawhia Native Committee exercising control over land title determination, land administration, minerals and resources, and unspecified ‘matters for the people’. Here, in other words, Wahanui was fleshing out some of the practical details of what mana whakahaere would mean.

Of the matters raised by Wahanui, we note that only one had been substantially honoured: the Government had prohibited liquor sales in most of the district. Government surveyors had also substantially completed the external boundary survey, except where the petition area overlapped the Mokau-Mohakatino and Mohakatino-Parininihi blocks (as discussed in section 8.6.6.4), the surveyors had insisted on excluding that block because it had already been before the court). So far as we can determine, this was not discussed with Wahanui until later in 1885.<sup>874</sup>

Having set the scene by referring back to previous negotiations, Wahanui then left it to the Kawhia Native Committee chairman, John Ormsby, to elaborate on the specifics of what Te Rohe Pōtae Māori now sought. Ormsby began by reminding Ballance that Te Rohe Pōtae Māori had been ‘estranged’ from Europeans for many years. The 1883 petition was the only step that had ever been taken towards ending that estrangement, and the Crown had done nothing in response.<sup>875</sup>

Ormsby said that the principal concern of Te Rohe Pōtae Māori was for their land. They opposed the court, because they had ‘never seen any good’ come from it; all land that passed through the court ended up in European hands. Often, this occurred as a result of ‘fictitious’ claims, typically backed by Government agents or private speculators. The court, Ormsby said, was ‘a machine by which the lands are transferred by the Native owners to either the companies or the Government.’<sup>876</sup> The other means by which the Government acquired Māori land was through roads (and, by inference, other public works), which were inevitably followed by the imposition of rates on Māori land, forcing owners to sell.<sup>877</sup> Ormsby said that, when Te Rohe Pōtae Māori sent in their petition, all they had wanted was laws that would benefit them and did not act as a means to separate Māori from their lands:

We wished that we should be allowed ourselves to manage matters concerning our own lands. The reason why we wish to manage our lands ourselves is because we,

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873. ‘Notes of Native Meetings’, AJHR, 1885, G-1, pp 13–14.

874. The survey work had begun in December 1883. By mid-1885, the District Surveyor Laurence Cussen reported that he hoped the surveys would be ‘finished during the present season’: ‘Report of the Surveys of New Zealand for the Year 1884–1885’, AJHR, 1885, C-1A, p 24; doc A78, pp 989–990, 1111–1112; doc A79, pp 59–60.

875. ‘Notes of Native Meetings’, AJHR, 1885, G-1, pp 14–16.

876. ‘Notes of Native Meetings’, AJHR, 1885, G-1, pp 14–16.

877. ‘Notes of Native Meetings’, AJHR, 1885, G-1, pp 14–16.

being the owners of land, know all about it, and are the proper persons to manage it.<sup>878</sup>

In response to the petition, Ormsby said, the Crown had established Māori committees but had not empowered them as Te Rohe Pōtae leaders wished. The committees were ‘only a shadow’ of what had been sought; they had no substance.<sup>879</sup> The Crown had also prohibited private companies from dealing in land, but had not imposed the same restriction on itself. Ormsby said it was time to ‘start a new policy’ with respect to Māori land. There were five key elements to what he sought:<sup>880</sup>

- ▶ The Native Land Court should play no role in the district, and the Kawhia Native Committee should instead be empowered to fulfil the court’s land title determination functions. The committee, Ormsby said, should have the power to compel owners to appear before it.
- ▶ Land titles should be awarded not to individuals but to hapū, ‘because from the time that our ancestors first settled on this land it was always divided amongst hapus; nothing was known about individualizing titles’.
- ▶ Each hapū should be able to appoint its own committee, which could make decisions about how land would be used, including whether it would be leased or sold.
- ▶ A board appointed by the Kawhia Native Committee should conduct all sale and lease transactions on owners’ behalf. As well as replacing the court, the Kawhia Native Committee should also replace the Native Trustee.
- ▶ Māori land should not be subject to rates.<sup>881</sup>

Here, for the first time, a Te Rohe Pōtae leader was speaking openly about the possibility of selling land. This was a significant concession: the 1883 petition had not contemplated any sales, and (as we will see in chapter 11) some Te Rohe Pōtae leaders would continue to argue against sales. But Ormsby imposed three caveats: first, that all decisions must be made by hapū acting collectively; secondly, that all transactions be managed by the Kawhia Native Committee; and thirdly, Ormsby said, the Government should play no role whatsoever in managing land transactions on behalf of Māori, nor in buying land for settlement. The Government’s sole role, Ormsby said, was to protect Māori in possession of their lands:

878. ‘Notes of Native Meetings’, AJHR, 1885, G-1, pp 14–16.

879. ‘Notes of Native Meetings’, AJHR, 1885, G-1, pp 14–16.

880. ‘Notes of Native Meetings’, AJHR, 1885, G-1, pp 14–16.

881. In the official record, Ormsby referred to committees and boards interchangeably, in a manner that made it unclear whether he expected the Kawhia Native Committee or owner committees or some other ‘board’ to fulfil these functions. However, newspaper coverage made it clear that Ormsby was referring to boards appointed by the Kawhia Native Committee. Wahanui later informed the Native Affairs select committee that the Kawhia Native Committee was to manage land transactions on owners’ behalf. See ‘Notes of Native Meetings’, AJHR, 1885–I, G-1, pp 15–16; ‘The Native Minister in Waikato’, *New Zealand Herald*, 5 February 1885, p 5; ‘The Native Minister in Waikato: Visit to Alexandra’, *Waikato Times*, 5 February 1885, p 2; ‘Evidence of Wahanui before the Native Affairs Committee on the Native Land Disposition Bill’, AJHR, 1885, I-2B, p 5.

There are no persons who have more right to dispose of Native land than the owners of that land; and I say that if the Government have the selling or the purchasing of Native lands it shuts the Natives out of the market; and we wish the Government at the present time . . . to look after our lands for us – that is, that no person should be allowed to come in and interfere with our management of them.<sup>882</sup>

These demands were consistent with the sentiment of the 1883 petition. The underlying principle was that Māori should retain and manage their land as they saw fit, and that the Crown's only role was to protect their right to do so. Having spent two years negotiating with the Government over these matters, Te Rohe Pōtae leaders were now offering greater detail about the legal and institutional arrangements they saw as necessary to fulfil their goals.<sup>883</sup> If the Government met these demands, Ormsby said, there would be 'no further trouble' about settlement or public works.<sup>884</sup>

Having dispensed with land, Ormsby also raised three other matters – liquor, gold prospecting, and Māori participation in the colony's lawmaking. With respect to alcohol, Ormsby said that the Government had prohibited liquor licenses, but 'the portion we were most anxious about was left out.'<sup>885</sup> He was presumably referring to Kāwhia, where the European population was greatest and where alcohol had first entered the district in significant quantities. He therefore asked Ballance to correct the omissions in the Kawhia Licensing Area, and to ensure that the regulations were 'as stringent as it is possible to make them.'<sup>886</sup>

With respect to gold, Ormsby said that the district was 'overrun' with prospectors, who failed to seek permission from the true owners of the land. He asked that the Government temporarily prohibit prospecting for gold, iron or other minerals until arrangements could be made to ensure that such activities were carried out properly and under the owners' authority.<sup>887</sup>

The other matter that Ormsby raised was Māori participation in the colony's democracy. He pointed out that general electorates were established on the basis that there would be one member for every 5,000 people (including non-voters such as women and children). In contrast, the Māori population was 40,000 and yet there were only four Māori electorates. The number of Māori electorates should double.<sup>888</sup> Ormsby also referred to the colony's lawmaking processes:

Previously, it has been the custom for the Acts to be made by the Europeans only, and the Maoris have no voice in the matter; although the Maori members may be in

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882. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 14–16.

883. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 14–16.

884. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 14–16.

885. 'Notes of Native Meetings', AJHR, 1885, G-1, p 15; doc A71, p 205.

886. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 14–16.

887. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 14–16.

888. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 14–16.

the House at the time that the Acts are passed they have no knowledge of them—they have no voice, no power.<sup>889</sup>

When a new law was proposed, he said, Māori should be consulted. Copies of Bills should be circulated among Māori, and Māori should also be able to propose their own legislation and have Parliament ratify it. In his view, this could ‘easily’ be done and European members could be persuaded not to oppose Māori initiatives.<sup>890</sup> In this, it seems likely that Ormsby’s views reflected Wahanui’s experience in Wellington, where he had clearly explained the laws he required in return for consent to the railway, and Ballance had then brought forward legislation of a different nature.

Taonui and other rangatira spoke in support of Ormsby’s words. Taonui said that Ormsby had set out ‘all that we have been discussing’.

We wish that all these matters that have caused pain to our hearts and trouble to our land may be done away with; and this is the day on which they can be done away with. Then we shall truly be one, and say to each other, ‘Ehoa, tena koe; Ehoa, tenakoe.’ We shall then nod our heads one to another and gaze in each other’s countenances.<sup>891</sup>

After continuing in the same vein, Taonui then added: ‘If you carry out these matters I shall nod my head to you; if you will not carry them out I will not nod my head to you.’<sup>892</sup>

#### 8.8.2.2.2 BALLANCE’S RESPONSE

Ballance had begun the hui by stating that he would ‘keep nothing back’ and would state the Government’s intended policy ‘without any reservation whatever.’<sup>893</sup> This contrasted with his stance at Rānana, where he had emphasised that the Government had still to determine its policies, especially with regard to land title determination.

In respect of the ‘compact’ between Wahanui and Bryce that no further work would be completed after the exploratory survey, Ballance said the Native Department had no record of this agreement. However, having heard of the agreement from Te Rohe Pōtae rangatira, he had resolved to visit them, ‘for I felt that it was my duty to make good all promises.’<sup>894</sup> Ballance also defended the Government’s record on consulting Te Rohe Pōtae Māori, telling those present that he had sought Wahanui’s view on the Native Land Settlement Bill and that when Wahanui had objected to some parts of the Bill the Government had withdrawn them. As we discussed in section 8.7.3, this was true in respect the land

889. ‘Notes of Native Meetings’, AJHR, 1885, G-1, pp 14–16.

890. ‘Notes of Native Meetings’, AJHR, 1885, G-1, pp 14–16.

891. ‘Notes of Native Meetings’, AJHR, 1885, G-1, p 16.

892. ‘Notes of Native Meetings’, AJHR, 1885, G-1, p 16.

893. ‘Notes of Native Meetings’, AJHR, 1885, G-1, p 13.

894. ‘Notes of Native Meetings’, AJHR, 1885, G-1, p 13.

administration clauses, but not in respect of the Crown retaining rights to purchase land in the district.<sup>895</sup>

In response to Ormsby, Ballance made a series of promises about land title determination and administration, which went part way towards delivering what Ormsby had sought.<sup>896</sup> Regarding determination of land titles, Ballance acknowledged Ormsby's criticisms of the Native Land Court, but rejected the call for it to be kept out of the district altogether. While the Court had faults, it was 'supposed to be an independent tribunal, that will decide fairly between the conflicting parties', whereas native committees might show bias towards the tribe that formed the majority of the committee. In other words, Ballance said, 'no institution is altogether perfect. All require to be hedged in with sufficient safeguards'.<sup>897</sup>

We observe that, at the time, the Native Land Court itself did not have extensive 'safeguards': there was no mechanism by which Māori could seek an appeal against the court's decisions (rehearings could be granted by the Native Affairs Committee, but the cases were returned to the court). Māori themselves were concerned about decisions based on false evidence or in the absence of the true owners. Some of these concerns had been raised by Te Rohe Pōtae Māori, and Rewi in particular, in earlier negotiations (see chapter 7). The only real safeguard in place was that Native Land Court judges were assisted by Māori assessors, who might have better understanding of the relevant history and tikanga than European judges did.

Although Ballance was not willing to do away with the court, he proposed to grant native district committees 'larger powers', under which 'all cases will come before the Native Committee in the first instance, and then go on to the Native Land Court, which will finally deal with the matter'. On its own, this statement could be read as an endorsement of the existing Native Committees Act, which provided for committees to inquire into questions of land title but left the court to make all decisions. Previously, however, Ballance had responded to Wahanui's speech in the House of Representatives by saying that the committees could act 'as a Court of first instance', with the court hearing appeals.<sup>898</sup> By using the same language ('first instance') he appeared now to be endorsing that proposal. At Rānana, he had made clear that the court would have to ratify all decisions made by committees, but he offered no such caveat here, leaving the impression that committees would have powers to inquire into titles as Bryce had previously promised.

Ballance said he was also considering an amendment to the law to prevent Māori who had little or no interest in a land block from making claims to the court.<sup>899</sup> He also proposed to empower native committees to adjudicate in minor civil disputes between Māori in their districts. Committees were already empowered to adjudi-

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895. 'Notes of Native Meetings', AJHR, 1885, G-1, p 13.

896. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 16–18; doc A78, pp 1128–1129.

897. 'Notes of Native Meetings', AJHR, 1885, G-1, p 17.

898. 'Native Lands Settlement Bill', 1 November 1884, NZPD, vol 50, pp 315–316.

899. 'Notes of Native Meetings', AJHR, 1885, G-1, p 17.

cate on disputes of up to £20 in value, but only if both disputing parties agreed. Ballance said that his proposal was to give the committees 'the same power as a court'. Ballance said he intended to introduce legislation during 1885 to give effect to this change.<sup>900</sup> He also proposed to give the committees some revenue, possibly by empowering them to collect dog tax from Māori in their districts, and said he believed the chairman should be paid 'a small sum.'<sup>901</sup> Although Ormsby had not specifically requested the changes to committees' dispute resolution and revenue gathering powers, they appear to be consistent with Wahanui's general requirement that committees be empowered 'to conduct matters for the people'.

Regarding Ormsby's proposals for hapū title and for land administration, Ballance said his view was that all owners should be named on the title. Once title was awarded, owners could elect committees which would administer lands on their behalf and make decisions about sale or lease. Ballance said he favoured this approach because of 'abuses' that had arisen when the law had provided for 10 individuals to be named on each title.<sup>902</sup> While Ballance was not agreeing to vest title in hapū, this suggested that he was agreeing that decisions should be made collectively by owners.

If the committee wanted to sell or lease land, Ballance said, it could approach a board that would manage the process on their behalf. At Rānana, Ballance had said the board would comprise a Crown appointee and two Māori, who would be either elected or nominated. He now said that one of the Māori members would be the chairman of the Māori committee, and one other 'should be perhaps' elected by Māori, though the Government had not yet decided on the method of appointment.<sup>903</sup> This strongly implied that the board would have a Māori majority without giving a definite assurance. Ballance's thinking about the makeup of these boards was clearly evolving as he travelled.

Together, these measures might have given Māori control over the boards. Ballance said the boards would not be able to do anything except with the approval of the committee of owners, and by this means the 'fullest power' would remain with the owners.<sup>904</sup> Ormsby had asked that the Kawhia Native Committee manage land transactions, and Ballance gave no reason why it should not. Nor did he give any reason why a Crown appointee was required to manage land transactions on behalf of hapū and iwi.

Regarding rating of Māori land, Ballance said he agreed with Ormsby. His view was that it was unfair to impose rates on land that was not being used (by which he meant farmed). No Māori land within the area affected by the railway would have rates imposed unless it had been sold, leased, or cultivated, in which case rates would be necessary to pay for the roads that served the land.<sup>905</sup>

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900. 'Notes of Native Meetings', AJHR, 1885, G-1, p 17.

901. 'Notes of Native Meetings', AJHR, 1885, G-1, p 17.

902. 'Notes of Native Meetings', AJHR, 1885, G-1, p 17.

903. 'Notes of Native Meetings', AJHR, 1885, G-1, p 17.

904. 'Notes of Native Meetings', AJHR, 1885, G-1, p 18.

905. 'Notes of Native Meetings', AJHR, 1885, G-1, p 17.



Ballance also discussed the Government's land purchasing and settlement objectives. He said the Crown had halted private purchases of Māori land in order to protect the owners. The Government itself was 'not anxious' to buy Māori land, and he did not see it as necessary. The Government's 'principal object' was 'to get the land and country settled'. If Māori would use the proposed land administration system to make land available for settlement, the Government 'will assist them and not otherwise interfere'.<sup>906</sup> Ballance also indicated that, under this system, Māori would enjoy the benefits of rising land prices. At that time, Ballance said, there were 'large blocks of land in this country which have really no value at all, because there are no roads or railways through them'. If those blocks were sold, 'they would not receive more than three or four shillings an acre, whereas if railways or roads were made through it it would sell for as many pounds an acre'.<sup>907</sup>

In effect, Ballance was telling Te Rohe Pōtae leaders that they would be left to manage the district's settlement themselves, and that the Government would only step in and buy land if voluntary settlement did not occur. Te Rohe Pōtae leaders had already indicated their willingness to make land available for settlement if the right laws were put in place and would have seen this as a significant concession.

Having dealt with land issues, Ballance turned to the other matters Ormsby had raised. With respect to the licensing boundary, Ballance said there had been 'some misunderstanding or mistake'; the Government's intention had been to deliver exactly what had been sought in the petition. He undertook to investigate and take immediate steps to address any gaps in the licensing area.<sup>908</sup>

With respect to prospecting, Ballance said that Wahanui had raised this issue during their September talks, and the Government had responded by prohibiting prospecting on Māori land except with the consent of the owners and the Native Minister. Ballance had not approved any prospecting since that time and would not approve prospecting on any land until title had been awarded. He was, however, prepared to delegate his decision-making power to the chairman of the Kawhia Native Committee.<sup>909</sup>

With respect to lawmaking, Ballance agreed that Māori should be consulted on all legislation affecting them. He said that once he returned to Wellington he would circulate a Bill proposing new land laws.<sup>910</sup> He also agreed that Māori should have more members in the House of Representatives and promised to advocate for an increase. He gave no promises about the exact number, on the grounds that there were differing views among members of the House of Representatives about the exact size of the Māori population.<sup>911</sup>

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906. 'Notes of Native Meetings', AJHR, 1885, G-1, p 18.

907. 'Notes of Native Meetings', AJHR, 1885, G-1, p 17.

908. 'Notes of Native Meetings', AJHR, 1885, G-1, p 18.

909. 'Notes of Native Meetings', AJHR, 1885, G-1, p 19.

910. 'Notes of Native Meetings', AJHR, 1885, G-1, p 17.

911. 'Notes of Native Meetings', AJHR, 1885, G-1, p 18.

**8.8.2.2.3 FURTHER DISCUSSIONS**

Ormsby, in turn, continued to press for land title determination to be conducted solely by the Kawhia Native Committee. The committee, he said, 'would be the proper body to deal with the land', though he admitted that it was 'not properly constituted just now'.<sup>912</sup> If the committee was given extra powers, he said, it should also be broken up and fresh elections held, with each hapū and iwi striving to elect its own representative. He expressed confidence that, with new elections, all iwi and hapū would be properly represented. In this, he appears to have been acknowledging concerns about the initial election and the lack of representation for some iwi, in particular those from Waikato (section 8.6.4.1), while also assuring Ballance that a properly constituted committee would be above suspicion and could therefore be trusted to carry out land title determination in a fair manner.<sup>913</sup>

Ormsby acknowledged that some hapū had applied to the court for title to be determined, but he said this had occurred before the Kawhia Native Committee had been established, when rangatira 'had no other course open to them'. Now that the committee existed, 'those applications should be recalled, and the matters left to the Native Committees to deal with'.<sup>914</sup> Land titles, he said, were 'a matter that requires a great deal of attention from all of us'. The court had been in operation for 20 years with no other system available to Māori. The reason he favoured committees over the court was that, before the court existed, 'land was sold, and there was an end of it; there was no trouble afterwards in connection with it'.<sup>915</sup>

In other respects, Ormsby indicated acceptance of much of what Ballance proposed. He welcomed Ballance's promise of additional powers for native committees, but said those powers should not be limited to small civil disputes – the committees should also have power to adjudicate on larger disputes.<sup>916</sup> He supported the principle of committees of owners deciding how to manage land and also appeared willing to consider Ballance's idea for a board (comprising a commissioner, the native committee chair and one other, who Ballance had suggested would be an elected Māori) to manage land transactions, so long as they could sell or lease to the highest bidder and not leave Māori 'shut out of the market'.<sup>917</sup>

He accepted Ballance's assurances with respect to rating, so long as they were put in writing so they would not be forgotten, as the 'compact' had been. By 'compact', he was presumably referring to the March 1883 agreement under which (as Wahanui had explained earlier in the hui) an exploratory survey would be conducted and no further decisions made without the consent of Te Rohe Pōtae Māori.<sup>918</sup> Ormsby also accepted Ballance's offer to delegate decision-making

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912. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 18–19.

913. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 18–19.

914. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 18–19.

915. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 18–19.

916. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 18–19.

917. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 18–19, 20.

918. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 18–19.

powers with respect to prospecting. And he also took Ballance's word that gaps in the licensing area had not been deliberate and would be addressed.<sup>919</sup>

Ballance, in response, acknowledged Ormsby's concerns about the court, but said the 1883 legislative changes had banned lawyers and 'removed many of the evils' from the court. Furthermore:

I trust that the powers that we are going to give to the [native] Committees will tend to remove most of the evils remaining. It is the desire of the Government to remove from the operation of the Court all objections which might be taken by the people themselves who own the land.<sup>920</sup>

Once land had been through the court, Ballance said, it should remain in owners' hands, subject only to survey and court fees.<sup>921</sup> This comment indicated that there would be an ongoing role for the court. However, the reference to empowerment of native committees clearly suggested that they would play a greater role in land title determination. In the context of Ballance's earlier comments (both in Parliament and here) and Ormsby's insistence that the court should not make land title decisions, it seems likely that Te Rohe Pōtae leaders believed Ballance intended to empower the committees as courts 'of first instance'.

In response to questions about the role of the proposed boards in managing land transactions, Ballance said that any land sold or leased would be 'submitted for public competition, so that the highest price will be obtained for the land'.<sup>922</sup> He promised that whatever was agreed about rating and other matters would be recorded in writing and confirmed through an exchange of letters.

#### **8.8.2.2.4** CONDITIONAL AGREEMENT TO THE RAILWAY

With the parties having reached an understanding on most matters, the hui adjourned for the night. In the morning, the assembled rangatira turned their attention to the railway. Wahanui, Taonui, Te Rangituatea, and others asked for more time to consult with their people, and with Whanganui and Ngāti Tūwharetoa leaders, before giving their final decision on the railway.<sup>923</sup> Wahanui, in particular, emphasised that the people would have to decide and that Whanganui and Ngāti Tūwharetoa must be involved, since they had interests in the forested Tūhua lands through which the railway would pass.<sup>924</sup> He told Ballance this did not mean he was 'keeping back the railway-line', but simply that he was anxious to see the people who had not been able to attend the hui. After he had seen those people, 'the final settlement will take place': 'I want to discuss with them the matters that were gone into yesterday. Yesterday you did not refuse to us the things

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919. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 18–19.

920. 'Notes of Native Meetings', AJHR, 1885, G-1, p 19.

921. 'Notes of Native Meetings', AJHR, 1885, G-1, p 19.

922. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 20–21.

923. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 21–24.

924. 'Notes of Native Meetings', AJHR, 1885, G-1, p 21.

that have been refused by two or three previous Governments.<sup>925</sup> The sole outstanding matter, Wahanui said, was that a road was being built from Kāwhia via Te Kōpua to the Waipā Valley, and Te Rohe Pōtae Māori also wanted a road from Te Kōpua to Kihikihi.<sup>926</sup>

Ormsby also spoke again, telling Ballance that the meeting had been ‘highly pleased’ with Ballance’s responses: ‘The sting of the scorpion has been broken off: the road we look upon as the scorpion, and the rates as the sting from it. Yesterday that sting was destroyed; now we have changed that insect, the scorpion, into one that we can utilize.’<sup>927</sup> Like Wahanui, Ormsby emphasised the need to consult, as some hapū in the vicinity of the railway might not agree with what the hui decided.<sup>928</sup>

Ormsby then asked Ballance how much land he would need for the railway. Ballance said he required a corridor of one chain wide for the railway, with a wider area – up to two chains – along hillsides where cuttings were needed. Stations would require an area of five acres, or 10 acres for stations at larger settlements.<sup>929</sup> He proposed to deal with the land in the same manner as if it was being taken from Europeans for public works. Once the owners were known, the Crown would pay the compensation at the same rates as if they were Europeans. He also gave assurances that timber would be paid for, that the railway would not interfere with waterways, and that ‘[n]o injury whatever will be done to Native land.’<sup>930</sup> With respect to railway construction, he said:

The Government proposes to let the contracts in such a way that the Natives may be able to take them. That is to say, that a portion of the line will be let in small contracts, so that the Natives themselves may contract and make the line. Therefore a large amount of the money for the construction of this line will go amongst the Native people directly.<sup>931</sup>

Ballance acknowledged rangatira who had asked about protection of eel weirs and about maintaining forests for food, and responded ‘that the money that will come to the people through the construction of this railway will be worth all the berries in the world, and the eels, too.’<sup>932</sup> Responding to the request for a road between Te Kōpua and Kihikihi, Ballance said that if the road could be made easily, it would be made.<sup>933</sup> When Te Rangituatea said he did not wish to part with his land, Ballance said he would not have to. All the Government sought was land

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925. ‘Notes of Native Meetings,’ AJHR, 1885, G-1, p 21.

926. ‘Notes of Native Meetings,’ AJHR, 1885, G-1, p 22.

927. ‘Notes of Native Meetings,’ AJHR, 1885, G-1, p 22.

928. ‘Notes of Native Meetings,’ AJHR, 1885, G-1, p 22.

929. ‘Notes of Native Meetings,’ AJHR, 1885, G-1, pp 22–23.

930. ‘Notes of Native Meetings,’ AJHR, 1885, G-1, pp 22–24.

931. ‘Notes of Native Meetings,’ AJHR, 1885, G-1, pp 22–24.

932. ‘Notes of Native Meetings,’ AJHR, 1885, G-1, pp 22–24.

933. ‘Notes of Native Meetings,’ AJHR, 1885, G-1, p 24.

for the railway. It would otherwise be left to Te Rangituatea and other owners to decide what they did with their land, but the Government did not wish them to let the land go.<sup>934</sup> Having exhausted all topics of discussion, Ballance then gave two further assurances in conclusion:

I have explained the matter as fully as I can, and I have only to say, in conclusion, that not a single Native right will be prejudiced. As I said yesterday, greater powers will be placed in the hands of the Natives to deal with their own land, when their land will be enormously increased in value through the construction of this railway and roads. I therefore call upon you all to assist the Government in carrying on these works.<sup>935</sup>

Rewi Maniapoto then spoke. Referring to the tensions that had emerged among Te Rohe Pōtae tribes, he said he had believed the matter settled during Bryce's time 'from all parts of the boundary', but he now found 'objections coming from some parts'. This was why further discussion was needed. His personal view was that the Government should get on with construction and complete the railway within five years 'that I might ride on it before I die'.<sup>936</sup>

Ballance offered to give Te Rohe Pōtae Māori until the end of February to complete their discussions. Wahanui then concluded the hui by telling Ballance he would have an answer within three weeks; and if he had no answer by then, the agreements reached during the hui would stand. He took this approach, he said, 'in order that everybody may understand'.<sup>937</sup>

We will settle it now, lest what has been offered to us now should be taken away; for Governments have offered us things, and we have not accepted them; and it may be, if we do not accept these offers now, at the end of three weeks that the offer will be withdrawn. We must settle it within three weeks whether the thing is to go on. I am talking in this way in order that you [Ballance] may hear, and that my people may hear.<sup>938</sup>

The hui therefore concluded with general agreement among those present that the railway should proceed, based on Ballance's many assurances. In several respects, what Ballance offered fell short of what Te Rohe Pōtae leaders had sought. In particular, with respect to land title determination and administration, he offered considerably less than the mana whakahaere (full control and power) that Te Rohe Pōtae leaders wanted. But he nonetheless offered more than any previous Minister. As Wahanui made clear, Te Rohe Pōtae leaders felt they had to

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934. 'Notes of Native Meetings,' AJHR, 1885, G-1, pp 22-24.

935. 'Notes of Native Meetings,' AJHR, 1885, G-1, pp 22-24.

936. 'Notes of Native Meetings,' AJHR, 1885, G-1, p 24.

937. Document A78, p 1141.

938. 'Notes of Native Meetings,' AJHR, 1885, G-1, p 24.

compromise at this point, and accept what was offered, lest it be withdrawn and something worse put in its place.

### 8.8.2.3 *The hui at Whatiwhatihoe, February 1885*

Immediately after the hui, Ballance travelled to Whatiwhatihoe where he met with Tāwhiao and the Kingitanga contingent. The railway, land, and lawmaking processes were all discussed, though Tāwhiao's main concern was his 1884 petition requesting Māori self-government, on which he was still awaiting a response.<sup>939</sup>

Speaking for the King party, Te Wheoro described what he considered to be the rights accorded to Māori under the Treaty. He said the Treaty did not reserve power for Europeans, but gave it to Māori as well: 'it states in the Treaty of Waitangi, Maori chiefs should be treated in the same way as the people of England, and given the same power. It was understood that the Maoris would be allowed to govern themselves in the same way that the Europeans are allowed to govern themselves.'<sup>940</sup> Te Wheoro's words highlight the fundamental difference that had emerged between Tāwhiao and the Ngāti Maniapoto rangatira who were negotiating over the railway. Both, by this time, accepted the Queen's overarching authority. But Tāwhiao and his advisors wanted a Parliament of its own under the Queen, whereas Wahanui sought to persuade the settler-dominated Parliament to deliver mana whakahaere for his people.

In response to Te Wheoro's comments, Ballance accepted that the Treaty was 'binding on both races.' He said, however, that there was only one 'supreme' authority in the colony, and there could therefore be only one Parliament and one Government:

The Treaty does not give the right to set up two governments in New Zealand. The chiefs there bound themselves to accept the laws of the Queen, in exchange for which she guaranteed to them their lives, their liberty, and their property.

Subject to that proviso:

We are prepared, under that Treaty, as I have said – under the laws which the Queen has given to the colony, and under the Constitution of the colony – to give the Natives large powers of self-government. That is the meaning of the Treaty.<sup>941</sup>

However, Ballance said that Europeans and a large proportion of Māori valued the institutions of the colonial government, and 'no foreign interference will ever be tolerated'. By 'foreign interference', he appears to have been referring to Māori institutions that rivalled Parliament or the Government. Ballance repeated the promise of 'self-government' on three other occasions during the hui. He also said

939. A transcript of the meeting is recorded in 'Notes of Native Meetings', AJHR, 1885, G-1, pp 25–29; see also doc A78, pp 1142–1145.

940. 'Notes of Native Meetings', AJHR, 1885, G-1, p 27.

941. 'Notes of Native Meetings', AJHR, 1885, G-1, p 27.

the Government was 'now extending self-government to the Native race under the Parliament and Government and institutions of the colony', that it was 'prepared to extend to the Native people large powers of self-government by means of their Native Committees', and that the Government would grant Māori 'great powers of self-government' through the committees, 'and not . . . take from you any of the powers that you now possess.'<sup>942</sup>

Whereas, at Kihikihi, Ballance had specified the powers that committees would have (including power to act as courts of first instance for land title determination, as tribunals for minor disputes, as regulators of gold prospecting, and to conduct some other administrative functions) he was now extending his promise to include a general right of self-government subject to the existing colonial institutions. Ballance, furthermore, promised to reform the committees' electoral system to 'make them really represent the people' and ensure that all Māori had a voice in their election.<sup>943</sup> Tāwhiao's simple response was to say that Māori wanted self-government 'independent of the [colonial] Government.'<sup>944</sup>

Having discussed the powers of committees, Ballance also referred to his proposal to establish a system whereby committees of owners would make all decisions about land use:

When the owners of a block of land are found out they will have the power of appointing a Committee among themselves to manage that land, and that land cannot be sold or leased without the consent of the Committee and the people. No private European will then be allowed to come in by a back-gate and get the land away from the people. What shall be done shall be done with the consent of the people themselves.<sup>945</sup>

He said the only land that would be taken for the railway 'will be the land on which the railway will stand, and that will be paid for unless, when the owners are determined, they . . . give it'. Otherwise, the Government's intention was 'to leave the management of Native lands as much as possible in the hands of the Natives themselves', because '[t]he owners of the lands are the best judges to decide what shall be done with them'. No other land would be sold or leased without the consent of the owner committees.<sup>946</sup> As he had at Kihikihi, Ballance was implying that the Crown had no intention of purchasing land for settlement, though he stopped short of giving an absolute assurance. Ballance added that the railway would bring great benefit to the district's Māori, giving employment to their young people, and 'increas[ing] fourfold or tenfold the value of their land.'<sup>947</sup>

As he had at Kihikihi, Ballance promised to consult Māori leaders about any proposed legislation and ensure that their views were taken into account. He

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942. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 27–28.

943. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 27–28.

944. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 27.

945. 'Notes of Native Meetings', AJHR, 1885, G-1, p 26.

946. 'Notes of Native Meetings', AJHR, 1885, G-1, p 26.

947. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 26, 28.

therefore invited Tāwhiao and Te Wheoro to visit Wellington so they could give their views on his proposed Māori land legislation. He said Māori had the power, through the Parliament, of making laws that were 'equal to the whole wants of the Native people' – though he did not explain how this could be so when Māori had four representatives and settlers had 91.<sup>948</sup> He did, however, repeat his Kihikihi promise to push for greater Māori representation in Parliament. On this, one of the rangatira present, Pāora Tūhaere, argued that the number of Māori and European members of the House of Representatives should be equal.<sup>949</sup>

Tāwhiao said he agreed to the railway, on condition that he was consulted about all railway lines and roads, and that the railway 'is left to me' to manage. 'I own this district. I am the head man . . . the representative of the land.' The railway 'can only go through on my agreement'.<sup>950</sup> He asked when the Government would respond to his petition, as Lord Derby could give no reply until he received the New Zealand Government's response. Ballance said the Government's law officers were preparing a reply, and it would be sent without delay.<sup>951</sup> Ballance also emphasised the constitutional position as he saw it:

Lord Derby would not speak one word against the Government of the colony. He recognizes as fully as any man in New Zealand that the Parliament and Government of this colony are supreme within the colony . . . Lord Derby knows that the Queen, through Her Government and the Parliament, acts in this colony just the same as she does at Home. The Queen is here as well as in England—that is, her power is here. It is exercised in her name and by her authority.<sup>952</sup>

#### **8.8.2.4 Ballance's meetings in other districts, February–March 1885**

Ballance's tour was intended partly to progress the opening of Te Rohe Pōtae, and partly for purposes of consulting Māori about land laws. As we have described, Ballance arrived with preconceived ideas about the system he wanted – one in which the court would retain the final say over land title determination and boards with Crown appointees would administer lands on behalf of Māori land-owners. In Thames, he said that the boards would comprise a Crown appointee, the chair of the district native committee, and one Māori to be nominated by the governor. This differed from what he had said at Kihikihi in two ways: first, Māori would definitely have a majority; and, secondly, the second Māori member would be appointed by the Crown, not elected by the people. He also said that owners would be able, by majority, to overrule decisions made by owner committees.<sup>953</sup> According to Marr, at this and other meetings, Ballance presented his proposals as offering Māori 'significantly better opportunities to control and manage their land' and as evidence that the Government could be trusted 'to protect Maori and assist

948. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 26–27, 28.

949. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 27–28.

950. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 26–27.

951. 'Notes of Native Meetings', AJHR, 1885, G-1, p 28 (doc A78, pp 1146–1147).

952. 'Notes of Native Meetings', AJHR, 1885, G-1, p 26.

953. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 30–31.



them to more fairly participate in new opportunities and benefits expected from settlement.<sup>954</sup>

### 8.8.3 The tribes give their final agreement to the railway, February–March 1885

During the remaining weeks of February, Te Rohe Pōtae leaders and communities continued to meet and discuss whether they would confirm their agreement to allow the construction of the railway to proceed. Ngāti Maniapoto held a small hui on 10 February, and Ngāti Raukawa held one five days later. Following those hui, a major gathering took place at Kihikihi on 27 February. Ngāti Maniapoto, Ngāti Raukawa, and Ngāti Hikairo were all represented. One contemporary source said that Ngāti Tūwharetoa was present but Whanganui iwi were not; other sources said the reverse was true. As Marr noted, some Tūhua rangatira could affiliate to both, which may have been a source of the confusion.<sup>955</sup>

Although there are no detailed accounts of the hui, Marr said that ‘there was considerable discussion at the hui over whether land for the railway should be given free, or would need to be paid for, and if it had to be paid for, how this might be implemented.’ John Ormsby argued that the land should be given as payment for the £1,600 Te Rohe Pōtae Māori would owe for the survey of their external boundary once that work was completed. Others, according to Marr, suggested that Māori should give the land in return for passes allowing them to ride the railway for free.<sup>956</sup>

Immediately after the hui had concluded, John Ormsby telegraphed Ballance confirming agreement to construct the railway, subject to three conditions: first, the railway line was to be one chain wide; secondly, the land in question should be paid for; and, thirdly, the railway should be fenced in on both sides (this condition was apparently aimed at protecting livestock owned by Te Rohe Pōtae Māori).<sup>957</sup> A week later, on 4 March, Wahanui wrote to Ballance, confirming that those at the hui had consented to the railway and would allow one chain width of land to be taken. Questions concerning ‘the land required for the railway, the land on either side of the railway, and that required for the stations’ should be deferred for further consideration when Ballance next visited.<sup>958</sup>

Whereas Ormsby had said that the railway corridor would be paid for, Wahanui made no mention of payment. This suggests that the question of payment remained unresolved. Later, at the sod-turning ceremony in April, Wahanui

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954. Document A78, p 1148.

955. Ormsby said that the agreement that arose from this meeting was made on behalf of Ngāti Maniapoto, Ngāti Hikairo, Ngāti Raukawa, and Ngāti Tūwharetoa; Te Rangituata said that Ngāti Maniapoto, Ngāti Hikairo, Ngāti Raukawa, and Whanganui, with Ngāti Tūwharetoa absent; Te Pikikōtuku of Whanganui said the hui was attended by some Tūhua rangatira who were affiliated to Whanganui; Wahanui said it represented ‘the four tribes’, presumably meaning Ngāti Maniapoto, Ngāti Raukawa, Ngāti Tūwharetoa, and Whanganui, who were the original four tribes from the 1883 petition: doc A91, vol 1, pp 18–24, 41–54; doc A78, pp 1151–1154; doc A20, p 73.

956. Document A78, pp 1154–1155.

957. Document A78, pp 1155–1156; doc A20, p 73.

958. Document A78, pp 1158–1159.

told the premier, Sir Robert Stout, that the land for the railway corridor would be gifted.<sup>959</sup> In August, Wahanui confirmed to Parliament's Native Affairs Committee that Te Rohe Pōtae leaders were willing to gift land along the railway corridor, but he did not wish to 'state whether the Maoris will give the land along the line', preferring that the decision be left to hapu along the line.<sup>960</sup> Ormsby then wrote to the Government early in 1886, confirming that no more than one chain was to be taken, along with a single acre for each small station and three acres for each large station.<sup>961</sup> Further details of the gifting were worked out during 1886 and 1887. Details of the actual land taken for the railway will be discussed in chapter 9.

In addition to railway and land matters, Wahanui's 4 March 1885 letter asked Ballance to take the 'strongest' preventative measures against 'Europeans or others' prospecting on Te Rohe Pōtae lands. Here, Wahanui appeared to be seeking confirmation of Ballance's promise that no prospecting would be allowed without the Kawhia Native Committee's consent.<sup>962</sup> Wahanui also advised the desire of Te Rohe Pōtae Māori to turn the first sod 'ourselves'.<sup>963</sup> Ballance wrote back. He acknowledged Wahanui's letter, but did not keep his promise to set out the Government's understanding of the Kihikihi agreement. He said the Government had decided that Premier Robert Stout was the appropriate person to conduct the sod-turning ceremony, though he could be assisted by Wahanui and the chiefs.<sup>964</sup>

#### 8.8.4 The turning of the sod ceremony, April 1885

In the weeks immediately following the agreement, Wilkinson reported that some of Tāwhiao's supporters objected to construction of part of the line that went through their lands, and that Hauāuru 'and some other chiefs' had 'determined not to give their consent' to the railway.<sup>965</sup> Te Pikikōtuku of Whanganui also wrote to Ballance expressing concern about a rumour that Wahanui had agreed to sell Whanganui land along the railway line; the Native Department responded that Wahanui had not committed to the sale of any land.<sup>966</sup>

959. According to Cleaver and Sarich, the Ngāti Tūwharetoa ariki Tūkino Te Heuheu heard Wahanui telling Stout that Te Rohe Pōtae Māori were giving the backbone of their ancestor Tūrongo 'for nothing': 'Native Affairs Committee: Report on the Petition of Te Wherowhero Tawhiao together with Two Hundred and Seventy Six Others re Māori Land Councils Bill, Together with Minutes of Evidence', AJHR, 1905, I-3B, p17; doc A20, pp 141–142.

960. 'Native Affairs Committee: Report on the Native Land Disposition Bill, together with Minutes and Appendix', AJHR, 1885, I-2B, p8; doc A20, pp 85, 141; see also doc A78, p1159.

961. Document A20, p142.

962. Wahanui to Native Minister, 4 March 1885 (doc A78, p1159); see also doc A41, p176; doc A20, p73.

963. Wahanui to Native Minister, 4 March 1885 (doc A78, p1159).

964. Document A78, p1159.

965. Wilkinson to Native Department, 25 March 1885 (doc A91, pp 23–24).

966. Document A78, pp1155–1156. Te Paiaka was not objecting to the railway itself. The railway had been discussed at the hui at Rānana on 8 January, and Whanganui Māori had appeared to accept the decision about the line as having already been made: 'Notes of Native Meetings', AJHR, 1885, G-1, pp1–9.

The turning of the sod ceremony took place on 15 April 1885, on the south side of the Pūniu River.<sup>967</sup> In chapter 9, we describe the ceremony and the speeches given there. In summary, Wahanui and Stout agreed to share the turning of sod duties. Stout, in his speech, said the ceremony marked a coming together of Te Rohe Pōtae Māori and Europeans, after many years of estrangement.<sup>968</sup>

Wahanui named the railway corridor ‘Tūrongo’, after the great Ngāti Maniapoto ancestor.<sup>969</sup> Of all the substantive matters that had been discussed since Ballance came to office, Wahanui raised only one – control of liquor. He expressed concern that the Kawhia Licensing Area’s boundary lay south of the Pūniu, which had been named in the 1883 petition as the northern boundary of Te Rohe Pōtae. Wahanui, gesturing to the river, said:

I consider we could not have a better boundary with which to keep back the liquor than this stream of fresh water running down below us. I have seen, in one map that has been published, a certain boundary defining this licensing district; but that I did not agree to. I myself consider the proper boundary by which to keep back the liquor is a river of fresh water like the Puniu.<sup>970</sup>

The Native Department had already looked into this matter after Ormsby expressed concern in February. On 9 April 1885, a new proclamation was issued, adjusting the boundaries. The Pūniu became the northern boundary of the licensing area, and Kāwhia was now included.<sup>971</sup> Further adjustments were made on several other occasions before the final boundary was declared in 1894. In 1887, a separate Upper Wanganui Licensing Area was proclaimed, which was contiguous with much of the Kawhia Licensing Area’s southern boundary, creating a vast prohibition area through much of central North Island.<sup>972</sup> Stout later wrote that, if the Government had not accepted Wahanui’s demand for the prohibition of liquor sales in the district, ‘I feel sure that he and his people would not have consented to the railway being made.’<sup>973</sup>

Taonui also spoke, saying he wanted further discussion with Ballance ‘with regard to what is below the surface, and with regard to what is on the other side’ – a comment that Cleaver and Sarich interpreted to mean he wanted more discussion

967. ‘The North Island Trunk Railway: (Report on the Ceremony of Turning the First Sod of), at Puniu, 15th of April, 1885’, AJHR, 1885, D-6, pp 2–3.

968. ‘The North Island Trunk Railway: (Report on the Ceremony of Turning the First Sod of), at Puniu, 15th of April, 1885’, AJHR, 1885, D-6, pp 2–3.

969. ‘The North Island Trunk Railway: (Report on the Ceremony of Turning the First Sod of), at Puniu, 15th of April, 1885’, AJHR, 1885, D-6, p 4; doc A71, p 206.

970. ‘The North Island Trunk Railway: (Report on the Ceremony of Turning the First Sod of), at Puniu, 15th of April, 1885’, AJHR, 1885, D-6, p 4; doc A71, p 206.

971. ‘Kawhia Licensing Area’, 9 April 1885, *New Zealand Gazette*, 9 April 1885, pp 404–405.

972. Document A71, pp 204–209; doc A78, pp 1106–1107.

973. Stout wrote this to Frederick Wallis, The Bishop of Wellington, who later read it at a public meeting: ‘Liquor in the King Country: A Public Protest’, *Evening Post*, 24 July 1900, p 2 (doc A71, p 226).

about the process of construction.<sup>974</sup> He would also ‘have something to say with regard to the position of the stations’. But as Ballance was not there, he said, he would leave his points for another time.<sup>975</sup> This suggests that he shared Wahanui’s view, expressed in his 4 March letter to Ballance, that there would be further discussion about land and stations. We will address those matters in chapter 9.

### 8.8.5 Treaty analysis and findings

The railway agreement marked a significant step in the relationship between the Crown and Te Rohe Pōtae Māori. From the Crown’s point of view, it meant that two years of negotiation had brought a tangible result – the railway could begin. For Te Rohe Pōtae Māori, it was a compromise, which did not deliver all that they had sought in terms of Crown recognition for and protection of their mana whakahaere, but nonetheless did represent significant progress from what had previously been offered, and it was therefore an arrangement they were prepared to accept.

#### 8.8.5.1 *The nature of the February 1885 agreement*

The Kihikihi agreement fell short of what Te Rohe Pōtae Māori sought in some important respects. First, the court would continue to have a significant role in determining land titles, though the Kawhia Native Committee would, Ballance promised, become a court of first instance. Secondly, titles would not be vested in hapū, though Ballance’s proposed land administration system would allow owners to make collective decisions about their lands. Thirdly, land transactions would not be managed by a subcommittee of the Kawhia Native Committee, but by a board with Crown representatives.

In respect of determining land titles, Ballance was willing to have the Kawhia Native Committee act as a ‘Court of first instance’, but told Te Rohe Pōtae leaders the court would have to remain in case the committee could not resolve disputes. He gave two reasons for his stance. First, he did not accept that native committees could be impartial – they would inevitably reflect some tribes or hapū more than others.<sup>976</sup> Secondly, he believed the court was needed as an appeal body in case of disputes.

Although Te Rohe Pōtae leaders accepted the compromise position he offered, they made it clear that it was not their preference. Even after Ballance had outlined his position, Ormsby continued to argue for the Kawhia Native Committee to have sole jurisdiction over the determination of land titles. Ormsby acknowledged that the committee’s makeup was not ideal (as discussed previously, this was a direct result of the very casual manner in which Wilkinson had conducted

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974. ‘The North Island Trunk Railway: (Report on the Ceremony of Turning the First Sod of), at Puniu, 15th of April, 1885’, AJHR, 1885, D-6, p 5; doc A20, p 74.

975. ‘The North Island Trunk Railway: (Report on the Ceremony of Turning the First Sod of), at Puniu, 15th of April, 1885’, AJHR, 1885, D-6, pp 4–5.

976. ‘Native Lands Settlement Bill’, 1 November 1884, NZPD, vol 50, pp 312–317.

the election), and he offered to hold fresh elections in order to ensure that all iwi and hapū were properly represented.

Ballance's argument about the court as an appeal body would be more persuasive if the Crown had at this time offered Māori opportunities to appeal decisions of the Native Land Court. However, as other Tribunals have noted, prior to 1894 Māori could only apply for full rehearings (with the attendant expense). Because they required the case to be started afresh, rehearings were not granted lightly. After 1880, applications for rehearing were determined by the chief judge of the Native Land Court. During this period, the Native Affairs Committee repeatedly highlighted the lack of any appeal mechanism.<sup>977</sup>

Ballance's argument about impartiality must be considered alongside the litany of Māori complaints about the court. Te Rohe Pōtae leaders had unambiguously rejected the Court in their 1883 petition and continued to do so in their 1883 and 1884 negotiations with the Crown, and again at the hui at Kihikihi in February 1885. They did so because of the 'evils' they associated with the court, which were not limited to drunkenness and exploitation by European lawyers and agents, but also concerned the individualisation of title and a general lack of faith in the court's ability to make fair or just decisions due to judges' lack of knowledge of tribal history or tikanga. To put this last point another way, they did not regard the court as remotely fair or impartial. Yet Ballance continued to insist on the court's impartiality despite acknowledging these failings.

On the other hand, empowering the Kawhia Native Committee to determine land titles was not necessarily a perfect alternative, at least as the committee was constituted at the time. Ormsby appeared to acknowledge that it was not fully representative of all iwi and hapū with interests in the district. And the committee's boundary created added complications, by including almost all Ngāti Maniapoto lands while bisecting the rohe of several other iwi. Some iwi were concerned that Ngāti Maniapoto would dominate the decision-making process to the exclusion of their interests, and those concerns cannot simply be dismissed. Some, like Te Heuheu, and some Whanganui Māori, simply wanted to keep tribal rohe together in the same jurisdiction.

It might have been possible for Ballance to address some of these concerns, for example by accepting Ormsby's offer of fresh elections, or by considering renegotiation of boundaries. The court and the Kawhia Native Committee were not necessarily the only alternatives. There might have been other possibilities, including withdrawing the court from the district and providing time for direct negotiation among the affected parties to resolve issues among themselves without pressure to place their lands before the court. In their June 1883 petition, what Te Rohe Pōtae had sought was the right to determine ownership among themselves; it was only later that empowerment of the Kawhia Native Committee had become their goal.

Accepting the Native Land Court as a court of appeal was a compromise for Te Rohe Pōtae Māori, but it was one they were prepared to live with in light of

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<sup>977</sup> Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 498; Waitangi Tribunal, *He Whiritauonoka*, vol 1, p 388.

the assurance that the committee would act as a court of first instance. To some degree, that assurance may have offered Māori the time they sought, since it would allow Te Rohe Pōtae communities to negotiate among themselves without Government or settler involvement. It was an imperfect solution, and one that was to some extent forced on Te Rohe Pōtae Māori by the circumstances that they faced, including the pressures from the court and settlement along the boundary, and the flawed native committee legislation. But it was nonetheless a compromise that Te Rohe Pōtae Māori were prepared to accept.

Similarly, they accepted compromises in the system of land administration that Ballance proposed. Whereas they had wanted the Kawhia Native Committee (or a subcommittee) to manage land transactions with settlers, Ballance insisted on at least one Crown appointee also being involved. His statements in the House suggested that he regarded the Crown's involvement as necessary to protect Māori landowners from unscrupulous Europeans. Ballance said that transactions would involve three members – the Crown appointee, the chairman of the Kawhia Native Committee, and one other, possibly elected by Māori. If the boards were constituted along these lines, the Māori members would be in a majority, and would be accountable to their Māori constituents. This, too, was a compromise, but it was one that Te Rohe Pōtae Māori were prepared to accept.

Likewise, although they did not get the hapū titles they wanted, they were prepared to accept Ballance's assurances that he was seeking to prevent a repeat of previous difficulties when blocks had been awarded to 10 hapū leaders while others were excluded. Ballance argued that all hapū members should be named on the title. This was acceptable to Te Rohe Pōtae leaders on the basis of his assurance that owners would be able to make collective decisions about their land.

In all of these respects, the Kihikihi agreement fell short of delivering the mana whakahaere that Te Rohe Pōtae leaders sought and were entitled to under the Treaty. When a modified version of Ballance's proposals was subsequently enacted in the Native Land Administration Act 1886 (see section 8.9.3.5), Māori refused to make use of the provisions, which they saw as favouring the Crown. Tribunals have since acknowledged that Act for taking some steps towards providing for communal management of Māori lands, but have also found that it fell well short of delivering what the Treaty required.

Ballance offered Te Rohe Pōtae leaders less than what they had sought, and less than what they were entitled to. But he also offered more than any other Native Minister had, or would for a long time afterwards. They accepted a compromise. The value of that compromise would depend on whether the promises Ballance had made were delivered.

#### **8.8.5.2 *What was agreed?***

For Te Rohe Pōtae Māori, the agreement went further than any previous agreement with the Crown towards recognising their mana whakahaere (full control and power) over their own lands. If the Crown did not deliver what had been sought, it did at least make some concessions and give some assurances that were important to Te Rohe Pōtae leaders. Altogether, Ballance made 20 promises or

assurances to Te Rohe Pōtae Māori during the hui at Kihikihi. In respect of land, his promises were:

- The Kawhia Native Committee would be empowered to play a greater role in land title determination, possibly becoming a court 'of first instance' in this district, holding initial hearings to determine titles which the court would then ratify or consider on appeal.
- Elected committees of owners would determine how lands would be managed and would make all decisions about sale or lease. No lands would be sold or leased without the consent of the owner committee.
- Three-person boards with Māori representation (and possibly a Māori majority) would manage all land sales and leases on the owners' behalf. They could do nothing without the consent of owner committees, which would retain the 'fullest power'. The boards would comprise a Crown-appointed commissioner, the chair of the district's native committee, and one other, possibly elected by Māori.
- All sales or leases would be 'submitted for public competition, so that the highest price will be obtained for the land'.
- Māori land would not be subject to rates unless it had been leased, sold, or cultivated.

In addition to these specific promises, Ballance gave the following assurances about the Crown's land purchasing and land law intentions:

- The Crown was 'not anxious' to buy Māori land and intended to acquire only what it needed for the railway – a corridor of 1–2 chains wide, and 5–10 acres for stations. So long as Māori voluntarily made land available for settlement by leasing, the Government would not interfere. Ballance did not specify how much land would need to be made available, or when, but rather stressed that all decisions would be left to hapū.
- Māori landowners would be left to enjoy the benefit of rising land prices. Ballance anticipated that land prices would increase up to tenfold in value. This implied that Māori would retain a substantial proportion of their land.
- Ballance also gave the general assurance: 'Not a single Native right will be prejudiced.'

Regarding the railway itself, Ballance promised:

- The Crown would take no more than 1–2 chains' wide for the railway corridor, and 5–10 acres for stations.
- Once owners were identified, they would be paid for the land that was taken for the railway corridor and stations, and for any timber or other resources used. The amounts paid would be determined on the same basis as if the land was being taken from Europeans. Te Rohe Pōtae Māori later agreed to gift one chain for the corridor, and 1–3 acres for stations.
- Māori communities would be awarded contracts for the construction of parts of the railway. Therefore 'a large amount of the money' from the construction would go to the people directly.
- The railway would not interfere with waterways and would do '[n]o injury whatever' to Māori land.

During the negotiations, Te Rohe Pōtae leaders had identified other matters as important, including control of liquor, control of prospectors, hearing of civil disputes, and Māori participation in lawmaking processes. With respect to these, Ballance made the following promises:

- ▶ The Government would address the gaps Te Rohe Pōtae leaders had identified in the Kawhia Licensing Area.
- ▶ Ballance would delegate to the Kawhia Native Committee chairman his power to grant or withhold consent for gold prospecting.
- ▶ Native committees would be given the same powers as a court to hear civil disputes up to a certain value. It would no longer be necessary for disputing parties to agree to place their dispute before the court. Ballance said he would introduce legislation in 1885 to bring this about.
- ▶ Māori would be consulted on all legislation affecting them. More specifically, Ballance would circulate a Bill during 1885 proposing new Māori land laws.
- ▶ Ballance would press for an increase in the number of Māori Members of the House of Representatives, so that Māori had proportionate representation.

Ballance furthermore gave a commitment that his promises with respect to rating and all other matters would be recorded in writing and confirmed through an exchange of letters.

In addition to these promises and assurances, Ballance indicated that he was considering, or would consider, other matters:

- ▶ Giving native committees some source of revenue, possibly by empowering them to collect dog tax from Māori in their districts.
- ▶ The introduction of small payments to native committee chairmen.
- ▶ Amending native land laws to prevent claims to the court by people who had little or no interest in the land.

With respect to civil disputes, the Kawhia Native Committee sought power to adjudicate all disputes whereas Ballance proposed to restrict the committee to small disputes. With respect to liquor and prospecting, Ballance largely accepted what Te Rohe Pōtae Māori sought, and indeed had done so prior to the Kihikihi hui – all that remained at that point was to finalise details of the licensing committee boundary, which Ballance showed himself willing to do. The claimants submitted that control of liquor was a central element of the railway agreement.<sup>978</sup> The Crown did not directly answer this claim, but did submit that there was no agreement to prohibit liquor sales in perpetuity. It also submitted that negotiations over control of liquor occurred alongside those over the railway, rather than being a central element of those negotiations.<sup>979</sup> Our view is that the request for a prohibition on sale of liquor represented the broader desire of Te Rohe Pōtae leaders for Māori communities to exercise mana whakahaere (full control and power) over the full range of their communities' affairs, including those that were important to social well-being. They were asking the Crown to use its powers to assist them in preventing harm to their people. As Stout made clear, prohibition of liquor

978. Submission 3.4.128, p 2; submission 3.4.128(b), p 22.

979. Submission 3.4.301, pp 30, 79–80.



sales was an essential precondition for Māori consent to the railway. We therefore agree with the claimants that the prohibition was a central element of the railway agreement.

With respect to land, Ballance's promises fell some distance short of what Te Rohe Pōtae Māori had sought. He was not willing to grant Māori full control over land title determination as they had sought. And he was also unwilling to provide for the Kawhia Native Committee to manage land transactions, instead insisting that these be managed by a board with Crown representation. Te Rohe Pōtae Māori nonetheless signalled that they consented to his proposals. They told him they were pleased with what he had said, since it went further than any previous Government had offered, and on the basis of his promises and assurances they gave their consent to the railway.

Claimants saw the Kihikihi hui as a critical juncture in the series of negotiations between Te Rohe Pōtae Māori and the Crown. In their view, Ballance had given 'the strongest undertakings about Maori control over local affairs and land dealings' in the railway region, and had done so 'in order to get the railway agreed to', and because he had 'more confidence that his predecessors . . . that he could create an environment in which Māori would be prepared to sell land'.<sup>980</sup>

The Crown's view was that, in this and other mid-1880s agreements, Te Rohe Pōtae leaders were prepared to accept a compromise because they knew that 'in order to allow their people full access to the colonial economy, some measure of the political autonomy they previously enjoyed had to be sacrificed'.<sup>981</sup> We agree with the Crown only insofar as Te Rohe Pōtae Māori were prepared to appeal to the authority of the Crown in response to new circumstances. For more than 40 years since the Treaty, they had sustained their tino rangatiratanga without placing any reliance on the Treaty relationship and without accepting that the Crown had any right to make or enforce laws applying to their territories. As we have seen in preceding chapters, they had gone to great lengths and faced great costs to sustain their tino rangatiratanga in the face of Crown indifference or direct attacks. In the 1883 petition, Te Rohe Pōtae leaders had signalled a new approach, in which they demanded the Crown use its powers of kāwanatanga to enact laws that would recognise and protect their tino rangatiratanga. This was a significant change from the full independence they had previously exercised, and it was a significant step towards the relationship envisaged by the Treaty under which the Crown and Māori would each exercise authority with distinct but potentially overlapping spheres of influence. During 1884, Wahanui continued to demand the Crown use its powers in a Treaty-consistent manner.

We agree with the Crown that Te Rohe Pōtae Māori were willing to engage with the colonial economy under the right conditions – the 1883 petition had indicated as much. But we do not agree that this was why they accepted a compromise at Kihikihi – none of the compromises they accepted improved their economic prospects. Rather, in general terms they were compromising because of the pressures

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980. Submission 3.4.130(e), pp 23–24, 26.

981. Submission 3.4.301, p1.

they faced at their borders largely due to previous Crown actions, which made an arrangement with the Crown increasingly necessary if they were to continue to exercise tino rangatiratanga. And in the specific context of the February 1885 Kihikihi hui, they accepted a compromise because Ballance had offered more than Bryce had been willing to, and because they felt they had to accept quickly out of fear that the Crown would otherwise withdraw its offer. In this, they were influenced by previous disappointments, in which Bryce and Ballance had failed to deliver what they had sought. Put another way, they compromised at Kihikihi because they felt they had to, in order to reach an agreement in which the Crown guaranteed them some reasonable degree of autonomy and authority over their lands, without preserving it entirely.

### **8.8.5.3 Was Ballance fully open about the Crown's policies?**

Ballance attended the Kihikihi hui as the Native Minister and therefore as the Crown's representative. Whereas at Rānana he made clear that he was making proposals on which the Government had still to make final decisions, he offered no such caveat at Kihikihi. On the contrary, he told those assembled he would 'keep nothing back' and would state the Government's intended policy 'without any reservation whatever'.<sup>982</sup> Those assembled clearly understood that he had taken over from Bryce and now had responsibility for Government policy on native affairs. As the hui began, Hopa Te Rangianini described him as the Queen's representative and as 'the person who points out the Queen's policy',<sup>983</sup> and Ballance described himself as 'the representative of the Government' and therefore of the Queen.<sup>984</sup>

Having promised to be entirely frank and honest with Te Rohe Pōtae leaders, Ballance also clearly explained which of their demands he accepted and which he refused. He gave no indication that his promises and assurances were anything other than Government policy. Indeed, for most of his promises (including those concerning the railway, land title determination, and land administration) he used the terms 'the Government proposes' or 'we propose', implying that the Government was in agreement.<sup>985</sup> He used 'I propose' to refer to his promises to empower native committees to adjudicate civil disputes, and to attempt to increase the number of Māori members of the House of Representatives.<sup>986</sup>

In fact, as we explained in section 8.8.1, Government policy with respect to Māori land in the district was far from settled. Ballance had told the House he favoured increased powers for native committees, but had not won general agreement. He did not tell the Kihikihi hui that this was a personal view which might not win parliamentary support. Based on the comments made by Te Rohe Pōtae leaders, it is very doubtful that they would have accepted Ballance's proposals if

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982. 'Notes of Native Meetings', AJHR, 1885, G-1, p 13.

983. 'Notes of Native Meetings', AJHR, 1885, G-1, p 12.

984. 'Notes of Native Meetings', AJHR, 1885, G-1, p 13.

985. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 17, 20, 23.

986. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 17, 23.

they had known of this uncertainty. As we will see in section 8.9, Ballance never introduced legislation to give effect to some of his promises.

Furthermore, while Ballance's personal preference was to establish a system under which Māori would voluntarily make land available for settlement, he clearly anticipated some Crown purchasing, as he had told the banquet at Whanganui. And others in his Government, and in opposition, clearly wanted the Crown to begin large-scale purchasing along the railway line as soon as possible, as indicated in the governor's speech. As we will see in section 8.9.1.1, it did not take long after the Kihikihi hui for those voices to assert themselves. Yet Ballance made no mention of Crown purchasing, except to assure those assembled that the Crown was 'not anxious' to acquire the district's lands and would be content if it could acquire enough for the railway and if land for settlement were made available by leasing under a system that left full control with the owners. Again, if Te Rohe Pōtae leaders had been told that some in the Government wanted to buy large areas of the district's land as quickly as possible, it is very doubtful that they would have accepted Ballance's proposals.

More broadly, Te Rohe Pōtae leaders had spelled out their understanding of their Treaty rights in the June 1883 petition, making clear that they understood article 2 of the Treaty as guaranteeing their tino rangatiratanga. The Government's view (which we will consider in section 8.9.1.2) was that the Treaty offered no more than a guarantee of possession of land, which in its view was fully provided for in existing native land laws.

In these respects, Ballance was less frank than he ought to have been about the areas of Government policy that were uncertain or counter to Māori interests. We do not think that he deliberately lied to the district's leaders, but in his concern to secure agreement to the railway he emphasised those elements of his argument that might win support, while glossing over the elements that Te Rohe Pōtae leaders might object to. His approach contrasted with that of Wahanui, who said clearly at the Kihikihi hui that he could not give final consent until he had consulted and obtained consent from the leaders of the five tribes and in particular the leaders of Whanganui and Ngāti Tūwharetoa, who had not been well represented at Kihikihi or at the preceding tribal hui. Wahanui therefore gave conditional consent, telling Ballance he would have a final answer within three weeks, and if he did not get an answer in that time the Kihikihi agreement would stand. This was an open and transparent way of doing business, which reflected Wahanui's understanding of the tikanga involved, including his understanding that the word of a rangatira was his bond and must therefore be expressed with great care.

Te Rohe Pōtae Māori assembled at Kihikihi were entitled to the same consideration from Ballance. They were making decisions about the future of their district and its land. They were therefore entitled to nothing less than full disclosure of the Crown's goals and policies, including any areas of uncertainty. By failing to be fully open, Ballance – acting as the Crown's representative – denied Te Rohe Pōtae Māori the opportunity to make a fully informed decision about his proposals, or about the railway. He therefore denied them the opportunity to manage their affairs as they wished, in accordance with the Treaty guarantee of tino

rangatiratanga. His actions as a Crown representative therefore breached the Crown's duty to negotiate fairly, honourably, and in good faith.

#### **8.8.5.4 Was the Crown obliged to honour Ballance's promises?**

As noted in the previous section, Ballance was negotiating with Te Rohe Pōtae leaders as the Crown's representative. His promises were therefore binding on the Crown, irrespective of any subsequent refusal by other Ministers or members of the House of Representatives to comply. This was a matter of the Crown's honour and its responsibility to negotiate fairly, honourably, and in good faith. It was also a question of tino rangatiratanga. Te Rohe Pōtae leaders were negotiating over matters that fundamentally affected their authority over lands, resources, and people. They accepted what Ballance proposed in its entirety and granted their consent for the railway on the understanding that the agreement would be honoured.

The Crown could not unilaterally alter any part of the agreement without first returning to negotiations and seeking the consent of Te Rohe Pōtae leaders. In opening submissions, Crown counsel said that Ballance's promises were not binding agreements, but general statements of intent.<sup>987</sup> But, in closing submissions, Crown counsel conceded that the Crown had 'failed to consult or re-engage with Rohe Pōtae Māori when it departed from representations it had made' at the Kihikihi hui, and thereby 'breached the Treaty of Waitangi and its principles by not acting in good faith and by failing to respect their tino rangatiratanga.'<sup>988</sup> This concession suggested that the Crown did not *have* to honour Ballance's Kihikihi promises, but did have to re-engage if it was not going to. We presume that the Crown, here, was acknowledging the possibility that either Ballance might be unable to honour the assurances he had given, in particular because the Government had not yet made decisions, as Ballance explained at Rānana but not at Kihikihi. The breach occurred, the Crown suggested, not because of a failure to deliver what had been promised, but because of a failure to consult over that failure.

We agree with the Crown that it was obliged to re-engage if, for any reason, it decided not to honour the promises or assurances that Ballance had made. But we do not think that the concession goes far enough. At Kihikihi, Ballance gave an assurance that he was speaking frankly and holding nothing back. He was careful to distinguish between promises, intentions, and suggestions that would require further consideration. And he gave no indication that the Government had yet to make decisions about the matters he was speaking about. Te Rohe Pōtae leaders accepted his promises and assurances in good faith, and it was on the basis of those statements that they consented to the railway.

This was, to them, a very significant step; it was the opening of a district that had been previously closed to the Crown, and it signalled acceptance of the Crown's right to give practical effect to its powers of kāwanatanga in this district by enacting laws that applied to the district's lands and by constructing public works. As

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987. Statement 1.3.1, p 274.

988. Submission 3.4.307, p 25.

Te Rohe Pōtae leaders had previously made clear on several occasions, this was a step they would be willing to take only if they had received clear assurances that the Crown would enact laws that recognised and gave effect to their rights under articles 2 and 3 of the Treaty, or (to use Wahanui's words) their mana whakahaere. The negotiations at Kihikihi concerned the details of how that might be achieved.

Under these circumstances, the Crown was obliged to do more than go away and consider whether it would do what Ballance had said it would do. It was obliged to take all reasonable steps to implement what had been agreed and then to return to negotiations if it genuinely was unable to deliver. If the Crown could not deliver on any substantive element of the February 1885 agreement, the entire basis for that agreement would be called into question, including the Crown's right to proceed with the railway and its right to enact laws that applied in Te Rohe Pōtae. Put simply, the Treaty partnership required both parties to keep their word.

By the time of the sod turning, the Crown had already taken steps to fulfil one of Ballance's promises, by addressing Te Rohe Pōtae leaders' concerns over liquor control in Kāwhia. For most of the Crown's other promises and assurances, further action was needed. In section 8.9.4, we will consider whether the Crown during 1885 and 1886 made genuine attempts to honour the assurances that Ballance had given with respect to empowerment of native committees, administration of Māori land, and mineral prospecting. We will also return to Ballance's promises in future chapters concerning the railway (chapter 9), the Native Land Court (chapter 10), and Crown purchasing of Māori land (chapter 11).

### **8.9 LAND SETTLEMENT AND THE END OF THE AUKATI, 1885–86**

Having obtained Te Rohe Pōtae leaders' consent for the railway, the Government was obliged to take all reasonable steps to implement the measures it had promised to Te Rohe Pōtae Māori. More generally, it continued to be obliged to recognise and protect the tino rangatiratanga of Te Rohe Pōtae Māori, even as it became less and less willing to do so.

With respect to land, the Crown was obliged to empower the Kawhia Native Committee to act as a court of first instance in determining land titles – or, if it was unwilling or unable to do that, to reopen consultation with Te Rohe Pōtae leaders and find some other means by which Māori communities could determine title among themselves. Furthermore, at minimum the Crown was obliged to: provide for the establishment of owner committees with full power to determine how their lands should be managed; ensure that all land sales or leases occurred in an open market in accordance with hapū wishes; ensure that the board established to manage land transactions included the Kawhia Native Committee chairman, and acted solely as an agent for owners; honour its assurances that it would leave Māori in control of their own lands so long as some land was made available for settlement by leasing; honour its assurances that Māori would have the opportunity to benefit from rising land prices along the railway; and ensure that Māori land was not subjected to rates before it was sold, leased, or farmed.

With respect to the railway, it was obliged to take no more land than it had said it would for the railway corridor, or to obtain consent and ensure that Māori were fairly paid for any additional land; it was obliged to pay fairly for timber and other resources used in construction, and to ensure that Māori had opportunities to win construction contracts. On other matters, the Crown was obliged to correct the errors in the Kawhia Licensing Area boundaries; to provide for the Kawhia Native Committee to manage prospecting within the district; to consult Māori over all legislation affecting them; and to consider increasing Māori representation in the House of Representatives.

As we will see in this section, by mid-1886 the Crown had broken many of these commitments, especially those concerning land. When Ballance returned to Wellington he faced a barrage of criticism from Government and opposition members of the House of Representatives, and from settler media, for having offered Te Rohe Pōtae Māori too much control over their lands – lands which settler politicians and their constituents were increasingly desperate to obtain for settlement purposes. Ballance either gave in to this pressure or was defeated; during his remaining time in office, he attempted to deliver only part of what he had said he would.

He did introduce new legislation for Māori land administration, but it failed to deliver much of what he had promised and was enacted despite strong opposition from Wahanui and other Māori leaders. We do not know what discussions Ballance had behind closed doors, but he made no attempt to introduce legislation to empower district native committees as he had promised, or to increase Māori representation in the House of Representatives. By the end of 1885, the Crown was committed to a large-scale land purchasing programme within Te Rohe Pōtae. Notwithstanding Ballance's assurances at Kihikihi, and notwithstanding the right of tino rangatiratanga guaranteed by the Treaty, Te Rohe Pōtae Māori were to be given no opportunity to control the pace and manner of settlement. Ballance did grant the Kawhia Native Committee the authority to control gold prospecting and he also took steps to correct the errors in the Kawhia Licensing Area; these were the only two promises that were substantially honoured.

We consider these events below. The railway commitments will be considered in chapter 9.

### **8.9.1 The Government's amended land settlement policy**

With the railway construction getting under way, the Crown had – through negotiation – achieved one of its goals for Te Rohe Pōtae. It had also made considerable progress on another of its goals – asserting its authority over the district. Throughout the negotiations, Te Rohe Pōtae leaders had recognised the Crown's right to make law and had asked that the Crown use its power to protect their lands and provide for their autonomy. They had yet to engage fully with the Native Land Court, but – from the Crown's point of view – had taken a significant first step with their 1883 request for confirmation of their external boundary. The Crown's third goal was to settle the district. On this, it had so far made little

progress; any settlement plan could only proceed once the owners' titles were confirmed in accordance with the colony's laws. That meant either empowering the Kawhia Native Committee to determine land titles (at least in the first instance) or persuading Māori to bypass the committee and place their lands before the court.

### **8.9.1.1 Initial Government and settler responses to Ballance's promises – February–March 1885**

Ballance had told Te Rohe Pōtae leaders that he was willing to leave the district's settlement in their hands. So long as they made some land available for settlement by leasing, he had said, the Government would be satisfied and leave them to manage their lands as they wished, without intervening either by purchasing land outside the railway corridor or by other means.<sup>989</sup> Te Rohe Pōtae leaders had said (in the 1883 petition<sup>990</sup>) that they would welcome settlement so long as their lands and autonomy were protected, and Ballance took them at their word. His view was that hapū would willingly offer lands for sale or lease if they knew they were getting good prices, and his promises to Te Rohe Pōtae Māori were made on this basis.<sup>991</sup>

But, among colonial politicians, and among settlers more generally, Ballance's views were not widely supported. Bryce and other members of the Atkinson Government had seen no reason for Māori to enjoy the benefit of rising land prices; in their view, the State was funding the railway, and the State should therefore receive the benefit.<sup>992</sup>

Some Ministers in the Stout–Vogel Government were of the same view and wasted no time in telling Ballance so. Almost immediately after the Kihikihi hui, the Colonial Treasurer Julius Vogel wrote to Ballance observing that his meetings had been 'very successful', but also warning that his 'conciliating disposition' was leading Māori to ask too much.<sup>993</sup> Vogel was concerned about payment for the railway corridor, urging Ballance to fix a value immediately, while the land was 'waste' and therefore (from the Crown's point of view) of little value.<sup>994</sup> But his main concern was to repudiate Ballance's promises that the Crown did not intend to buy large areas of land and would be content with Māori leasing land for settlement. Vogel said that, by giving these assurances, Ballance had gone 'much further than the Colony will approve'. He reminded Ballance that the Crown had bor-

989. 'Notes of Native Meetings', AJHR, 1885, G-1, p 13.

990. 'Petition of the Maniapoto, Raukawa, Tuwharetoa and Whanganui Tribes', AJHR, 1883, J-1.

991. 'Notes of Native Meetings', AJHR, 1885, G-1, p 13; see also 'Banquet to the Hon John Ballance', *The Yeoman*, 5 December 1884 (doc A78(a), vol 6, pp 2921–2922); doc A41, pp 147–149.

992. For example, see 'Native Lands Settlement Bill, 1 November 1884, NZPD, vol 50, pp 320–322; doc A78, pp 1087–1089; 'Native Land Alienation Restriction Bill', 8 November 1884, NZPD, vol 50, pp 434–435. Also see Waitangi Tribunal, *He Whiritaunoka*, vol 2, p 558.

993. Vogel to Ballance, 8 February 1885 (doc A68(a), pp 16–20); see also doc A41, p 184; doc A68, p 22; Waitangi Tribunal, *He Whiritaunoka*, vol 2, p 558; Waitangi Tribunal, *Te Kāhui Maunga*, vol 2, p 377.

994. Vogel to Ballance, 8 February 1885 (doc A68(a), pp 16–20); see also doc A41, p 184; doc A68, p 22.

rowed large sums for the railway and wanted a return not only from the railway itself but also from the surrounding land.

It may have been diplomacy to appear to disclaim any wish to get land but remember this: the House the Colony and common prudence demand that we should get large tracts of land into our own hands along a line on which we are going to spend a million and a half.<sup>995</sup>

In Vogel's view, Māori might be willing to offer land for sale under Ballance's system, but 'it is risky'. Vogel advised Ballance to instead undertake a programme of large-scale Crown purchasing: '[I]n my opinion you should set yourself to acquire immediately at least a million acres freehold, & more if practicable.'<sup>996</sup>

Vogel made similar comments in a speech in Auckland soon afterwards, saying that the Crown had imposed restrictions on the 4.5 million-acre zone 'because we desire to see it settled'. The Crown would not force Māori to give it up, but was 'open to purchase large blocks' and was already 'under negotiation for very large blocks upon the railway.'<sup>997</sup> These must have been outside the inquiry district, since title had yet to be determined for the vast majority of Te Rohe Pōtae land. Vogel noted the reality that, if Māori believed their lands were to be taken from them, that would have 'roused opposition . . . from one end of the line to the other' and made it 'impossible for that line to be commenced'.

The broad view of the Government in relation to the lands of the natives is this, that we should do everything we possibly can to secure the land, and to convince the natives that the one object to be gained is to put that land to useful purposes of settlement, whether by Europeans or Maoris, and not allow these vast tracts of land to remain unused and unoccupied, but to subject them to purposes of settlement by an industrial population.<sup>998</sup>

There are two important points to take from Vogel's comments. First, Vogel was saying that the Crown would obtain large areas of land and thereby manage the settlement process; Māori would not be trusted to manage their own lands as they wished. He said this was 'the broad view of the Government', indicating that his approach, and not Ballance's, was now in the majority. Secondly, Vogel was acknowledging that Ballance had not been fully open with Te Rohe Pōtae Māori about its settlement agenda and about the internal policy debate that had been occurring between Ballance and other Ministers. If the Government had been

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995. Vogel to Ballance, 8 February 1885 (doc A68(a), pp 16–20); see also doc A41, p 184; doc A68, p 22.

996. Vogel to Ballance, 8 February 1885 (doc A68(a), pp 16–20); see also doc A41, p 184; doc A68, p 22.

997. 'Sir Julius Vogel's Address at the Theatre Royal', *New Zealand Herald*, 2 March 1885, p 2 (doc A146 (Hearn), p 53).

998. 'Sir Julius Vogel's Address at the Theatre Royal', *New Zealand Herald*, 2 March 1885, p 2 (doc A146, p 53).



open about its agenda, Vogel acknowledged, the result would have been widespread Māori opposition. As we will see in section 8.9.1.3, that is what occurred once the Government's settlement and purchasing plans became clearer.

Settler media were similarly scathing about Ballance's promises. The *Auckland Star* claimed that Ballance's scheme, if enacted, would put an end to sales and leases of Māori land, thereby preventing settlement.<sup>999</sup> Most newspapers argued that the Crown should be purchasing large areas, on the basis that land values would increase greatly along the railway route as construction progressed and the Crown ought to receive the benefit.<sup>1000</sup> The alternative to Crown purchasing, one newspaper said in March 1885, was to allow 'native speculators' to get the 'unearned increment' that the statutory restrictions were denying European speculators.<sup>1001</sup>

### 8.9.1.2 *The Government rejects Tāwhiao's petition, March 1885*

On 28 March, the premier, Robert Stout, wrote to the British Colonial Secretary Lord Derby forwarding the New Zealand Government's response to Tāwhiao's petition. The response had been delayed until after Ballance's North Island tour and was sent a month after Te Rohe Pōtae leaders had assented to the railway, and a week before the sod-turning ceremony.<sup>1002</sup> It explains the Government's understanding of its Treaty obligations, in respect of land and, more generally, Māori rights of self-government and self-determination.

As discussed earlier, Tāwhiao's petition had set out Tāwhiao's understanding of the Treaty as preserving the Māori lands and 'rights of chieftainship', and as granting to Māori the Queen's protection and the Queen's laws 'in like manner' as the people of Britain.<sup>1003</sup> The petition also listed numerous breaches of the Treaty by the government in New Zealand, including buying land from people who did not own it, invading Māori territories, confiscating Māori land, imprisoning Māori leaders without trial, and failing to provide Māori with equal representation in Parliament.<sup>1004</sup> The Government had also breached the Treaty, Tāwhiao said, by establishing the Native Land Court and thereby destroying Māori land rights that had been guaranteed in the Treaty, sweeping away the rights of rangatira to secure lands on behalf of their people, appointing Māori assessors while giving them no power, awarding land to individuals, and excluding the real owners from obtaining title to their land.<sup>1005</sup>

999. Editorial, *Auckland Star*, 11 March 1885, p 2; doc A68, pp 47–48.

1000. Document A41, pp 184–185; doc A68, pp 22–26, 28–29, 31, 34–35, 210–211; doc A20, pp 82, 87–88; doc A146, pp 52–53, 55–56.

1001. Editorial, *Poverty Bay Herald*, 2 March 1885, p 2 (doc A68, p 23); see also doc A146, p 56.

1002. 'Despatches from the Governor of New Zealand to the Secretary of State', AJHR, 1885, A-1, pp 32; see also submission 3.4.301, pp 21–23.

1003. 'Despatches from the Secretary of State to the Governor of New Zealand', AJHR, 1885, A-2, pp 3–5.

1004. 'Despatches from the Secretary of State to the Governor of New Zealand', AJHR, 1885, A-2, pp 3–5.

1005. 'Despatches from the Secretary of State to the Governor of New Zealand', AJHR, 1885, A-2, pp 3–5.

In general terms, Tāwhiao sought the right for Māori living on ancestral lands to govern themselves in accordance with their own laws. He referred to section 71 of the New Zealand Constitution Act 1852, which provided for the establishment of autonomous districts in which Māori would continue to govern themselves in accordance with their own ‘laws, customs and usages’, asking the Queen to bring the section into effect for Māori districts.<sup>1006</sup> His petition sought the establishment of a single Māori government, to parallel the colonial government; the appointment of a Māori commissioner to mediate between Māori and settlers over matters of land and law; the return to Māori of taxes levied from them; the empowerment of Māori to appoint their own judges to determine land titles; and the return of confiscated lands.<sup>1007</sup>

Stout’s response revealed much about the premier’s attitude to the Treaty and to Māori rights of self-determination more generally. He said he would only discuss the period since 1865, when imperial troops were removed from New Zealand and the colonial government acquired responsibility for native affairs. From 1865, he said, he was ‘quite certain . . . there has been no infraction of the Treaty of Waitangi’. He drew this conclusion without addressing any of Tāwhiao’s specific allegations of Treaty breach, many of which concerned government actions after 1865, on grounds that they had all been ‘dealt with before’ in previous petitions.<sup>1008</sup>

Stout unequivocally rejected any notion that Māori had rights to make their own laws or govern themselves independently of colonial authorities. He rejected Tāwhiao’s request for the proclamation of autonomous native districts under section 71 of the New Zealand Constitution Act, claiming that the intended purpose – allowing Māori to continue to live according to their own ‘laws, customs, and usages’ – was already achieved by the Native Land Act, under which the Native Land Court was required to deal with Native land . . . according to Native customs or usages.<sup>1009</sup>

By giving the court as a reason for opposing genuine Māori self-government, Stout was ignoring the fact that the court dealt solely with land tenure, not with self-government more generally. He made no mention of the litany of complaints about the court and its operation made by Tāwhiao and other Māori leaders, who saw it as destroying chiefly authority and Māori communal relationships with land. And he ignored the fact that the court was a settler institution specifically established to impose English systems of law, dispute resolution, and land tenure over those of Māori.

Stout did pronounce himself willing to entertain the idea of a limited ‘form of local government’ for Māori communities. He said the county of Waipa was

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1006. ‘Despatches from the Secretary of State to the Governor of New Zealand’, AJHR, 1885, A-2, pp 3–5.

1007. ‘Despatches from the Secretary of State to the Governor of New Zealand’, AJHR, 1885, A-2, pp 3–5.

1008. ‘Despatches from the Governor of New Zealand to the Secretary of State’, AJHR, 1885, A-1, p 32; see also submission 3.4.301, pp 21–23; doc A78, p 1151.

1009. ‘Despatches from the Governor of New Zealand to the Secretary of State’, AJHR, 1885, A-1, p 32.

‘practically a native district’, and if Māori wanted similar local self-government in other districts the Government would see no difficulty in granting that.<sup>1010</sup> The county of Waipa was constituted under the Counties Act 1876, which made local counties responsible for local by-laws, public works and libraries, and regulating public health and safety. We are unsure of the basis for Stout’s conclusion that the Waipa County was ‘practically a native district’. Jane Luiten, in her history of local government in Te Rohe Pōtae, noted that the county lay on 180,000 acres of confiscated land north of the Pūniu, of which Māori possessed a few isolated and tiny holdings, the rest being owned by farmers and Auckland property speculators.<sup>1011</sup> Newspaper reports from the time indicate that the councillors were Europeans.<sup>1012</sup>

In any case, Stout acknowledged that Tāwhiao was seeking much more than the powers of a local county council; the King was seeking a Parliament for Māori under the Queen, which would make law for Māori districts independently of the colonial Parliament. This accorded with the view that Te Wheoro had expressed at Kihikihi, that article 3 of the Treaty entitled Māori and settlers to their own legislatures within their own territories. But Stout was dismissive of Tāwhiao’s request:

Seeing that in the Legislative Council and the House of Representatives the Natives are represented by able chiefs, and that they have practically no local affairs to look after that cannot be done by their Committees—local bodies recognized by the Government—Ministers do not deem it necessary to point out the unreasonableness and absurdity of such a request.<sup>1013</sup>

Here, Stout made no mention of the complaints that Tāwhiao and other Māori leaders had made about their lack of influence in the House of Representatives, arising from the significant under-representation of Māori voters. He also presented native committees as possessing sufficient power to satisfactorily manage all local affairs within Māori districts. As we have seen, the committees were empowered to do little more than adjudicate in very minor civil disputes, and Māori leaders regarded the committees’ powers as manifestly inadequate.<sup>1014</sup> Indeed, these were the same committees that Stout in 1884 had dismissed as being not ready to become involved in land transactions or decisions about ownership.<sup>1015</sup> In effect, Stout was dismissing Māori concerns about the court and the powers of native committees, while making clear that in his view the Treaty entitled Māori to very little in the way of communal self-determination. While he did not specific-

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1010. ‘Despatches from the Governor of New Zealand to the Secretary of State’, AJHR, 1885, A-1, p32.

1011. Document A24, pp 55, 59.

1012. For example, see ‘Waipa County Council’, *Waikato Times*, 20 June 1882, p 4; ‘Waipa County Council’, *Waikato Times*, 13 March 1884, p 2.

1013. ‘Despatches from the Governor of New Zealand to the Secretary of State’, AJHR, 1885, A-1, p32.

1014. Document A78, p1151.

1015. ‘Native Land Alienation Restriction Bill’, 7 November 1884, NZPD, vol 50, p 478; doc A78, p1098.

ally address the matter, his comments suggested that the Government by this time had very little sympathy for Ballance's promise of substantially increased powers for native committees.

The Secretary of State for the Colonies, Lord Derby, acknowledged Stout's response in a 23 June letter to Governor Jervois, making clear that Britain no longer took any responsibility for the Crown–Māori relationship. As Lord Derby explained the constitutional relationship:

under the present constitution of New Zealand the government of all Her Majesty's subjects in the Islands is controlled by Ministers responsible to the General Assembly, in which the Natives are efficiently represented by persons of their own race . . . it is no longer possible to advise the Queen to interfere actively in the administration of Native affairs any more than in connection with other questions of internal Government.<sup>1016</sup>

Lord Derby nonetheless conveyed the British Government's hope that Māori rights, customs, and *institutions* would be protected:

Although . . . Her Majesty's Government cannot undertake to give you specific instructions as to the applicability at the present time of any particular stipulations of a treaty which it no longer rests with them to carry into effect, they are confident . . . that the Government of New Zealand will not fail to protect and to promote the welfare of the Natives by a just administration of the law, and by a generous consideration of all their reasonable representations.

I cannot doubt that means will be found of maintaining to a sufficient extent the rights and institutions of the Maoris without injury to those other great interests which have grown up in the land, and of securing to them a fair share of that prosperity which has of necessity affected in many ways the conditions of their existence.<sup>1017</sup>

Upon receiving Lord Derby's response later in 1885, Tāwhiao acknowledged that the colonial Government had gained responsibility for Māori in 1865, but said that the Queen had agreed to this without consulting the Māori people.<sup>1018</sup>

### **8.9.1.3 The Native Land Disposition Bill, June 1885**

By March 1885, then, the leaders of the Stout–Vogel ministry had signalled their opposition to some of Ballance's key promises. Notwithstanding Ballance's promise that Te Rohe Pōtae leaders would be left to make their own decisions about settlement of the district, Vogel had insisted that the Crown needed to urgently

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1016. 'Despatches from the Secretary of State to the Governor of New Zealand', AJHR, 1885, A-2A, p12; doc A78, p1151.

1017. 'Despatches from the Secretary of State to the Governor of New Zealand', AJHR, 1885, A-2A, p12.

1018. Document A78, p1197.

purchase one-third of the 4.5 million-acre railway area. And notwithstanding the promise of substantially increased powers for the Kawhia Native Committee to inquire into land titles, Stout had indicated that native committees had sufficient powers to do all that was required of them, and the Native Land Court adequately met Māori needs with respect to land title determination.

As the Government hardened its attitude towards Te Rohe Pōtae Māori aspirations, it also stepped up its commitment to its land settlement goals. It had already, in January, reopened its Whanganui land purchasing office (which had been closed) and appointed Thomas McDonnell as land purchasing officer for the region, charging him with buying land near the proposed railway route in blocks outside of this inquiry district which had already been through the court.<sup>1019</sup>

In June, it took another significant step towards advancing its settlement agenda, by introducing new legislation aimed at opening Māori land for settlement. The Native Land Disposition Bill, as it was called, was to apply to the entire country. Some of its provisions reflected the system that Ballance had outlined at Kihikihi, under which owner committees would decide how to manage lands, with a board then managing any sales or leases on the owners' behalf.

But there were also some important differences. Whereas Ballance had promised that owner committees would make all decisions about land sales or leases and that no land would be sold without owners' consent, the Bill provided for 'local committees' which could make decisions by a simple majority. There would be no meeting to elect committee members; instead, they would be nominated in writing, in the same manner as Kawhia Native Committee members had been. There was no provision to ensure that all owners consented before alienation took place, and nor was there any provision by which owners could veto a decision made by the committee.<sup>1020</sup> All private sales and leases would be carried out by a Crown-appointed commissioner, acting in accordance with decisions made by a district board of management. The board would comprise the commissioner, one other Crown appointee, and the chair of the district native committee.<sup>1021</sup> At Kihikihi, Ballance had suggested that the third member might be elected by local Māori, which would have given Māori a majority.

Once the board had been asked to sell or lease, it was empowered to do as it saw fit. It could survey, subdivide, and build roads and other works, deducting the expenses from the proceeds of sale or lease, with no requirement to consult the owners, let alone obtain their consent. As well as deducting development costs, the board was also empowered to charge a 5 per cent commission on any rent or

1019. Document A78, pp 1181–1182.

1020. Native Land Disposition Bill 1885, cl 3, 13, 25, 36. Clause 3 defined 'owner' to mean 'any native owner of land' (except where the land had been purchased from the Crown or a European, and was held by the owner as an individual). Clause 25 provided that: 'Owners may sell or lease to the Crown without and notwithstanding the appointment of a local committee. A local committee may sell or lease to the Crown.' Clause 36 prohibited all private dealings.

1021. Native Land Disposition Bill 1885, pts 2, 3.

purchase money, which would be paid to the Crown.<sup>1022</sup> These expenses had not been discussed at Kihikihi.

Whereas Ballance had promised that all sales or leases would occur in an open market, the Bill provided that owners (individually or collectively) could sell directly to the Crown, bypassing the local committee and the board of management. A local committee could also sell directly to the Crown. Neither local committees nor owners could sell or lease privately, except through the board.<sup>1023</sup>

In material ways, this was not the land administration system that Ballance had promised at Kihikihi. Collectively, these variations meant that – should the system set out in the new legislation be enacted – hapū and iwi would be denied the powers that they had sought to manage their own lands. Owners' decisions would not have to be unanimous; sales and leases would be managed by a Crown-appointed commissioner; the commissioner would act in accordance with the decisions of a board which had a majority of Crown appointees and was not required to consult the owners, let alone obtain their consent; substantial expenses could be deducted without the owners having given prior consent; the Crown would be able to buy land from anyone it pleased, with no promise of transparency or competition; and no provision was made for owners to veto decisions made by the local committee.

#### 8.9.1.3.1 INITIAL MĀORI AND SETTLER VIEWS

Ballance had promised to circulate the Bill before the parliamentary session began in June. According to Dr Loveridge, this did not occur – Ballance appears to have been modifying the Bill up to 15 June, the day before it was introduced to the House.<sup>1024</sup> After introduction, the Bill was circulated among Māori and settler communities for comment. The response in the settler press was as negative as it had been after the Kihikihi hui. The general view was that the Bill would halt all settlement of Māori lands, with dire consequences for the colony's stuttering economy.<sup>1025</sup> The *Press* of Christchurch expressed the commonly held settler view that the Government wanted to 'convert the centre of the North Island into a Maori paradise – at the expense of the European taxpayers.' Under Ballance's Bill, Māori would be 'unimproving and grasping landlords,' and the Government would become 'the hated middleman, who squeezes out the rents and sells up defaulters.'<sup>1026</sup>

Soon after the Bill's introduction, the Government faced a vote of no confidence, principally motivated by an unpopular Budget which had increased taxes. During that debate, the former Premier Harry Atkinson expressed the Opposition's view of Ballance and his Bill. Whereas Māori had known Bryce as a hard negotiator, Atkinson said, they knew that Ballance would give them all they wanted. Ballance's promises would reopen questions that had previously been resolved. Māori would

1022. Native Land Disposition Bill 1885, pt 5.

1023. Native Land Disposition Bill 1885, cl 25, 36.

1024. Document A41, p 48. For introduction, see NZPD, 1885, vol 51, p 14.

1025. Document A68, p 47.

1026. Editorial, *The Press*, 5 June 1885, p 2 (doc A68, p 47). According to Loveridge, the newspaper was quoting the former Native Minister, John Bryce.

come to believe ‘that . . . they will govern the Europeans instead of the Europeans governing them.’<sup>1027</sup> Furthermore, Atkinson continued, the land on either side of the railway would never be settled, and Māori would believe ‘that . . . the whole of that land belongs to them, with the railway made through it – a railway made and completed at the expense of the country’:

And I say . . . that the Natives are told, and believe . . . that the whole of that land is to be left to them for their own disposal after the railway is made. They have no idea of giving to the colony any of the enormous increase in value which will accrue from the colony’s works. They believe that it will all go into their own pockets.<sup>1028</sup>

Though Ballance had good intentions, Atkinson said, the inevitable consequence of his approach would be ‘broken promises, pledges unfulfilled’.<sup>1029</sup>

If settlers thought the Bill did far too much for Māori, Māori thought it did too little. Rangatira from around the country wrote to Ballance giving their views. Some favoured the Bill, at least in principle; others trenchantly opposed it. Many of those who wrote noted that it was an improvement on current law, since it provided (albeit with some exceptions) for all owners to be represented in decisions about land. But the changes since Ballance’s North Island tour did not go unnoticed.<sup>1030</sup>

In the House, Ballance read a letter from Te Wheoro (Tāwhiao’s advisor), which said that Te Wheoro could not point out all the faults in the Bill, ‘as there are so many’. Te Wheoro’s view was that the native committees – not boards with a Crown-appointed majority – should be left to manage the land; or, better still, native committees should design their own law.<sup>1031</sup> Ballance also read a letter from the Kawhia Native Committee chairman, John Ormsby. Ormsby said he accepted the ‘principle’ of the Bill, but objected to some of its clauses. While he did not specify what that principle was, other Māori leaders who wrote to Ballance indicated that they supported the ‘principle’ of hapū controlling their own lands.<sup>1032</sup> Ormsby’s main objection was to clause 22, ‘enabling the Crown to get behind the Board’ and buy land directly from Māori individuals or groups.<sup>1033</sup>

But, in Ormsby’s view, the Bill as a whole was ‘of minor importance’ compared with the question of how title would be determined. Ormsby reminded Ballance that Te Rohe Pōtae Māori ‘have no confidence’ in the existing system under which the Native Land Court determined title to Māori land.<sup>1034</sup> Ormsby informed Ballance that Wahanui would soon be in Wellington to continue negotiations.<sup>1035</sup>

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1027. ‘Want of Confidence’, 8 July 1885, NZPD, vol 51, pp 418–419; doc A68, p 26.

1028. ‘Want of Confidence’, 8 July 1885, NZPD, vol 51, pp 418–419; doc A68, p 26.

1029. ‘Want of Confidence’, 8 July 1885, NZPD, vol 51, pp 418–419; doc A68, p 26.

1030. ‘Native Land Disposition Bill’, 3 August 1885, NZPD, vol 52, pp 390–392.

1031. ‘Native Land Disposition Bill’, 3 August 1885, NZPD, vol 52, p 391.

1032. ‘Native Land Disposition Bill’, 3 August 1885, NZPD, vol 52, pp 391–392.

1033. ‘Native Land Disposition Bill’, 3 August 1885, NZPD, vol 52, pp 391–392.

1034. ‘Native Land Disposition Bill’, 3 August 1885, NZPD, vol 52, pp 391–392.

1035. ‘Native Land Disposition Bill’, 3 August 1885, NZPD, vol 52, pp 391–392.

Wahanui arrived in mid-June, along with other leaders.<sup>1036</sup> Over the next few weeks, the views of Te Rohe Pōtae leaders appear to have hardened against the Bill, and against Ballance himself.

On 29 July, the *New Zealand Herald* reported that the district's leaders had lost confidence in Ballance, who they now believed would 'promise anything' without any intention to keep his promises.<sup>1037</sup> They objected to the Bill 'in the strongest manner possible', seeing it as 'the means by which the Government, through unscrupulous agents, will be enabled to wrest from them their lands'. Wahanui, the newspaper reported, had been instructed to inform the Government that they would not part with their lands either to the Government or anyone, except by leasing. In order to prevent the Government from having any means of breaking their resolve, Te Rohe Pōtae leaders had raised in full the £1,600 owing for the external boundary survey and intended to pay it off. Taonui, Te Rangituatea, Hitiri Te Paerata, and numerous others had signed a petition asking for the abolition of the Native Land Court, due to its 'maladministration' of Māori land, and leaders had determined that the court would never adjudicate title to their lands.<sup>1038</sup> Whereas Ormsby had asked that the Crown honour its Kihikihi agreement, these leaders appeared to be advocating a return to the pre-Kihikihi position in which the court would play no role in land title determination even as an appeal body.

#### 8.9.1.3.2 THE GOVERNMENT'S DEFENCE OF THE BILL'S LAND PURCHASING PROVISIONS

Faced with fierce criticism of the Bill, the Government became increasingly defensive. Ballance sought to present the Bill as providing 'fair play' to both Māori and settlers, and as providing a mechanism for land dealing which served 'the interests of the Government and . . . the interests of the Natives themselves.'<sup>1039</sup> Māori possessed a vast estate, he told the House. The Bill served Māori interests by allowing them 'to guard that portion of the land which public policy requires should not go from their hands'; and it served settler interests by ensuring that they would not be prevented from acquiring some of that land if they wished.<sup>1040</sup> Furthermore, Ballance said, the Bill violated no Māori right and was entirely consistent with the Treaty, under which the Crown had received the pre-emptive right in return for Māori 'ownership' of their land. He said the Crown in Britain had 'only recently determined that the treaty was still binding'. But the Crown, Ballance said, had gone further than the Treaty demanded:

while we retain the right of purchase in our hands, we give the Natives an opportunity of getting a better price for their land by placing it in the open market, by offering it to

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1036. Document A78, p1165; doc A68, p48.

1037. 'The Natives and the Government', *New Zealand Herald*, 29 July 1885, p5.

1038. 'The Natives and the Government', *New Zealand Herald*, 29 July 1885, p5.

1039. 'Native Land Disposition Bill', 3 August 1885, NZPD, vol 52, pp 393, 394.

1040. 'Native Land Disposition Bill', 3 August 1885, NZPD, vol 52, p 394.



competition . . . It is just and fair to the Natives; for instead of having one purchaser, as under the Treaty, they will have the whole public of New Zealand – of the whole world, in fact – as the purchasers of their land.<sup>1041</sup>

In making these comments, Ballance appears to have suggested that the Treaty guaranteed Māori no more than ownership of land, and that Māori interests were served so long as they could retain possession of a *portion* of what they owned, while selling the rest at fair prices. Even that was more than Te Rohe Pōtae Māori had so far agreed to – they had not yet agreed to consider the possibility of settlement and had made clear they would not do so until the Crown honoured its side of the Kihikihi agreement.

Ballance and Stout both made clear that the Government was walking a fine line in its attempts to persuade Māori leaders (in this district and elsewhere) to open their remaining lands. As Stout explained, the Crown had at least to be *seen* to be dealing fairly with Māori, Stout told the House, because if Māori perceived otherwise they would not place their lands before the Court, and if they did not place their lands before the Court there would be no possibility of obtaining land for settlement.<sup>1042</sup> Ballance, likewise, emphasised the importance of winning Māori trust and confidence. Maori in the restriction zone, he said, were ‘hostile to the Government . . . had never accepted our institutions, . . . [and] had rejected the rule of every Government that had been in office’:

When the Natives are disturbed about any question, when they feel a want of confidence, when they feel that their land is slipping away from under their feet, you cannot induce them to take advantage of our institutions or come under our laws. You can only do that by establishing among them a feeling of confidence in the justice and equity of our Government. This is the only way in which the Natives can be made to accept our institutions.<sup>1043</sup>

### 8.9.1.3.3 DEBATE ON THE ROLE OF NATIVE COMMITTEES

If the Bill’s land purchasing provisions were not what Te Rohe Pōtae Māori had expected, nor were the Government’s provisions for land title determination. As noted in section 8.9.3, nothing in the Bill expanded the powers of native committees to make them a court of first instance with respect to land title determination, or to provide for the ‘great powers of self-government’ that Ballance had promised to Tāwhiao. While the House was debating the Native Land Disposition Bill, the Government also introduced the Native Land Court Consolidation Bill, which brought together several existing Acts relating to Māori land titles. If the Government had any intention of empowering district native committees to

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1041. ‘Native Land Disposition Bill’, 3 August 1885, NZPD, vol 52, p 396; doc A67, pp 75–76; doc A41, pp 190–191.

1042. ‘Native Land Disposition Bill’, 3 August 1885, NZPD, vol 52, pp 408–409; doc A68, pp 27–28.

1043. ‘Native Land Disposition Bill’, 5 August 1885, NZPD, vol 52, pp 515–520; doc A68, pp 29–30.

inquire into title, this Bill presented an obvious opportunity. But, instead, it did little more than consolidate existing law.<sup>1044</sup>

During debates in the House, Ministers gave no reason for their failure to keep this promise. Stout claimed that it had never been made. The committees, he said, already had ‘enormous powers’, which provided for ‘a form of local self-government’, and Ballance had simply encouraged Māori to take up the opportunities already provided under the law.<sup>1045</sup> This was manifestly untrue, and the former Native Minister John Bryce was scathing in response. Bryce regarded it as ‘absurd’ and ‘perfectly futile’ that Stout characterised native committees as providing for local self-government, arguing that they were ‘never intended to be anything of the kind.’<sup>1046</sup> Rather, Bryce said, the committees had been established as a form of court, and a minor one at that, intended to act as ‘arbitrators’ when Māori had ‘a quarrel or complaint’. While they had powers to hold inquiries into land ownership among ‘other things’, these powers were negligible. The committees could not *determine* titles, and nor was the Court required to take their advice. Their land title determination powers were no greater than if they ‘were not mentioned in the Act at all.’<sup>1047</sup> This, precisely, was the point that Te Rohe Pōtae leaders had expected the Government to address; instead, it did nothing.

#### 8.9.1.3.4 RATING OF MĀORI LAND

During debate on the Bill, opposition members of the House of Representatives also criticised Ballance over his recorded promise that Te Rohe Pōtae Māori land would not be subject to rates until the land was sold, leased or brought into cultivation. Stout noted that Te Rohe Pōtae was already exempted from rates – the previous Government’s Crown and Native Land Rating Act 1882 provided that no rates could be levied on land in the East Taupo, West Taupo, and Kawhia counties. He claimed that Ballance had simply promised to retain existing law and said that for this reason no letter had been written to Te Rohe Pōtae Māori confirming the promise.<sup>1048</sup>

#### 8.9.1.4 *The Native Affairs Committee considers the Bill, August 1885*

Wahanui appeared in August before the House of Representatives’ Native Affairs Committee. There, he argued that he simply sought ‘the authority of administering my own land’; the Crown, in his view, was attempting to take both land and authority. Wahanui asked: ‘Why should our land be taken from us, or why should our authority over that land be held back?’<sup>1049</sup>

1044. ‘Native Land Disposition Bill’, 3 August 1885, NZPD, vol 52, p 392.

1045. ‘Native Land Disposition Bill’, 3 August 1885, NZPD, vol 52, pp 408–409; doc A68, pp 29–30; see also doc A78, pp 1168–1170.

1046. ‘Native Land Disposition Bill’, 3 August 1885, NZPD, vol 52, p 411; doc A78, p 1168.

1047. ‘Native Land Disposition Bill’, 3 August 1885, NZPD, vol 52, p 411; doc A78, p 1168.

1048. ‘Native Land Disposition Bill’, 3 August 1885, NZPD, vol 52, p 408.

1049. ‘Native Affairs Committee: Report on the Native Land Disposition Bill’, AJHR, 1885, 1-2B, p 5. Wahanui’s evidence is also described in document A67, pp 86, 91, 94–95, 101–103, 107–108, 114.

Wahanui advocated for a land administration system that was similar to what Ballance was proposing, except that the key roles (in land title determination and land administration) would be carried out by Māori, not by the Crown or its appointees. He favoured hapū, acting through elected committees, making decisions about land use and alienation. But he wanted the Kawhia Native Committee to administer land transactions in accordance with owners' wishes. The committee, he said, should have 'the whole administration of the land' – in essence, empowering it to carry out the functions that Ballance had envisaged for Crown-controlled boards or commissioners. He also wanted the Kawhia Native Committee to 'have the power to sell to the highest bidder'. He objected to the Crown having any right to bypass the committee and buy directly from owners. Furthermore, he wanted owners to have a right to veto the Kawhia Native Committee's decisions, thereby leaving final say over land in the hands of hapū.<sup>1050</sup> Asked if he understood that the Bill would have no effect until title had been awarded by the Native Land Court, Wahanui said he did understand but did not agree: 'I will not consent to hand over my land to the Native Land Court at present. I have heard of the cries that have been brought up on all sides during the past year on account of the action of the Native Land Court.'

One 'of the theories' about land titles was that they would be carried out by the Kawhia Native Committee, and that was 'feasible', he said – without making clear what the other 'theories' might be: 'What I say is, that the Committee should have power—full power—to deal with the land in any case. That is only my own opinion.'<sup>1051</sup> He repeated several times that he would not consent to the court.<sup>1052</sup>

Wahanui – like Taonui before him – now appeared to be returning to his pre-Kihikihi position that the court would not be allowed into the district at all, and Māori would instead determine iwi and hapū title among themselves, either through the Kawhia Native Committee or by some other means. Māori communities would then retain full control over their lands; hapū would make all decisions about land use, but the Kawhia Native Committee would manage transactions on their behalf; all transactions would take place in an open market.

The Napier member of the House of Representatives, John Ormond, then asked Wahanui a series of questions about settlement of the district. Did Wahanui believe that the Bill would open the railway area for settlement? Would the area be opened more quickly if the Government purchased directly from Māori? Were Māori willing to assist settlement and advance the colony's prosperity by selling land?<sup>1053</sup> In response, Wahanui said Te Rohe Pōtae Māori supported the goal of bringing prosperity to the colony and had done their part by giving land for the

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1050. 'Native Affairs Committee: Report on the Native Land Disposition Bill, together with minutes of Evidence and Appendix', AJHR, 1885, 1-2B, pp 5-7, 9-13.

1051. 'Native Affairs Committee: Report on the Native Land Disposition Bill, together with minutes of Evidence and Appendix', AJHR, 1885, 1-2B, p 9.

1052. 'Native Affairs Committee: Report on the Native Land Disposition Bill, together with minutes of Evidence and Appendix', AJHR, 1885, 1-2B, pp 8-10.

1053. 'Native Affairs Committee: Report on the Native Land Disposition Bill, together with minutes of Evidence and Appendix', AJHR, 1885, 1-2B, p 8.

railway corridor without asking for any payment. They now wanted to know what they would get in return.<sup>1054</sup>

When pressed on whether Māori would be willing to sell or lease land, or both, Wahanui said owners might be willing to do either, but he could not speak for them, and in any case now was not the time to consider land transactions. Owners first wanted a satisfactory law ‘before they take one step or another’. They wanted, in other words, to be ‘first assured that they shall have authority – full authority – over their land.’<sup>1055</sup> This was the first time that Wahanui had spoken about the possibility of selling land. As already discussed, in the 1883 petition Te Rohe Pōtae leaders had sought a permanent ban on sales, and in more recent negotiations they had either expressed their preference for leasing or refused to discuss the matter until agreement was reached on satisfactory laws. While sales now appeared to be a possibility if hapū wished, the precondition remained – satisfactory laws had to be in place. This was consistent not only with the petition, but with Wahanui’s 1884 comments to the railway committee that Te Rohe Pōtae leaders expected satisfactory laws in exchange for their cooperation with the Government’s plans.<sup>1056</sup> When Ormond told Wahanui that the railway was being built for the specific purpose of opening Te Rohe Pōtae lands for settlement, Wahanui said this was the first he had heard of it:

I did not know that the railway was to be made with the object or with the understanding that the land was to be settled on each side. I thought it was to connect two places, so far as to enable people to come from one end of the Island to the other. I have now heard for the first time that there is another object in view, and that the Europeans look on the land on each side of the railway as having become their own.<sup>1057</sup>

Nor did he accept Ormond’s view that that the railway would bring ‘enormous value’ to the district’s lands, and that therefore the district’s Māori should ‘assist in the disposal of their land’. He said he did not know that the railway would increase land values, and said he needed to ‘laugh a while’ at the idea that Māori landowners were in some way obliged to sell their lands for settlement.<sup>1058</sup> Then he added: ‘If the railway is being made for the benefit of the Maoris, it is better to stop it.’<sup>1059</sup> This, too, was consistent with the 1883 petition, in which Te Rohe Pōtae lead-

1054. ‘Native Affairs Committee: Report on the Native Land Disposition Bill, together with minutes of Evidence and Appendix’, AJHR, 1885, 1-2B, p 8.

1055. ‘Native Affairs Committee: Report on the Native Land Disposition Bill, together with minutes of Evidence and Appendix’, AJHR, 1885, 1-2B, p 8.

1056. ‘Report of the Select Committee appointed to consider and report on the best route for the North Island Trunk Railway’, AJHR, 1884, 1-6, p 16; doc A78, p 1069; doc A41, p 149.

1057. ‘Native Affairs Committee: Report on the Native Land Disposition Bill, together with minutes of Evidence and Appendix’, AJHR, 1885, 1-2B, p 8.

1058. ‘Native Affairs Committee: Report on the Native Land Disposition Bill, together with minutes of Evidence and Appendix’, AJHR, 1885, 1-2B, p 8.

1059. ‘Native Affairs Committee: Report on the Native Land Disposition Bill, together with minutes of Evidence and Appendix’, AJHR, 1885, 1-2B, p 8.

ers had made it clear that they had no interest in a railway if it became the means to deprive them of their lands.

Other Māori who appeared before the committee gave evidence similar to Wahanui's. They felt that the Bill gave too much power to the government and was not consistent with the promises that Ballance had made during his tour. The former chief judge of the Native Land Court, Francis Fenton, agreed that the Bill gave the Government almost complete power over land titles and dealing in Māori lands, and would not be acceptable to Māori.<sup>1060</sup> Māori witnesses also argued that questions of land administration should not be considered until problems with land titles and the Native Land Court had been addressed. And they asked for amendments to provide that all hapū members must consent before hapū lands were leased or sold.<sup>1061</sup> The member of the House of Representatives for Eastern Maori, Wi Pere, proposed a series of amendments designed to strengthen owners' control over their own lands and remove the development costs that Ballance proposed to deduct. Ballance also proposed a series of amendments, one of which removed native committees altogether, instead providing that the board of management would comprise three Crown appointees (two of them Māori) and one temporary member elected by the hapū whose land was being dealt with.<sup>1062</sup>

In the face of concerted criticism from Māori and some European witnesses (such as Fenton), and from opposition members of the House of Representatives, the committee recommended that the Bill not proceed during 1885.<sup>1063</sup>

### **8.9.1.5 The Government commits to large-scale land purchasing, August 1885**

While the Bill remained before the select committee, the Government faced another no confidence vote. The main issue was the Government's financial policy and in particular its spending on public works. But the no confidence motion also criticised the Government for having 'failed to make arrangements' to acquire land for settlement along the line and called for all work to cease until the Government had obtained 500,000 acres:

That one of the principal objects of the construction of the North Island Trunk Railway being to open the interior of the North Island for settlement, and seeing that the Government has failed to make arrangements for securing the land necessary for this purpose, no further expenditure should be incurred beyond the present contracts

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1060. 'Native Affairs Committee: Report on the Native Land Disposition Bill', AJHR, 1885, 1-2B, p30.

1061. 'Native Affairs Committee: Report on the Native Land Disposition Bill', AJHR, 1885, 1-2B, pp 1-2, 14-15, 16, 56.

1062. 'Native Affairs Committee: Report on the Native Land Disposition Bill', AJHR, 1885, 1-2B, pp 61-74.

1063. 'Native Affairs Committee: Report on the Native Land Disposition Bill', AJHR, 1885, 1-2B, title sheet.

and for the completion of the working surveys until satisfactory arrangements have been made for the acquisition of not less than 500,000 acres of land for settlement.<sup>1064</sup>

The Government also faced continued criticism in the settler press for its failure to 'open up' Te Rohe Pōtae and rapidly push ahead with settlement.<sup>1065</sup> One newspaper commentator savaged Ballance for his Kihikihi promises:

To promise . . . that the Maoris might reap all the benefits in the shape of increment of land value arising from the construction of the railway . . . was to commit the Government to a pledge which future Governments cannot possibly fulfil, and which neither Parliament nor the country can endorse. It is both idle and dangerous to stuff the Natives with such sugar-plums as these.<sup>1066</sup>

In the face of opposition, media and settler pressure, Ballance announced on 28 August that the Government now intended to purchase large areas of Māori land in the railway area.<sup>1067</sup> He said that he recognised as much as any member of the House of Representatives 'that we are called upon to provide for settlement of population' along the railway line. But the Government had been in office for only a year, he said, and could not have done more than it had done.<sup>1068</sup>

As he had in July, he explained that settlement could only occur once title had been determined. It had therefore been necessary to establish 'a feeling of confidence' among Māori along the railway route so they would be willing to place their lands before the court.<sup>1069</sup> That, he said, was now occurring. He had received applications from Taupō Māori for survey and title determination for 450,000 acres, and from Whanganui Māori for survey and title determination for 1.2 million acres. Ballance did not say precisely which land blocks he was referring to; as discussed in section 8.9.2, applications were received later in the year for the Tauponuiatia and Waimarino blocks.<sup>1070</sup> Ballance also said that the Crown had already negotiated the purchase of a 63,000-acre block along the railway line and had purchased and surveyed a 30,000-acre block, which would in six months

1064. 'The Want-of-Confidence Motion', *Evening Post*, 27 August 1885, p 2; doc A90, p 53; 'Want of Confidence', 27 August 1885, NZPD, vol 53, p 269.

1065. See, for example, 'Native Lands Disposition Bill', *Poverty Bay Herald*, 10 August 1885, p 3; doc A68, p 34.

1066. 'Native Lands Disposition Bill', *Poverty Bay Herald*, 10 August 1885, p 3; doc A68, p 34.

1067. 'Want of Confidence', 28 August 1885, NZPD, vol 53, pp 354–356; doc A90, pp 54–56, 69–71; doc A68, pp 31–32, 210–211; doc A41, p 170 n; doc A78, pp 1183–1187; doc A146, pp 54–55.

1068. 'Want of Confidence', 28 August 1885, NZPD, vol 53, pp 354–356.

1069. 'Want of Confidence', 28 August 1885, NZPD, vol 53, pp 354–356.

1070. Document A79, pp 79–82.

be settled by small farmers on hundred-acre blocks.<sup>1071</sup> There is no evidence that these purchases were in this inquiry district.<sup>1072</sup>

'My idea is this,' he told the House, 'that before the railway is completed . . . we ought to have acquired along that line of railway nearly two million acres for the purpose of settlement. But if Māori were told of these land purchasing ambitions, or believed they were being treated unfairly, they would become suspicious and would refuse to bring any land before the court or offer any for sale.'<sup>1073</sup> Presented this way, fair treatment – or at least the appearance of it – was not an end in itself, but a land purchasing tactic. Ballance had told Te Rohe Pōtae leaders that the Government wanted settlement, but he had also given assurances that the Crown did not intend to purchase large areas and would be content for land to be made available by leasing and for Te Rohe Pōtae Māori to make their own decisions about settlement.

In turn, the consistent position of Te Rohe Pōtae Māori leaders had been that settlement would not be discussed until the boundary was protected and satisfactory laws were enacted. They had given their consent for the railway on the basis of those conditions. Now, having won their consent for the railway, and in the face of pressure from settlers, Ballance was setting their conditions and his own assurances aside.

In fact, the Crown was already taking steps to begin purchasing along the railway line as soon as land was titled. As noted earlier, in January it had appointed a purchasing officer for Wanganui. In its financial statement to the House, delivered in June, the Government confirmed plans to borrow £1 million to complete the railway and other works needed for settlement. Of that money, £100,000 was to be used for purchasing of Māori lands during the 1886–87 financial year.<sup>1074</sup>

Through the trig and boundary surveys, the Government had also acquired extensive knowledge about Te Rohe Pōtae lands and their potential for settlement. In August 1885, the surveyor Laurence Cussen presented an extensive report about the 'general character' of the lands in the 'Rohe Potae block', including a map dividing the district into first class 'good agricultural land', second class 'pastoral' land, and third class 'very broken or poor country'. He gave details, furthermore, of topography, vegetation, soil types, climate, and proximity to the railway, and

1071. 'Want of Confidence', 28 August 1885, NZPD, vol 53, pp 354–355 (doc A90, pp 69–71).

1072. The Crown's return of lands purchased from Māori in the year to 31 March 1885 show no Crown purchases either completed or under way in the inquiry district: 'Lands Purchased and Leased from Natives in the North Island', 31 March 1885, AJHR, 1885, C-7. Nor had any applications for title been filed from within the inquiry district, other than the five tribes' 1883 application. Ballance may have been referring to the Waimarino and Taupouiatia applications, which were filed later in 1885: doc A79, pp 77–82.

1073. 'Want of Confidence', 28 August 1885, NZPD, vol 53, pp 354–355; doc A90, pp 54–56, 69–71; pp 54–56; doc A68, pp 31–32, 210–211; doc A41, p 170 n; doc A78, pp 1183–1187; doc A146, pp 54–55.

1074. 'Financial Statement', 19 June 1885, AJHR, 1885, B-1, p xvii; doc A68, p 202. Earlier, Vogel had told Ballance the railway would cost £1.5 million: doc A41, p 184.

also reported on the locations of coal deposits and limestone formations.<sup>1075</sup> He had been explicitly instructed to gather this information,<sup>1076</sup> and his report later guided the Crown's initial land purchasing priorities.<sup>1077</sup>

#### **8.9.1.6 *The Government's handling of the Joshua Jones lease***

The Government's increasing determination to break the aukati and open Te Rohe Pōtae for settlement was reflected in its handling of the so-called Jones lease during 1885. Since 1882, an Australian settler, Joshua Jones, had entered into an agreement to lease timber and mineral rights on part of the Mokau-Mohakatino block. However, Jones's relationship with Mokau Māori quickly soured after he claimed that the lease also gave him rights to land and applied to the whole block.<sup>1078</sup>

As discussed in section 8.7.2, the Native Land Alienation Restriction Act 1884 prohibited private land dealings within a 4.5 million-acre area surrounding the railway. Jones lobbied the Government, claiming the Act had prevented him from completing his lease negotiations and had therefore left him out of pocket.<sup>1079</sup> The Government responded in September 1885 by enacting the Special Powers and Contracts Act, which included a special provision giving Jones the legal right to complete his lease negotiations. Mōkau leaders were not consulted before the Act was passed.<sup>1080</sup> Ballance explained the Government's support for Jones as being due to the contribution he was making towards 'opening up the aukati'.<sup>1081</sup>

The Mokau-Mohakatino lands he claimed to have rights over lay within the 1883 petition area, which the Crown had agreed to survey. The Government had already breached the terms of the December 1883 agreement by refusing to include the Mokau-Mohakatino and Mohakatino-Parininihi blocks in its survey of the Te Rohe Pōtae boundary. By supporting Jones's disputed claim to have rights in lands within the aukati, it was further demonstrating its lack of respect for the district's boundary. Further details of the Jones lease will be discussed in more detail in chapter 11.

#### **8.9.2 *The end of the aukati***

The Government's failure to deliver on Ballance's promises, its rejection of Tāwhiao's petition, and its new commitment to settlement and land purchasing in the railway area all caused considerable frustration to Māori leaders in Te Rohe Pōtae and elsewhere. Having consented to the railway and offered the land for

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1075. 'Report on the Surveys of New Zealand for the Year 1884-1885', AJHR, 1885, C-1A, app 3, p 21; doc A67, p 125.

1076. He began his report with: 'In compliance with your instructions, I have the honour to report on the general character of the land in the King Country over which my survey extends'. The report was to the House of Representatives, but the instruction may have been from the Surveyor-General, or the Minister of Lands: 'Report on the Surveys of New Zealand for the Year 1884-1885', AJHR, 1885, C-1A, app 3, p 21 (doc A67, p 125).

1077. Document A41, pp 112-113; doc A67, pp 196-198.

1078. Document A28, pp 327-328.

1079. Document A28, pp 328, 339-340.

1080. Special Powers and Contracts Act 1885, sch 1, cl 17; doc A28, pp 339-343.

1081. Document A28, p 340.



free, Te Rohe Pōtae leaders had now lost their bargaining chip, only to find that the Crown wanted more than it had already been given. The very thing that Te Rohe Pōtae leaders had sought to avoid by engaging with the Crown – the loss of their land – now seemed to have become a very real possibility.

The leaders and people of the five tribes found different ways of responding. Some communities turned back to the Kīngitanga or to the Parihaka prophet Te Whiti o Rongomai, rejecting all engagement with the Crown and its institutions, in the hope that a show of resistance would keep the forces of colonisation at bay.<sup>1082</sup> The leaders of Ngāti Tūwharetoa, and some leaders from northern Whanganui, decided they had no option but to turn to the court to secure title to their lands. Other Whanganui leaders, along with the leaders of Ngāti Maniapoto, Ngāti Raukawa, and Ngāti Hikairo, remained on their former course, apparently reasoning that the only means by which they could now secure their land and authority was to honour the Kihikihi agreement and hope the Crown could be persuaded to do so the same. The Kawhia Native Committee attempted to manage the district's affairs as well as it could without real powers, and this included offering significant assistance to the Government's railway construction efforts.

At the end of the year, with the boundary survey almost complete, Te Rohe Pōtae leaders offered to pay the £1,600 they owed for the boundary survey. They then made the decision to lift the aukati, providing both tangible and symbolic proof that they were honouring the agreements they had made with the Crown.

### **8.9.2.1 Ngāti Tūwharetoa and Waimarino Native Land Court applications, October–December 1885**

Late in August, while Parliament was debating the Government's proposed new Māori land laws, Tāwhiao received the British Government's response to his petition. As described earlier, it explained that Britain no longer accepted any responsibility for Māori affairs and was leaving all decisions to the Government in New Zealand.<sup>1083</sup>

Early the following month, a major Kīngitanga hui was held at Poutū (to the south of Tūrangi). According to Marr, between 1,000 and 1,200 people attended; most were from Ngāti Tūwharetoa, Whanganui iwi, and sections of Ngāti Maniapoto and Ngāti Raukawa that bordered the Taupō district. Wahanui, Taonui, Rewi Maniapoto, and Hone Te One were all absent, as was Tāwhiao.<sup>1084</sup> Hitiri Te Paerata attended, as did Te Herekieke and Matuaahu Te Wharerangi, and the Ngāti Tūwharetoa ariki Horonuku Te Heuheu. The only named Ngāti Maniapoto representative was called Ngatau.<sup>1085</sup>

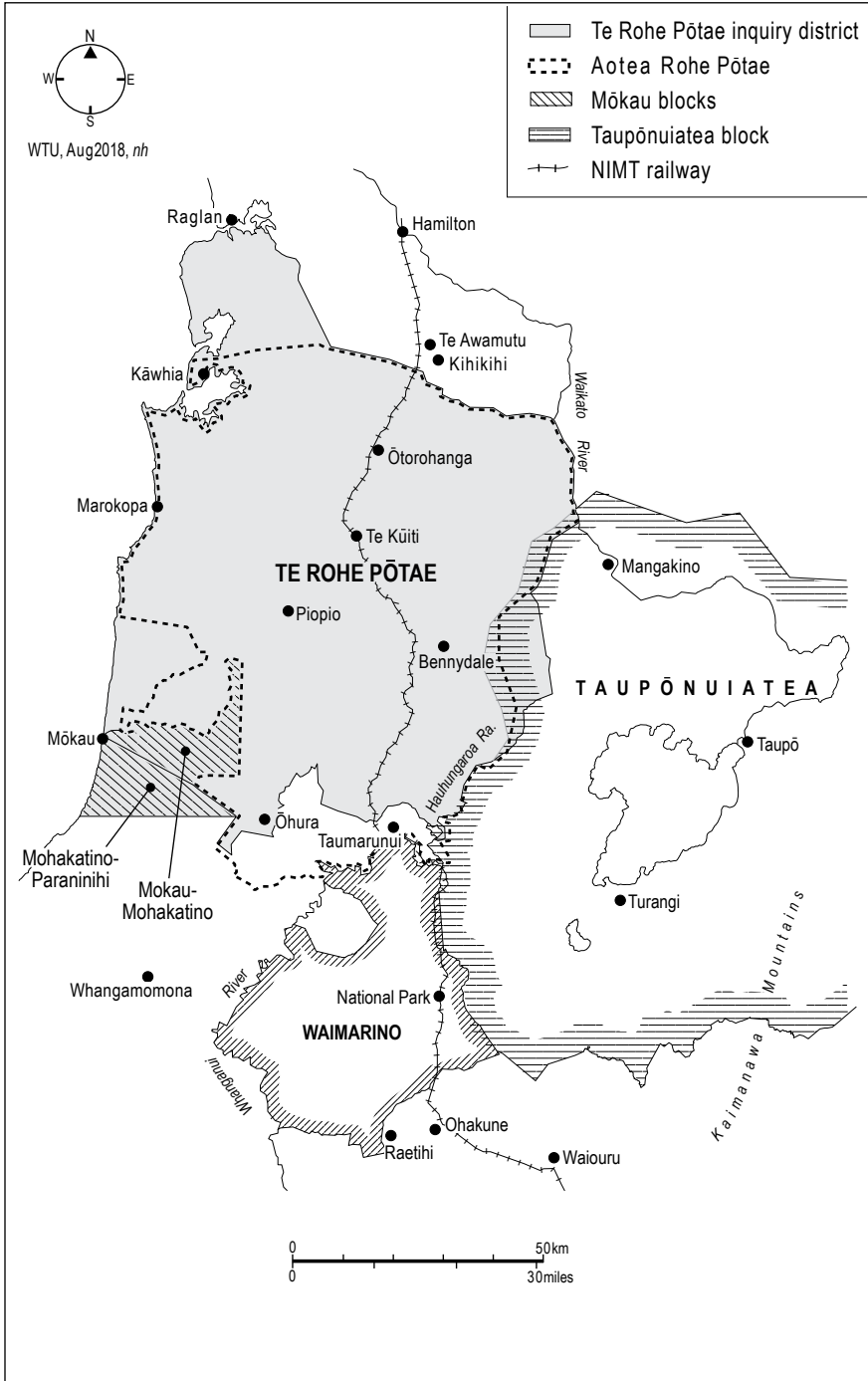
As with so many other hui during this period, the Poutū hui was concerned with questions about land and authority, in particular questions about how to protect lands from the court, how to protect the integrity of tribal rohe, whether

1082. Document A78, pp 1196–1197.

1083. Document A78, p 1197.

1084. Document A78, pp 1199–1200.

1085. 'Native Meeting, Poutu, Taupo', AJHR, 1886, G-3, pp 3–5.



Map 8.3: Tauponuiatia and Waimarino blocks with Te Rohe Pōtae inquiry district

to support the petition area boundary, and whether and how to engage with the Crown. According to Bruce Stirling, the hui reflected the ‘failure of the Rohe Pōtae’s moderate strategy’ to win meaningful concessions from the Government, which led to a resurgence in support for the Kīngitanga.<sup>1086</sup>

The hui passed resolutions acknowledging Tāwhiao as King of all Maori; acknowledging the Queen’s authority but not that of the colonial government; rejecting the Native Land Court; opposing all land sales, leases, and surveys; calling for native committees established under Tāwhiao’s authority to manage local affairs.<sup>1087</sup> Those attending resolved not to actively obstruct the railway, but determined that they would charge high prices for any materials used, and would not provide any labour.<sup>1088</sup>

The Crown regarded the resolutions, and the resurgent Kīngitanga, as threats to its settlement plans – particularly those concerning Whanganui and Tūhua lands adjacent to the railway. As the Whanganui Whenua Tribunal noted, the Native Department immediately took steps to encourage Native Land Court applications for Whanganui lands along the railway line and also began to charge expenses to its Waimarino block purchasing account.<sup>1089</sup>

According to some reports, the hui divided Ngāti Tūwharetoa. Although the resolutions were passed by a great majority, some sections of the tribe opposed them, and Te Heuheu resented what he regarded as the Kīngitanga’s unwarranted interference in tribal matters. As discussed, he had previously expressed concern about the petition area boundary dividing Ngāti Tūwharetoa territories, and that, too, was discussed at Poutū. Speaking at the hui, Te Heuheu likened the Ngāti Tūwharetoa rohe to ‘a kiwi’s egg lying before me’, which was ‘not yet broken’, and which he now wished to see hatched. Even if a portion was ‘rotten or sold’, the egg remained: ‘It matters not about the disputed boundary of Ngatimaniapoto, and they should shift your boundary. Listen! This is the day my egg shall be hatched’. The clear inference was that the Ngāti Tūwharetoa rohe was one whole which could not be broken by the five tribes boundary, the Kīngitanga, any rival land claims, or even by sales or leases which could take part of the land but not the rohe itself.<sup>1090</sup>

In his speech, Te Heuheu said he was with Matuaahu. As discussed in section 8.5, claimants told us that Matuaahu had supported Wahanui’s negotiations with the Crown,<sup>1091</sup> though we do not have specific evidence of his attendance at the 1883 or 1885 hui at which key agreements were reached. At Poutū, Matuaahu said there had been ‘difficulty’ between Te Heuheu and himself, which he wanted to resolve. He had placed his troubles before Hori Tohipa (Tāwhiao’s advisor). ‘I have little to say re “Rohe-potae.” I did not make it, others did . . . I am not anxious to

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1086. Document A53, vol 2, p 862.

1087. Document A78, pp 1201–1204.

1088. Waitangi Tribunal, *He Whiritaunoka*, vol 2, p 561.

1089. Waitangi Tribunal, *He Whiritaunoka*, vol 2, p 561; see also pp 687–588; doc A53, vol 2, pp 894–895.

1090. ‘Native Meeting, Poutu, Taupo’, AJHR, 1886, G-3, pp 3–5. (doc A78, pp 1202, 1205).

1091. Document J22, paras 88–89.

seek support from Europeans.<sup>1092</sup> According to one report of the hui, Te Heuheu, Te Herekieke, and Hitiri Te Paerata were all among those who signed the resolutions recognising Tāwhiao as King. But Te Heuheu also spoke against Tāwhiao, saying he had broken from Tūwharetoa, Raukawa, and Maniapoto by travelling to England without consulting them.<sup>1093</sup>

Soon after the hui, Ngāti Tūwharetoa took steps to secure its position against the perceived threats to their lands. On 31 October 1885, Te Heuheu and other Ngāti Tūwharetoa leaders lodged an application to the Native Land Court for title to the Taupouiatia block. This covered an area exceeding two million acres, including a large area in the east overlapping the 1883 petition area (see map 8.3).<sup>1094</sup> Other Tribunals have considered the events leading to this application, and have concluded that the principal motivation for Ngāti Tūwharetoa leaders was to assert mana over their tribal territories, protecting those territories from rival claims.<sup>1095</sup> Stirling, in this inquiry, drew a similar conclusion, noting that Te Heuheu appeared to see the application as being for definition of a boundary within which Ngāti Tūwharetoa hapū could retain control of their lands.<sup>1096</sup>

But other Tribunals have also concluded that the Crown influenced Te Heuheu's decision to lodge the claim. As the National Park Tribunal noted, the Crown had done little since 1883 to dispel Te Heuheu's fears that Ngāti Maniapoto might lay claim to Ngāti Tūwharetoa lands; it instead encouraged Ngāti Tūwharetoa to resolve any concerns by taking the matter to court.<sup>1097</sup> Furthermore, Te Heuheu's decision to apply for title for the entire Taupouiatia block was made on advice from his son-in-law, Lawrence Grace, who was the member of the House of Representatives for Tauranga and had traveled from Wellington to Taupō towards the end of the parliamentary session expressly for this purpose. Grace had discussed the application with Ballance in Wellington, and he also corresponded extensively with Ballance after his arrival in Taupō. It was Grace who informed Ballance by telegram on 31 October that Te Heuheu had agreed to file the application.<sup>1098</sup> Grace's brother, William, later wrote that the Government had encouraged the application because it was 'dissatisfied with the conduct of Maniapoto over their Rohepotae.'<sup>1099</sup> It is not clear what Wahanui had done to displease the Government, other than remind it of Ballance's promises at Kihikihi.

Ballance himself said that he had encouraged the application. Speaking at a hui at Aramoho (Whanganui) in April 1886, he said:

1092. 'Native Meeting, Poutu, Taupo', 23 September 1885, AJHR, 1886, G-3, p 4.

1093. 'Native Meeting, Poutu, Taupo', 23 September 1885, AJHR, 1886, G-3, p 5.

1094. Document A79, pp 68, 79.

1095. Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, pp 206, 225, 240, 287, 289; Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 330; Waitangi Tribunal, *The Pouakani Report*, s 8.2.

1096. Document A53, vol 2, pp 887–888.

1097. Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, pp 233–236, 340; Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 330, vol 2, p 476. The timing of Grace's visit to Taupō is discussed in doc A78, p 1219.

1098. Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, pp 233–236, 340; Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 330, vol 2, p 476; Waitangi Tribunal, *The Pouakani Report*, p 127.

1099. Document A35, p 66.

Now, let me explain why the Court sat at all at Taupo. I found that Tawhiao was bringing his influence to bear in order to get the chiefs and the people of Taupo to sign a memorial handing over the whole of their lands to him. I told Wahanui at Alexandra that I considered that an improper action on the part of Tawhiao, and on the part of the people themselves, and my reason was this; that I preferred the people themselves should have the title to their lands rather than Tawhiao should have the mana over it. I saw an effort and indication on the part of Tawhiao to become possessed of all the lands on the island, and I felt certain that was wrong, and that it was the duty of the Government to resist Tawhiao to the very utmost. That is one of the principal reasons why the Court sat at Taupo at the time it did.<sup>1100</sup>

Here, Ballance was quite clearly admitting that he had influenced the court process, though he did not specify whether this was by encouraging the application, or by advancing it when others had been held back, or both. He was also admitting to doing exactly what he accused Tāwhiao of doing – denying the right of Ngāti Tūwharetoa communities to exercise mana over their land, in this case by deciding who should take on the responsibility of protecting it.

The Tauponuiatia application marked the end of Ngāti Tūwharetoa involvement in the ‘five tribes’ which had been negotiating for Crown recognition of their right to mana whakahaere. As previously discussed, Te Heuheu had not supported these negotiations but several other senior Ngāti Tūwharetoa rangatira had, including Te Herekieke and Matuaahu Te Wharerangi. According to the Ngāti Tūwharetoa claimant Napa Ōtimi, theirs were the second and third signatures on the tribe’s Native Land Court application, making it clear that those rangatira no longer saw themselves as supporting the June 1883 boundary.<sup>1101</sup> The former Kingitanga and Te Rohe Pōtae tribes Ngāti Tūwharetoa, Ngāti Maniapoto, Ngāti Raukawa, and various iwi of northern Whanganui were now being forced into the role of competing claimants.<sup>1102</sup> Hitiri Te Paerata later explained his frustration at hearing of the application:

I thought the tribal boundary, i.e., the Rohe Potae, was sufficient for Te Heu Heu and all chiefs and myself, consented thinking it was sufficient. I thought that we the hapu would arrange sub-division. I also thought that considering we were friends to support him and I was supporting him, owing to our ancestral relations. We were one body, one mind, one tribe. This day I find he wants to sub-divide the land. Whilst listening to this I thought his proposal was a robbery.<sup>1103</sup>

When the hearings began at Taupō on 14 January, Rewi Maniapoto attended, along with Te Rangianini and several other Ngāti Maniapoto rangatira: Aporo

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1100. ‘Important Native Meeting at Aramoho’, *Wanganui Herald*, 27 March 1886, p 2 (doc A53, vol 2, p 895).

1101. Document J22, para 94.

1102. Waitangi Tribunal, *The Pouakani Report*, p 130.

1103. Document A53, vol 2, p 888.

Taratutu, Pineaha Tawhaki, Te Hihi, Tupu Kaheke, Hone Kutu and others. Some Whanganui rangatira were also present,<sup>1104</sup> as was Hitiri Te Paerata of Ngāti Raukawa and Ngāti Tūwharetoa.<sup>1105</sup> Taonui was initially unable to attend because he was required at another court hearing at Cambridge.<sup>1106</sup>

The tribes called for an early adjournment so they could discuss matters among themselves. During this adjournment Rewi Maniapoto urged Te Heuheu to withdraw the application so that Wahanui could complete his negotiations and one hearing could be held for the whole of Te Rohe Pōtae.<sup>1107</sup> Te Heuheu refused, but he did accept Rewi's request for the Ngāti Tūwharetoa claim boundaries to be moved so as not to encroach on Ngāti Maniapoto lands. The boundaries were subsequently moved, and Ngāti Maniapoto leaders professed themselves mostly satisfied with some exceptions, principally concerning lands immediately north of Pureora, and those in the south between Waimiha and Ketemaringi. The contested lands were included in the Taupouiatia block, creating an ongoing source of grievance for Ngāti Maniapoto and Ngāti Raukawa (see chapter 10).<sup>1108</sup>

When Taonui arrived at Taupō on January 18, he held an extended meeting with Te Heuheu, asking him to defer the application. Ngāti Maniapoto, Taonui said, was merely trying to get a law passed to save both people and land, and wanted the tribes to 'all be one people.'<sup>1109</sup> Te Heuheu refused: 'Your boundary splits me in two . . . What about the half of me that is left outside? Who is to save that part. No, I prefer my people to die together as a whole. If you object to my Court going on, state your objection to the Court. We will meet there.'<sup>1110</sup>

When Taonui appeared in court, he asked that the Maraeroa, Hurakia, and Tūhua lands be excluded from the hearing so the tribes (Maniapoto, Tūwharetoa, and Raukawa) could resolve matters among themselves. The judges said he was too late.<sup>1111</sup> Wahanui and other Ngāti Maniapoto leaders later argued that, by accepting the Ngāti Tūwharetoa application, the Crown had broken the terms of Bryce's 1883 agreement with them. During the remainder of the decade they made numerous protests on this matter.<sup>1112</sup>

Other Tribunals have found that, although the Government clearly had some influence on the Ngāti Tūwharetoa decision to apply to the court for title, Te Heuheu made the decision himself. The National Park Tribunal also cast doubt on whether Grace could be regarded as a government agent in his dealings with

1104. Waitangi Tribunal, *The Pouakani Report*, p 130.

1105. Document A53, vol 2, p 888.

1106. Waitangi Tribunal, *The Pouakani Report*, pp 130–131.

1107. Waitangi Tribunal, *The Pouakani Report*, p 130.

1108. Waitangi Tribunal, *The Pouakani Report*, p 130.

1109. Waitangi Tribunal, *The Pouakani Report*, pp 130–131.

1110. Mitchell to Native Minister, 15 May 1886 (doc A53, vol 2, pp 915–916).

1111. Waitangi Tribunal, *The Pouakani Report*, pp 141–142.

1112. For full accounts of Ngāti Maniapoto attempts to address their concerns about the border between the Aotea and Taupouiatia blocks, and about the Government's failure to respect the 1883 boundary, see Waitangi Tribunal, *The Pouakani Report*, ch 8; doc A53, vol 2, sections 5.5–5.13; see also doc A78, p 1261.

Te Heuheu, even though he appeared to be taking instructions from and reporting to Ballance. Furthermore, the Central North Island Tribunal found that Wahanui could have done more to communicate with leaders of Ngāti Tūwharetoa and ensure they understood his purposes.<sup>1113</sup>

If the Crown did not manipulate Ngāti Tūwharetoa, the National Park and Central North Island Tribunals found that it did manipulate the court and its process. Between 1883 and 1885 it intervened to prevent the court from hearing applications within the petition area boundary; this suited its ends while it was negotiating with Te Rohe Pōtae leaders over the railway. In Ngāti Tūwharetoa territories alone, 108 applications were held back for a short time. Now, presented with a large application that crossed the boundary and served the Crown's newly adopted land purchasing goals by threatening to break Te Rohe Pōtae open, the Crown allowed the case to proceed with haste.<sup>1114</sup>

The Tribunal in its National Park and Central North Island reports found that the application could have been avoided, and the petition area boundary thereby preserved, if the Crown had enacted laws to allow Māori to determine title among themselves. It was reasonable, they concluded, for Te Rohe Pōtae leaders to want to do this, and it was entirely possible for the Government to give native committees the necessary powers.<sup>1115</sup> Once the Tauponuiatia application had been filed with the court, other tribes had no real choice but to follow suit if they wanted to protect their interests in their own tribal lands.<sup>1116</sup> By the end of December, a large area of upper Whanganui and Tūhua land was also before the court.<sup>1117</sup>

The Waimarino application, made by three Whanganui rangatira (including Toakohuru Tāwhirimatea) with assistance from the Crown's purchasing agents, covered a 490,000-acre area stretching from Taumarunui south to Owhango.<sup>1118</sup> As with the Tauponuiatia application, the Waimarino application overlapped the Te Rohe Pōtae external boundary, taking in some 88,000 acres of Tūhua land. This became the subject of a long-running grievance, after some Tūhua rangatira (mostly affiliated with Ngāti Hāua) were either excluded from or chose to stay away from the hearings, believing their lands to be protected by the 1883 boundary agreement.<sup>1119</sup>

1113. Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, pp 225–226, 234, 330, 332; Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 327–328, 332–333.

1114. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 330–331; Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, p 240.

1115. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 330–331; Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, pp 231–232, 291.

1116. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 332; see also Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, p 291.

1117. Document A50, pp 256–258; doc A79, pp 82–83; doc A78, pp 1249–1251.

1118. Document A50, pp 256–258; doc A79, pp 82–83; Waitangi Tribunal, *He Whiritaunoka*, vol 2, pp 587–588, 562.

1119. Document A50, pp 256–258, 299–303; doc A79, pp 82–83; doc A78, pp 1249–1251; Waitangi Tribunal, *He Whiritaunoka*, vol 2, p 648.

### 8.9.2.2 *The Kawhia Native Committee and further meetings with Ballance, November–December 1885*

While the Government had been readying itself to buy large areas of land along the railway route, the Kawhia Native Committee had been managing affairs within the district as best it could given its limited powers. In doing so, it appeared to be demonstrating to the Crown that it could manage the land title determination and administrative functions Ballance had promised it.

During its short time in existence, the committee had carried out a wide range of functions. It had used its arbitration powers to resolve disputes. It had advised Wahanui on his dealings with the Government. It had discussed how to manage prospecting activities – according to Marr, Ballance had kept his promise to delegate his powers to grant prospecting licenses to Ormsby, though we do not know exactly when or how this occurred.<sup>1120</sup> The committee had also assisted Government engineers to manage construction of the railway, and negotiated with Government officials over access to (and fees for) timber, gravel, coal, limestone, and other resources, and rents on land used for housing, grazing, and stores.<sup>1121</sup>

The committee collected fees for some of these activities, including land rents, but it held these in trust for the owners. In spite of the broad powers it was exercising – sometimes appearing to exceed what the Native Committees Act 1883 had anticipated – it had very little income of its own. At some point during 1885, Ballance provided for an annual payment £50 to Ormsby, without making it clear whether this was intended as a personal honorarium or to fund the committee's activities. Native Land Court judges at the time were paid £600 per year.<sup>1122</sup>

By the second half of 1885, the trig surveys were close to completion, providing sufficient detail to allow confirmation of title and to support subdivision. As noted in section 8.6.6, the boundary surveys had been substantially completed in 1884, except where the petition area overlapped the Mokau-Mohakatino and Mohakatino-Parininihi blocks, which surveyors insisted on excluding because they had already been before the court.<sup>1123</sup>

When Wahanui became aware of the exclusion of these blocks in September 1885 he wrote to Ballance insisting that there was 'but one boundary line from Parininihi to Raukumara' and that Mōkau was included. He said there were other blocks in the petition territory (in Taupō) that had been through the court, but remained within Te Rohe Pōtae (and, by inference, were therefore subject to his demands for Crown recognition of mana whakahaere). Wahanui therefore told Ballance to 'cease this sort of interference . . . lest there be trouble.'<sup>1124</sup> Ballance replied a few days later arguing that Wahanui was under a 'misapprehension', and the surveyors had only adjusted the boundary in order to comply with the court's order over Mohakatino-Parininihi.<sup>1125</sup>

1120. Document A78, pp 1211–1217; doc A79, pp 68, 107–108.

1121. Document A78, pp 1211–1217; doc A79, pp 68, 107–108.

1122. Document A71, p 104; doc A79(e), p 7.

1123. Document A78, pp 989–990, 1211–1212.

1124. Wahanui to Ballance, 25 September 1885 (doc A91, pp 756–757); doc A78, pp 989–990.

1125. Ballance to Wahanui, 3 October 1885 (doc A91, p 759).



Like Bryce, Ballance and Smith appear to have regarded the boundary as being prepared for the purpose of obtaining title to land blocks, whereas the explicit terms of the December 1883 agreement (section 8.5) were that the entire petition area boundary would be surveyed. From Wahanui's point of view, the boundary was not intended to delineate a land block, but to define an area in which Māori authority would prevail. So far as we can determine, the disagreement over the survey was never resolved, and as a result the Crown never fulfilled its commitment to survey the boundary of the 1883 petition area.

Faced with this encroachment on the petition area boundary, and with the Taupouiatia application, the Kawhia Native Committee began to consider how it should approach the task of determining land titles. As had been set out in the 1883 petition, its intention was to first secure title to the petition area (or whatever remained after counter-claims), and then to address hapū subdivision. In addressing these matters, the committee appears to have been proceeding in accordance with its legitimate expectation that the Crown would empower it to determine titles as a court of first instance, even though the Crown had done nothing to fulfil that promise.<sup>1126</sup>

Although the Crown had not respected the petition area boundary, either in its survey or in its handling of competing Native Land Court applications, it did at least appear to be willing to allow the committee a modest role in preparing land title applications for the court within territories that were not affected by the Taupouiatia and Waimarino claims. Late in 1885, it was still forwarding minor land claims to the committee for initial consideration, though the committee declined to address them until the boundary was finalised.<sup>1127</sup>

While the committee was considering its approach to land title determination, Ballance travelled to Kihikihi, arriving on 1 November – the day after he received the telegram informing him of the Taupouiatia application. Notwithstanding their concerns about Taupouiatia and Mohakatino-Parininihi, Te Rohe Pōtae Māori invited him to a major hui at Te Kūiti, where they planned to repay the £1,600 they had raised to pay for the external boundary survey.<sup>1128</sup> It appears that Te Rohe Pōtae leaders intended to show that they were honouring their side of the 1883 and 1885 agreements, and expected the Crown to honour its.

Ballance refused to attend, saying he was indisposed. Instead, he remained in Kihikihi for several days. He also refused to accept the £1,600, saying that the boundary was not yet complete. Some newspapers were sceptical about his claims of illness and suggested that he had other reasons for avoiding a large public gathering of Māori. In Marr's view, having encouraged Ngāti Tūwharetoa to make the Taupouiatia application, he could not now bring himself to attend a celebration of the petition area boundary, which he now knew would never be completed.<sup>1129</sup>

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1126. Document A78, pp 1213–1217; doc A79, pp 67–68.

1127. Document A78, pp 1211–1212.

1128. Document A78, pp 1219–1220.

1129. Document A78, pp 1222, 1241–1244.

Ballance did receive private visits from individual rangatira, including Wahanui, who discussed, among other things, the railway, surveys, roads, royalties to be charged for timber, and the Native Land Court. Shortly after one of these meetings, the *Waikato Times* published a report claiming that Wahanui now supported an application to the Native Land Court. Wahanui responded with a vehement denial, in which he would not allow the ‘treacherous’ and ‘evil’ court to deal with his lands.<sup>1130</sup> The reports nonetheless caused concern among the district’s Māori. Soon after the reports appeared, some rangatira from Ngāti Raukawa, Ngāti Matakore, and Ngāti Hauā passed a resolution to hand their lands to Tāwhiao. At least one of the rangatira involved subsequently pledged his support to Wahanui.<sup>1131</sup>

At its 1 December 1885 meeting, the Kawhia Native Committee debated whether to file an application to the Native Land Court for confirmation of the external boundary, on condition that internal subdivisions be left to the committee; or, alternatively, to resolve iwi and hapū claims first, before applying to the court for confirmation. The committee appears to have regarded itself as having the right to make initial determinations of title (in accordance with Ballance’s Kihikihi assurances) while also acknowledging the legal reality that only the Court could award title. Both Wahanui and Taonui were reported to have been at this meeting.<sup>1132</sup>

The committee decided to pursue the second option, at least for the time being. It was proposed that a hui be called to discuss these issues, and to invite the district’s communities to place their land claims before the committee. If iwi and hapū did not do so, Ormsby said, the committee would be left with no alternative but to take the whole petition area to court. There was general agreement among committee members that no iwi or hapū should act alone. The hui went ahead in April 1886 and will be discussed in section 8.9.3.<sup>1133</sup>

At the same meeting, the committee resolved to approve small numbers of Māori to prospect for gold within its territory, and to ask the Government to provide experienced and trustworthy men to assist. The Government subsequently provided 12 European prospectors who worked in the district alongside 12 Māori. No gold was found and most of the Europeans had left the district by May 1886, though some isolated prospective activities continued under the committee’s oversight for a few years after that.<sup>1134</sup> Marr reported that the 1 December 1885 meeting also made decisions about timber royalties (which had been the subject of a dispute between Māori and contractors); leasing of land for a railway tunnel; land needed for the railway outside the one chain already allocated; compensation for land taken or damaged by public works; coal mining; limestone and gravel charges; establishment of stores and butcheries inside Te Rohe Pōtae; a toll gate at

1130. Document A78, pp 1221–1223.

1131. Document A68, pp 56–57.

1132. ‘The King Country’, *Poverty Bay Herald*, 7 December 1885, p 2.

1133. Document A79, p 68; see also doc 78, pp 1212–1213.

1134. Document A71, pp 112–114; doc A78, p 1216.

Mangokewa; and a requirement that all buildings erected during railway work be left for subsequent Māori occupation.<sup>1135</sup>

### 8.9.2.3 *The lifting of the aukati, December 1885*

By the end of 1885, Te Rohe Pōtae leaders had little to show from their negotiations with the Crown. On the positive side, the Kawhia Licensing Area had been established, the Kawhia Native Committee was exercising responsibility for prospecting and resource management within the district, and railway construction had brought new economic opportunities.

But, two years after the December 1883 agreement with Bryce, the external boundary survey had still not been completed. And 10 months on from the Kihikihi hui, the Government was seemingly no closer to enacting laws that provided for mana whakahaere over the land title system or over land administration. Instead, the Government was pressing ahead with a land purchasing agenda and was contributing to pressures that were forcing Te Rohe Pōtae tribes into court.

Amid these difficulties, Te Rohe Pōtae leaders decided to formally lift the aukati. They signalled this by gifting their taiaha, Maungārongo (previously Mahuta), to the Crown. As Ballance had not come to the district as planned in November, the taiaha was instead handed to the Government agent, George Wilkinson, sometime late in the month. Maungārongo held great significance – it was a symbol of authority in the implementation of the aukati. Bryce had earlier asked for the taiaha in 1883, but had been refused, as the tribes were not yet ready to formally open their territory.<sup>1136</sup>

Ballance received the taiaha after returning to Wellington and lodged it in a glass display cabinet at Parliament Buildings for public viewing. The cabinet included an inscription describing the taiaha as ‘the emblem of the aukati’. The taiaha, the inscription read, ‘is celebrated as the emblem of the aukati and signified that the chief holding it had authority to kill any Europeans crossing the forbidden boundary. It was presented to the Government by Wahanui in token of the establishment of peace.’<sup>1137</sup> Ballance was mocked, however, by his political opponents, particularly Sir George Grey, who said he had been the victim of a practical joke.<sup>1138</sup> Though Ballance defended his understanding of the gift and its significance for the Crown’s political relations with Te Rohe Pōtae Māori, plans to display it in the parliamentary library were dropped. Within a few years, it was on display in the Otago Museum, where it remains today.<sup>1139</sup>

We have heard no wholly persuasive explanation for the decision by Te Rohe Pōtae leaders to lift the aukati at this time. Marr suggested that they believed they were entering a new phase in their relationship with the Crown, under which their

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1135. Document A78, p1215.

1136. Document A78, pp1224–1225.

1137. ‘Taiaha in Library’, 26 May 1886, NZPD, 1886, vol 54, p128 (doc A78, p1226).

1138. Document A78, p1226.

1139. Document A78, pp1227–1231.

boundary had been respected and their authority recognised.<sup>1140</sup> But we find this explanation unconvincing. The boundary survey remained incomplete, and the Crown had recently undermined it by accepting the Taupouiatia application. The Government, furthermore, had conspicuously failed to deliver anything but a fraction of the authority it had promised to Te Rohe Pōtae Māori. Te Rohe Pōtae leaders were quite openly unhappy with the Crown's actions at this time.

Other witnesses suggested that the withdrawal of the aukati and the gifting of Maungāorongo were gestures of peace, intended to symbolise the relationship that Te Rohe Pōtae leaders sought with the Crown. According to the Ngāti Maniapoto researcher Paul Meredith: 'The taiaha was to indicate the final withdrawal of the aukati and that from henceforth no more bloodshed would take place between the Europeans and Ngāti Maniapoto.'<sup>1141</sup> And the Ngāti Maniapoto claimant John Kaati said the gifting of taonga was 'mainly to do with relationships', particularly relationships in which there were reciprocal obligations, and symbolised the existence of an agreement between parties.<sup>1142</sup> Mr Kaati also told us that the change of name, from Mahuta to Maungāorongo, was likely intended to symbolise peace between the Crown and Māori: 'Kia mau tonu te rongō' (Let peace endure).<sup>1143</sup>

By lifting the aukati at this time, Wahanui may have been showing that Te Rohe Pōtae Māori were committed to peace with the Crown and settlers, while also reminding Ballance that the relationship involved reciprocal obligations – just as Te Rohe Pōtae leaders were keeping theirs, the Crown should keep its, including its December 1883 commitment to respect the boundary.

With the aukati now lifted, Te Rohe Pōtae Māori waited on the Government to introduce the reforms that had been promised, including reforms to the Court, increased authority for the Kawhia Native Committee, and a new system for enabling the collective authority of Māori land owners through block committees. Ballance circulated drafts of his new Land Disposition Bill and Native Land Court Bills, and held hui at Hastings and Whanganui in early 1886 to discuss the Bills. During these hui, Ballance made further promises to increase Māori self-government.<sup>1144</sup>

### 8.9.3 The end of Te Rohe Pōtae autonomy

As 1886 dawned, the autonomy that Te Rohe Pōtae leaders had sought through their interactions with the Crown was under considerable threat. The court was preparing to conduct hearings within the petition area; the Crown was stepping up its preparations for land purchasing; any prospect of the Crown granting additional powers to the Kawhia Native Committee was receding; and iwi and hapū leaders were increasingly turning their attention to the question of how to protect their own lands from competing claims.

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1140. Document A78, pp 1223–1224.

1141. Transcript 4.1.7, p 93.

1142. Transcript 4.1.7, p 150.

1143. Transcript 4.1.7, pp 183–184.

1144. Document A78, pp 1231–1232.

The Taupouiatia claim had effectively ended any Ngāti Tūwharetoa involvement in Te Rohe Pōtae negotiations, and the Waimarino application had split northern Whanganui iwi (some Tūhua leaders did not become aware of it until after hearings). Amid increasing pressure, Ngāti Maniapoto, Ngāti Raukawa, and Ngāti Hikairo attempted to remain unified, and the Kawhia Native Committee continued with its attempts to manage the district's affairs, including hapū land claims. But, by April, the district's leaders were facing the reality that the Native Land Court offered the only means available under the law by which they could secure title to their lands. With considerable reluctance, they filed a claim to the Native Land Court for title to the entire petition area.

The court began hearings in June.<sup>1145</sup> As the court's work got under way, the Kawhia Native Committee fell into a rapid decline. Without any role in considering land title applications, and without any formal authority to represent the district's owners in negotiations over land and resources, it had very little to do. It held its last meeting early in 1887. From 1887, what remained for Te Rohe Pōtae leaders was to negotiate the court process as well as they could, while protesting at the Crown's decision to send the Taupouiatia claim to a hearing and thereby break the 1883 agreement.

### **8.9.3.1 Further preparations for Crown purchasing, late 1885 to early 1886**

As 1885 ended, the Crown was stepping up its preparations for land purchasing in the railway area. New land purchase officers were appointed for the Whanganui and Taupō districts, and for 'the Kihikihi portion of the King Country'. At Taupō and Kihikihi, the role went to William Grace, whose brother Lawrence had advised Te Heuheu on the Taupouiatia Native Land Court application.<sup>1146</sup> Ballance later explained the appointment of more land purchase officers in the restriction zone as a reflection of the 'very great urgency' the Government now accorded its purchasing programme.<sup>1147</sup>

The *Evening Post*, in a December 1885 editorial, praised Ballance for his 'soothing' manner which had brought the 'fruit to perfection' – a metaphor for Māori lands which were now regarded as ripe for the picking. His support for the Kawhia Native Committee had helped to open up Te Rohe Pōtae, the newspaper said, and Ballance was now concentrating his efforts on encouraging Māori into the Court, knowing that once title was determined 'he can purchase what he wants.'<sup>1148</sup> The editorial described a significant change in Government policy towards Te Rohe Pōtae. Whereas it had previously held back Native Land Court applications and referred them to the Kawhia Native Committee, the Government now confirmed it would allow all applications to go before the Court.

It is not clear whether Te Rohe Pōtae leaders were directly informed of this change. On 9 December, presumably in response to the Taupouiatia application,

1145. Document A79, p111.

1146. Document A67, pp 177–179, 182–183; doc A78, pp 1247–1248.

1147. 'New Zealand Loan Bill', 20 July 1886, NZPD, vol 56, 1886, p 33 (doc A20, pp 90–91).

1148. Editorial, *Evening Post*, 8 December 1885, p 2; doc A78, pp 1231–1232.

Taonui wrote to Ballance asking that any further court applications affecting the external boundary be refused. The Under-Secretary of the Native Department, T W Lewis, minuted in reply:

I think no notice need be taken of Taonui's letter, but if any reply is sent, I suggest it would be that the government consider the native owners would act wisely bringing their lands into the Native Land Court for adjudication and any applications made will no doubt be [given] effect to.<sup>1149</sup>

As Husbands and Mitchell observed, 'the Crown's need to maintain this political relationship [with the Rohe Pōtae leaders] had been significantly diminished'. It had what it wanted – the railway – and no longer saw a need to maintain goodwill by holding back applications for title.<sup>1150</sup>

In turn, the Crown's approach at this time reflected its increased determination to push ahead with purchasing. Even as the Tauponuiatia and Waimarino blocks went through the court, Crown agents were actively seeking opportunities to buy shares in Māori land.<sup>1151</sup> In April, the Crown purchase agent William Butler began making offers to buy shares in the Tūhua region, thereby alerting the region's leaders that their lands had been through the court.<sup>1152</sup>

### **8.9.3.2 *The Kawhia Native Committee's consideration of land title applications, April 1886***

While the Crown was advancing its land purchasing goals, the Kawhia Native Committee was continuing to attempt to consider land title applications within its territory. From early December to early February, the committee had received six applications to investigate ownership of individual blocks. These were Mangamahoe, Te Kopua, Kawhia, Te Karaka, Okoruhe, and Whenuahou.<sup>1153</sup> The committee met on 6 April 1886. It decided to defer consideration of these claims until after the hui to be held later that month, which would consider whether to file an application for title to what remained of the 1883 petition area after Tauponuiatia and other blocks already before the court had been excluded.<sup>1154</sup>

By this time, the leaders of Ngāti Maniapoto, Ngāti Hikairo, and Ngāti Raukawa were feeling increasing pressure to take their lands to the court in order to secure title to their tribal territories. In February, March, and April, Ngāti Raukawa leaders had filed three applications for title to Wharepūhunga lands. Two of these applications were signed by Hitiri Te Paerata, who had reluctantly come to accept the prospect that each tribe would need to protect its own interests.<sup>1155</sup> Other title applications were received from Waikato, Ngāti Hikairo, and Ngāti Maniapoto

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1149. Hikaka to Ballance, 9 December 1885 (doc A79, p 85).

1150. Document A79, p 85.

1151. Document A78, pp 1250, 1258–1259.

1152. Document A78, p 1250.

1153. Document A79, pp 69–70.

1154. Document A79, pp 69–70.

1155. Like Taonui, Te Paerata had been dismayed by the Tauponuiatia application: doc A79, p 81.

hapū, and focused particularly on the traditionally contested northern parts of the district.<sup>1156</sup>

The committee also continued to oversee gold prospecting activities within the district. In January, groups of Māori and European prospectors had begun work in various parts of the district. Some immediately struck opposition from local communities; Ormsby and Wahanui intervened to smooth things over, assuring the owners they would share in the wealth from any gold that was discovered. As noted in section 8.9.2, no gold was ever found and prospecting activity quickly dwindled.<sup>1157</sup>

### **8.9.3.3 Ballance's visit to Te Rohe Pōtae, April 1886**

Soon after the Kawhia Native Committee decided to defer its consideration of land title applications in order to secure the remaining external boundary, Ballance visited the district. The visit was part of another North Island tour, during which he sought to persuade Māori to support his revived Māori land law proposals and to bring their lands before the Native Land Court.

In Te Rohe Pōtae, Ballance met with Wahanui and other leaders on 15 April 1886 at Te Kōpua. By this time, they were clearly very frustrated at the lack of progress on the legislative reforms they had sought. Wahanui addressed the meeting very briefly, asking Ballance to 'see about our petition,' adding that if Ballance would not do so 'I have nothing more to say.'<sup>1158</sup> John Ormsby spoke at greater length, telling Ballance that a hui would be held on April 20 so Te Rohe Pōtae Māori could decide what to do about their lands:

Many of them would like their titles to remain as they were; as they received them from their ancestors; but they found it to be now impossible that things can remain in their old state. An investigation into the ownership and title of their lands must be made. They would like to investigate the title and settle it amongst themselves by the native committees, but found they had not the power to do so, and they were now asking themselves what they ought to do.<sup>1159</sup>

Ormsby said Te Rohe Pōtae people had laid all of their land difficulties before the Government, but found it 'gave us no remedy'; they had granted the Government land for the railway and roads, but in return had received 'nothing, or very little'. He now sought Ballance's help to find 'some policy for this district.'<sup>1160</sup> If Te Rohe Pōtae Māori placed their lands before the court, Ormsby said, he wanted to be sure that its processes would be fair, and the judge would understand te reo Māori.<sup>1161</sup> In effect, Ormsby was saying that the Government's broken promises had left the

1156. Document A79, pp 83–84.

1157. Document A71, pp 113–114.

1158. 'Mr Ballance and the Natives: Important Meetings with Ngati Maniapoto and the "King"', *Waikato Times*, 20 April 1886, p 4; doc A41, p 193; doc A78, pp 1235–1238.

1159. Document A41, p 193.

1160. Document A41, p 193.

1161. Document A41, p 193.

remaining Te Rohe Pōtae tribes with no option but to place their lands before the court. Whereas Te Rohe Pōtae Māori had previously sought Crown recognition of their mana whakahaere, they now could do no more than ask for a court that would not do too much harm.

Ballance, in response, thanked the Kawhia Native Committee for its ‘assistance’ with the railway surveys and gold prospecting, and thanked Ngāti Maniapoto for the railway land.<sup>1162</sup> He said he would ‘like to give far more extended powers to the native committees, and in fact attempted to in Parliament, but was prevented’, due to the ‘great pressure of other business’. This was a tacit admission that the Government had either been unwilling to honour the Kihikihi agreement, or at the very least had refused to make it a priority.<sup>1163</sup> Ballance’s argument that it had been prevented by pressure of other business was not credible; he had introduced new legislative proposals for Māori land administration (the Native Land Disposition Bill 1885) and for the court (the Native Land Court Consolidation Bill 1885), and had simply not included any provision to empower native committees.

Ballance promised to increase native committee powers during the coming parliamentary session, allowing the committees to ‘settle all civil cases’. But he offered no hope that the committees would gain additional powers to determine land titles. Offering those powers was difficult, he said, because of ‘jealousy’ among Maori.<sup>1164</sup> Acknowledging that this meant title could be determined only through the court, he gave some assurances that court processes would be improved. Specifically:

- ▶ the judge would speak te reo Māori
- ▶ no ‘objectionable’ person or person with a conflict of interest would be allowed to act as an assessor or interpreter
- ▶ any land that was sold would go ‘to the highest bidder’, and would be ‘fairly bought, and at a fair price’
- ▶ the Crown would not begin to negotiate land purchases until the land had ‘passed through the court’ and ‘the owners are entitled to sell.’<sup>1165</sup>

Ballance, here, appeared to be setting aside the promises he had made at Kihikihi, and replacing them with a new and much more limited set of commitments about land rights and improvements in court procedure. As we will see in chapter 11, the Crown would not even honour all of these.

#### **8.9.3.4 *Te Rohe Pōtae Native Land Court application, April 1886***

Notwithstanding the outcome of this meeting, the Kawhia Committee continued to consider land title applications, even though it had no power to award title. On 20 April, it began to hear the claim of Hariwhenua (Walter) Searancke to the

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1162. Document A41, p 193.

1163. Document A41, p 193.

1164. Document A41, p 193.

1165. Document A41, p 193.



Mangamahoe block, but the hearing was deferred so that all parties could assemble their cases.<sup>1166</sup>

The following day, a hui at Te Kōpua resolved to place ‘all the tribal lands included in the boundary survey’ before the Native Land Court, so that the external boundary, or what remained of it, could at last be confirmed. The *Waikato Times* reported that there was only ‘slight opposition.’<sup>1167</sup> Newspaper reports gave few details about who attended, except that they comprised Ngāti Maniapoto ‘and other tribes’, and also – at Ormsby’s invitation – included members of Tāwhiao’s council.<sup>1168</sup>

On 28 April 1886, Te Rohe Pōtae leaders made an application to take their lands to the court.<sup>1169</sup> The application covered the entire 3.5 million acres described in the original 1883 survey agreement and court application, and therefore overlapped the Taupouniatia and Waimarino blocks, as well as the Mokau-Mohakatino and Mohakatino-Parininihi blocks, and pre-1865 Crown purchases in the Mokau-Awakino area. Once those areas were removed, a much smaller area – totalling about 1.6 million acres – would remain for the court to adjudicate on. This would become known as the Aotea-Rohe Potae block.<sup>1170</sup> The application was signed by leading Ngāti Maniapoto rangatira – Wahanui, Kaahu, Taonui, Tukorehu, and Hōne Omipi (John Ormsby) and also by the Ngāti Hikairo rangatira Hōne Te One.<sup>1171</sup> Newspapers reported it as representing ‘the Maniapoto and several other leading tribes.’<sup>1172</sup>

Shortly before they had made this application, Taonui and other Ngāti Maniapoto leaders had filed an application for rehearing of the Tūhua, Hurakia, and Maraeroa parts of Taupouniatia, arguing faults in the court’s procedures and the substance of its decisions.<sup>1173</sup> As Stirling observed in his Taupō–Kaingaroa overview report, these blocks would become the subject of ‘protracted and bitter’ legal disputes in subsequent years, involving many more applications for rehearings, and ultimately leading to the redrawing of the Taupouniatia north-western boundary.<sup>1174</sup>

More broadly, throughout the remainder of the decade, the leaders of Ngāti Maniapoto and Ngāti Raukawa were to mount a series of protests against what they saw as the Crown’s betrayal of their March and December 1883 agreements, under which the Crown had agreed to survey the external boundary and take no further

1166. Document A79, p 69.

1167. ‘The Ngati Maniapoto Meeting at Kopua,’ *Waikato Times*, 27 April 1886, p 2; doc A68, pp 72–73.

1168. ‘The King Natives: Their Lands to be Put Through the Court,’ *Auckland Star*, 29 April 1886, p 2; doc A68, pp 72–73.

1169. Document A78, p 1268.

1170. Document A79, pp 24–25, 35, 69–70, 87–88.

1171. Document A79, p 35.

1172. Document A78, p 1269.

1173. Waitangi Tribunal, *The Pouakani Report*, pp 134, 158; doc A53, vol 2, p 994.

1174. Waitangi Tribunal, *The Pouakani Report*, pp 134, 158; doc A53, vol 2, p 994.

action within it except with their consent.<sup>1175</sup> Early in 1887 they told Ballance they would not pay the £1,600 survey fees, as the Crown had not honoured the original agreement.<sup>1176</sup> The minutes of the 1889 Taupouiatia commission, which investigated some of the concerns of Ngāti Maniapoto and Ngāti Raukawa, recorded that Ngāti Maniapoto leaders regarded the 1883 agreement as ‘equal to a treaty’ and believed they had entered into it in good faith, on the understanding that it would ‘not be broken by Government’.<sup>1177</sup>

Once the Aotea block hearings got under way, the Crown wasted little time in assigning Wilkinson to monitor the proceedings and report on progress, with the aim of determining who the landowners were so that they might later be approached to sell their shares. Wilkinson subsequently assumed responsibility for land purchasing in the block, as discussed in chapter 11.<sup>1178</sup> The Kawhia Native Committee, meanwhile, pressed ahead with its own title hearings. It considered the Mangamahoe claim, reaching a decision on 2 June. At the same meeting, the committee resolved to build a whare at Ōtorohanga to hear more applications. As Husbands and Mitchell observed, notwithstanding the Government’s failure to grant it any additional powers, the committee evidently believed that once the court had determined the external boundary it would be able to consider the hapū subdivisions, at least in the first instance.<sup>1179</sup>

### 8.9.3.5 *The Native Land Administration Act 1886, August 1886*

When Ballance returned to Wellington, he placed his latest land administration Bill before the House. Like his previous Bills, it delivered little of what Māori had sought. In most respects, it replicated the previous year’s Native Land Disposition Bill, which Wahanui and many other Māori leaders had opposed. It provided for elected owner committees to decide whether land would be sold or leased. Committees could make decisions by majority, meaning there was no requirement for all owners to consent, though dissenting owners could apply to have their shares partitioned out.<sup>1180</sup> All sales and leases would be managed by a Crown-appointed commissioner – there would no longer be boards with Māori representation. Owners (individually or collectively) could sell or lease directly to the Crown, so long as a meeting of owners was first called. The Act implied, but did not say specifically, that the meeting of owners would have to consent to

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1175. Waitangi Tribunal, *The Pouakani Report*, pp 134, 158; doc A53, vol 2, p 994. For full accounts of Ngāti Maniapoto’s attempts to address their concerns about the border between the Aotea and Taupouiatia blocks, and about the Government’s failure to respect the 1883 boundary, see Waitangi Tribunal, *The Pouakani Report*, chapter 8, and doc A53, vol 2, sections 5.5–5.13; see also doc A78, p 1261.

1176. ‘The Native Minister at Otorohanga’, *Waikato Times*, 27 January 1887, p 3; Mr Ballance at Otorohanga, *Waikato Times*, 29 January 1887, p 3.

1177. Waitangi Tribunal, *The Pouakani Report*, pp 139–140.

1178. Document A67, pp 177–179, 182–183; doc A78, pp 1247–1248.

1179. Document A79, pp 69–70.

1180. Native Land Administration Bill 1886 (25–1), cl 17, 18.

the transaction.<sup>1181</sup> The Bill envisaged no role for native committees and made no attempt to increase their powers. Nor did Ballance introduce any other legislation during 1886 or 1887 to fulfil his Kihikihi promise that committees would receive greater powers.

During debates in the House, Ballance emphasised his hope that Māori would soon hand their remaining 13 million acres over to the commissioner, so those lands could be settled, bringing ‘moral and pecuniary advantage’ to the owners. Opponents argued that it would put an end to sales or leases of Māori land.<sup>1182</sup> The Bill passed its third reading on 9 August 1886, under the title Native Land Administration Act 1886.

Other Tribunals have considered this Act, and the consensus is that it represented a wasted opportunity to establish a Treaty-compliant land administration system. They have found that Ballance had almost certainly consulted more than any previous Native Minister, and the Act went further than any previous legislation towards providing a mechanism by which owners could collectively decide about land transactions. But the Act also contained critical flaws. It placed too much control in the hands of the Crown-appointed commissioner and elected owner committees which were not then accountable to owners; and it provided no role for native committees, despite Ballance’s repeated promises. The Central North Island Tribunal concluded that the ‘whole concept of the Act was defeated by not giving proper effect to the tino rangatiratanga of Maori communities.’ It found that the Crown had breached the Treaty by failing to enact the laws that Māori had sought.<sup>1183</sup>

In our view, the Act was compromised because the Crown was more focused on obtaining land for settlement than it was on genuinely providing for tino rangatiratanga or mana whakahaere. A week after it was passed, the House authorised the Government’s plans to spend £100,000 on land purchasing with the restriction zone. Specifically, the North Island Main Trunk Railway Loan Application Act 1886 provided that £100,000 out of the £1 million railway loan could be used to purchase land within the restriction zone.<sup>1184</sup> Of the land purchased under this Act, 2.5 per cent was to be set aside for schools, hospitals and other public services, and the remainder ‘shall constitute a railway reserve, the proceeds of which

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1181. Native Land Administration Bill 1886 (25–1), cl 3, 4–6, 20. Clause 3 provided that ‘owner’ meant ‘any native owner of land’. Clauses 4–6 provided for the Crown to appoint commissioners to manage all private land transactions. Clause 20 provided that: ‘Owners may convey or demise land to the Crown without or notwithstanding the appointment of a Committee. A Committee may convey or demise land to the Crown. But it shall be a condition precedent to any such sale or lease that a meeting of the owners of the land the subject thereof shall have been convened by the Commissioner for the purpose of discussing the terms of such sale or lease, and that the time fixed for such meeting shall have passed.’

1182. ‘Native Land Administration Bill’, NZPD, 1886, vol 55, pp 311–312 (doc A41, pp 198–199).

1183. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 354–356. Also see Waitangi Tribunal, *The Hauraki Report*, vol 2, pp 760–761; Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, p 232–233; Waitangi Tribunal, *Tauranga Moana 1886–2006*, p 38; Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 2, p 475.

1184. North Island Main Trunk Railway Loan Application Act 1886, ss 4, 5; doc A41, p 202.

shall be applied . . . in the construction of the said Main Trunk Railway, and of branch railways, tramways, or roads in connection therewith.<sup>1185</sup> Introducing this legislation to the House, Vogel explained that an ‘endowment’ was being established ‘for the purpose of opening up the country adjacent to the North Island Trunk Railway’, and that ‘proceeds of the sale of the land should be specifically tied down for the proper purposes of the railway’.<sup>1186</sup> In other words, the railway was to be funded through the profits from the purchase and onsale of Māori land. By the time this Act was in force, the Crown was already buying land within the 1883 petition area. During the 1886/87 fiscal year, the Crown acquired 400,000 acres of the 480,000-acre Waimarino block. Of that, a significant portion was within the petition area, though none was within this inquiry district.<sup>1187</sup>

### 8.9.3.6 *The decline of the Kawhia Native Committee, 1886–87*

In October 1886, the Native Land Court issued its judgment on the Aotea-Rohe Potae block, awarding almost the entire 1.6 million acres to claimants from the five tribes while setting aside a few very small areas for Waikato counter-claimants. The new block was known as the Rohe-Potae block. The following year the court began to turn its attention to tribal and hapū subdivisions.<sup>1188</sup> This was the work that the Kawhia Native Committee had expected to carry out, in accordance with the numerous discussions that Te Rohe Pōtae leaders had with Bryce and Ballance. But, once the Mangamahoe case was disposed of, the committee played almost no role.<sup>1189</sup> Instead, as we will discuss in chapter 10, informal tribal and hapū committees played a significant role in arranging subdivisions outside the court, but the Kawhia Native Committee played none.

The committee held its final substantive meeting in October 1886, and met again only once more, in February 1887, to confirm the minutes of the previous meeting.<sup>1190</sup> Ormsby continued, for some years afterwards, to sign letters as chair of the committee and to impose levies on shops and other economic activities. But the committee no longer functioned as a forum for dispute resolution, or as a forum for determining land titles, or as an effective body for negotiating resource management arrangements.<sup>1191</sup> The attempts by Te Rohe Pōtae leaders to mould this Crown-designed committee into a body that could serve their purposes had come to nothing.

These attempts had come to nothing in large part because of Crown actions. The committee had not been set up to succeed. It covered a very large and disparate area. It was not constituted in a manner that guaranteed equitable representation

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1185. North Island Main Trunk Railway Loan Application Act 1886, s 5; doc A67, pp 120, 132.

1186. ‘North Island Main Trunk Railway Loan Application Bill’, 28 July 1886, NZPD, vol 56, p 314 (doc A67, p 121).

1187. ‘Lands Purchased and Leased from Natives in the North Island’, 31 March 1887, AJHR, 1887, c-3; doc A90, pp 60–61; Waitangi Tribunal, *He Whiritaunoka*, vol 2, p 600.

1188. Document A79, pp 133, 159; doc A60, p 86.

1189. Document A79, pp 65–66, 186–188.

1190. Document A79, pp 65–66, 186–188.

1191. Document A79, pp 65–66, 186–188.

for all of the district's iwi and hapū, and therefore could not count on their support, and this was exacerbated by Wilkinson's very casual approach to committee elections. It lacked resources to conduct its duties effectively. And, above all, it lacked the statutory powers it needed to determine land titles, administer land on owners' behalf, and otherwise administer the district's affairs. Te Rohe Pōtae leaders had repeatedly called for the committee to be granted additional powers so it could effectively carry out administrative functions, dispute resolution, land title determination, and resource management duties. They had also called for it to be resourced properly.

The Crown promised to deliver additional powers, but repeatedly failed to act. As a result, the committee could never be truly effective; indeed, Bryce, who had introduced the legislation that established them, acknowledged in 1885 that he had never intended them to determine titles or to exercise powers of self-government.<sup>1192</sup> In the words of the 1891 Native Land Laws commission, the Native Committees Act 1883 was 'a hollow shell the object of which it is difficult to see. It mocked and still mocks the Natives with a semblance of authority.'<sup>1193</sup>

The arrival of the Native Land Court, and the committee's corresponding decline, marked the beginning of the end for Te Rohe Pōtae independence. After years of negotiations, numerous entirely legitimate requests for the Crown to provide for self-determination in respect of land and other matters, and numerous Crown promises made and broken, the Crown had won most of what it sought. The railway was being built; the district's land and people were now subject to the colony's law; and preparations were well under way for the Crown to buy large areas of land for settlement.

Te Rohe Pōtae leaders, on the other hand, had won little. They had demanded Crown recognition for their autonomy, Crown protection for their land, and freedom from the 'evils' that had befallen other districts through the Native Land Court and laws that supported alienation of Māori land. As we will see in subsequent chapters, the 'evils' arrived nonetheless. The boundary that Te Rohe Pōtae leaders had defined in 1883 would never be fully recognised, or given any statutory protection. Within a decade, title to most Te Rohe Pōtae lands would be individualised; much of the land would be sold; tribal and hapū authority would be seriously undermined, and many of the leaders who had ushered the district through its engagement with the Crown would have passed away. Ultimately, as we will see in a later chapter, even the liquor prohibition would not hold.

#### 8.9.4 Treaty analysis and findings

The Crown conceded that it had 'failed to consult or re-engage with' Te Rohe Pōtae Māori 'when it departed from representations it had made in February 1885' at Kihikihi. Those representations included, among other things, empowering native committees to play a greater role in Native Land Court processes and provide for

1192. 'Native Lands Settlement Bill', 1 November 1884, NZPD, vol 50, pp 321–322.

1193. 'Report of the Commission appointed to inquire into the subject of Native Land Laws', AJHR, 1891, G-1, p xvi; doc A67, p 119; doc A79, p 188.

‘a measure of self-government’. By failing to re-engage before departing from those representations, the Crown submitted, it had breached the Treaty and its principles.<sup>1194</sup> For various reasons described below, we consider that the Crown’s concessions do not adequately describe the scale of the Treaty breaches that occurred in this period.

The Crown’s actions can be contrasted with those of Te Rohe Pōtae Māori, who, despite the Crown’s repeated broken promises, continued to provide assistance to the Government in the construction of the railway and on other matters. They continued to make their views known, opposing the Native Land Court, opposing some of Ballance’s land law reforms, and advocating for the Government to increase the powers of native committees. It was in this context that they proceeded to lift the aukati in December 1885 and make the symbolic gifting of the taiaha Maungārongo.

What did it mean to lift the aukati? Given the circumstances – the Crown’s failure to enact the laws it had promised or to complete its survey of the external boundary, and its acceptance of a Native Land Court application encroaching on the boundary – we do not think that the lifting of the aukati can be read as a sign of Te Rohe Pōtae leaders’ confidence in their relationship with the Crown. Nor, by any means, do we see it as an act of submission to the Crown’s authority, as Bryce had anticipated. Rather, as discussed in section 8.9.2, it appears to us that Te Rohe Pōtae leaders were sending the Crown a message – that they would honour their side of the bargain, even if the Crown would not. As we have noted before, their word was their bond and could not be broken. By handing over Maungārongo, they signalled their commitment to peace and also their continued determination to uphold the agreements they had made with the Crown. In practical terms, lifting the aukati meant that Te Rohe Pōtae Māori would no longer police the borders of their rohe as they had. The Crown, however, continued to have an opportunity to respect those borders, by not sending the Taupouiatia Native Land Court application to court and instead allowing Te Rohe Pōtae leaders to determine iwi boundaries among themselves.

The goal of Te Rohe Pōtae Māori, carefully laid out in various communications with the Crown, had been to substitute the aukati with a legally sanctioned boundary defining Te Rohe Pōtae, within which their mana whakahaere would be provided for as a matter of law, and actively protected under Crown authority. This was their entitlement under the Treaty, which provided for the Crown and Māori to exercise distinct but overlapping spheres of authority. The Crown acquired a right to govern and make law, but it was fettered by the right of Māori to retain their tino rangatiratanga over lands, resources, and people. Wherever the Crown’s authority overlapped that of Māori, the Crown was obliged to use its powers to actively protect Māori authority. Through these provisions, the Treaty was meant to provide a place for both Māori and settlers in which each could retain their own cultures and their own systems of law and authority, while moving forward in a manner that brought mutual benefit.

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1194. Submission 3.4.307, p 25.

That is not the course that the Crown adopted. After the Kihikihi hui, it set a course in which its priorities were completion and funding of the railway, and settlement of the district's lands. There was no place in its vision for autonomous Māori communities able to determine the pace, nature, and volume of the settlement that took place. As the Crown moved progressively further from its 1883 and 1885 agreements, the quest by Te Rohe Pōtae Māori for Crown recognition of their mana whakahaere faded. The Tauponuiatia hearing in January 1886 broke open the boundary and further tested the relationship between Te Rohe Pōtae's tribes. Tribes other than Ngāti Tūwharetoa then had little option but to turn to the court themselves.

Te Rohe Pōtae leaders did not turn to the court, as the Crown suggested, because 'they wished to participate more fully in the colonial economy'; they could have done that under a system that allowed them to determine title among themselves. Nor did they see the court application as a desirable step 'given tribal rivalries that existed and the reality that Ngāti Tūwharetoa and Whanganui chiefs, amongst other neighbours, had already applied for investigation of title to the Court'.<sup>1195</sup> They applied simply because they had run out of other options – and they had run out of other options because the Crown had failed to empower them as it had said it would.

When Parliament resumed, Ballance introduced legislation that once again failed to deliver what Te Rohe Pōtae Māori had sought, let alone what had been agreed. As noted in section 8.9.3, other Tribunals have found that the Act represented a wasted opportunity to establish a Treaty-compliant land administration system. It went further than any previous legislation towards providing a mechanism by which hapū could collectively decide about land transactions, but it also contained critical flaws, which included placing too much control in the hands of the Crown-appointed commissioner, and elected owner committees which were not then accountable to owners, and failing to provide increased powers for native committees despite repeated promises. The Central North Island Tribunal concluded that the Act failed to give proper effect to the tino rangatiratanga of Māori communities, and we agree.<sup>1196</sup>

Although Te Rohe Pōtae Māori continued in their attempts to engage the Crown over the Native Land Court, the powers of native committees, and control of their lands, the Crown did not respond. It had attained its objectives. The railway was under construction, the land was proceeding through the court, and Crown purchasing – a more recent addition to the Crown's stated objectives for Te Rohe Pōtae – could commence once title had been determined and owners had been named.

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1195. Submission 3.4.301, p71.

1196. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp354–356. Also see Waitangi Tribunal, *The Hauraki Report*, vol 2, pp760–761; Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, pp232–233; Waitangi Tribunal, *Tauranga Moana 1886–2006*, p38; Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 2, p475.

As discussed in chapter 3, the Treaty created a partnership between Māori and the Crown, in which there were two spheres of authority – *kāwanatanga* and *tino rangatiratanga* – which would, at times, inevitably overlap. The Treaty therefore required both partners to negotiate openly and in good faith to determine how *kāwanatanga* and *tino rangatiratanga* might interact at a practical level, including the legal and institutional arrangements that might be necessary.

Partnership had effectively lain dormant in Te Rohe Pōtae since the Treaty was entered into and came into effect in 1840. There was little engagement for more than 20 years, and then there was war, followed by an uneasy peace in which Māori attempted to protect their independence from Crown and settler encroachment. As we have explained, we consider that the agreement reached between Te Rohe Pōtae Māori and the Crown in March 1883 established a basis upon which the Crown and Te Rohe Pōtae Māori could develop their relationship as Treaty partners in a manner that provided for the exercise of both *kāwanatanga* and *tino rangatiratanga*, in particular by the Crown recognising the external boundary and using its lawmaking powers to recognise and protect *mana whakahaere* within those boundaries.

But the Crown failed to respect the agreement that had been set in place in March 1883, which was faithfully upheld by Te Rohe Pōtae Māori in subsequent months and years. Having agreed to respect the external boundary and do no more towards the railway or land title determination without consent, the Crown then regularly and unilaterally pushed forward with its railway and settlement plans, and ultimately chose to disregard the boundary altogether when that suited its agenda. It did so while conspicuously failing to enact laws that guaranteed the *mana whakahaere* of Te Rohe Pōtae people. Having turned to the Crown in the hope that it might protect their lands and authority, Te Rohe Pōtae leaders had come to see that neither would be forthcoming. As Ormsby had put it, the Crown ‘gave us no remedy’; Ngāti Maniapoto had given roads and the railway and had abstained from appealing to the Crown in England when Tāwhiao had gone. In return, it had got ‘nothing, or very little.’<sup>1197</sup>

From the end of 1885, the Crown largely disengaged from Te Rohe Pōtae Māori as it pushed ahead with its railway, land buying, and land settlement plans. Having sent Ministers when it needed something from Māori, the Crown now left its agents to deal with the Kawhia Native Committee. The district’s leaders were left to hand the *taiaha Maungārongo* to Wilkinson. Te Rohe Pōtae Māori had entered negotiations with the Crown while they still retained considerable power, because they possessed and controlled access to their lands and could therefore say no to the railway. At that time, there was potential for them and the Crown to reach agreements that brought the railway and settlement to the district without compromising the authority of Te Rohe Pōtae communities. But that did not occur, and it did not occur because of the Crown’s unwillingness to give full recognition to the rights of Te Rohe Pōtae Māori.

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1197. Mr Ballance and the Natives, *Waikato Times*, 20 April 1886, p 2 (doc A41, p 193).



Many of our specific findings relate to the way in which the Crown failed in its duty to act honourably and in good faith and therefore breached the principle of partnership. This was tied to its underlying failure to give effect to the mana whakahaere of Te Rohe Pōtae Māori. We will describe the specific breaches below.

**8.9.4.1 *Did the Crown breach its agreement to confirm the external boundary before considering tribal divisions?***

As discussed in section 8.5, in December 1883 the Crown further agreed with Te Rohe Pōtae leaders that:

- ▶ the external boundary (as set out in the 1883 petition) would be surveyed, at a cost not exceeding £1,600; and
- ▶ that competing Native Land Court applications would be held back until the external boundary had been confirmed.

These agreements were not fulfilled. The Crown's surveyors refused to survey the Mōkau parts of the external boundary on the grounds that the Mokau-Mohakatino and Mohakatino-Parininihi blocks had already been through the court. They made this decision at some point in mid-1884 without consulting Wahanui or other iwi leaders. When Wahanui heard of it late in 1885, he expressed his considerable displeasure. So far as we can determine, the south-western corner of the 1883 petition area was never surveyed in accordance with the agreement.

By following this course, the Crown was insisting that its land title determination processes would take precedence over the clearly expressed wishes of Te Rohe Pōtae leaders with respect to the boundary survey, and over the terms of the 1883 agreements on that matter. This was a plain breach of their tino rangatiratanga, and of the Crown's duty to act honourably and in good faith in its relationships with Te Rohe Pōtae Māori. If the Crown did not wish to complete the survey, or did not believe that it could, it was obliged to reopen negotiations with Te Rohe Pōtae leaders so they could make informed decisions. Its failure to do so meant that Te Rohe Pōtae leaders entered subsequent negotiations – including the February 1885 negotiations at Kihikihi – under the impression that their boundary would be honoured. Had they known that it was not to be, they might have made different decisions. Ultimately, this action meant that the promised boundary survey was never completed.

The Crown did complete its survey of the eastern boundary, but then set it aside, accepting the Taupouiatia and Waimarino applications that encroached on large areas within the district. The Crown acknowledged that it supported both the Taupouiatia and Waimarino applications, but submitted that its actions 'must be assessed against the Four-Tribes' decision in 1884 not to apply to the Native Land Court for an external boundary survey, contrary to the undertaking it made in December 1883.<sup>1198</sup> As explained in section 8.6.6.3, the 'four tribes' did not withdraw their December 1883 application. Rather, Rewi withdrew his name from the application, while other leaders continued to uphold their agreement

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1198. Submission 3.4.6, p14.

with the Crown.<sup>1199</sup> Then, in June 1884, a section of Ngāti Maniapoto made decisions to withdraw a handful of minor applications they had made to the court prior to the December 1883 boundary application.<sup>1200</sup> The Crown's agent, George Wilkinson, explained at the time that they intended the Kawhia Native Committee deal with their applications before the court did;<sup>1201</sup> and John Ormsby later confirmed to Ballance that this was the case.<sup>1202</sup> These were applications that Bryce had agreed to hold back, and their withdrawal was entirely in accordance with the December 1883 agreement, under which the Te Rohe Pōtae Māori understood that the boundary would be surveyed, a Crown grant would be issued, and the Kawhia Native Committee would then be able to inquire into iwi and hapū titles. If the four tribes had in fact withdrawn their boundary application, why would they have later offered to pay for the survey, and why would Wahanui have expressed frustration at the Crown's unilateral decision to exclude Mokau-Mohakatino and Mohakatino-Parininihi from the survey, and why would Te Heuheu have continued to be concerned about the boundary late in 1885?

Even if the four tribes had made such a decision, we cannot see how it could have been relevant to the Crown's later decision to support the Taupouniatia and Waimarino applications. Sixteen months had elapsed between the two events, during which time the Crown held back applications in Te Rohe Pōtae (from non-Maniapoto claimants such as Ngāti Hauā) and in Taupouniatia. As Ballance himself said, the Government supported the Taupouniatia application because it feared that the Ngāti Tūwharetoa – responding to the failure of Te Rohe Pōtae leaders to win meaningful concessions from the Crown – would otherwise place their lands under the King's mana.

The National Park and Central North Island Tribunals have considered the events leading to the Taupouniatia application in some depth. Those Tribunals concluded that the Taupouniatia application could have easily been avoided if the Crown had empowered Māori to determine land titles among themselves, and the external boundary could therefore have been preserved, at least until the tribes agreed among themselves to a subdivision.<sup>1203</sup> As the Central North Island Tribunal put it:

In our view, the Crown could and should have met the reasonable demands of the Rohe Potae leaders. It should have surveyed the external boundary of the Kingitanga lands, and then given legal powers for the tribes to decide their own titles inside the rohe. Had it done so, and made it clear that it was doing so, then Te Heuheu's application to the Native Land Court would not have been necessary. Also, the Taupo

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1199. Rewi Maniapoto letter, 26 January 1884 (doc A78, p1018).

1200. Document A79, p77.

1201. Wilkinson to Bryce, 4 June 1884 (doc A41, p140; doc A90, p46).

1202. 'Notes of Native Meetings', AJHR, 1885, G-1, p18.

1203. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp330–331; Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, pp 231–232, 291.

interests of Ngāti Raukawa and Ngāti Maniapoto would have been properly protected, and the tribes would have negotiated and decided boundaries for the new purpose of leasing land.<sup>1204</sup>

The obvious means of achieving this, the Tribunal found, was by properly empowering native committees, and then reconstituting the Kawhia Native Committee to ensure that it was genuinely representative of all iwi and hapū within the boundary. Once iwi boundaries had been determined, the Tribunal continued, hapū boundaries could then have been determined by iwi committees and registered so they had legal protection.<sup>1205</sup> This was almost exactly what Te Rohe Pōtae leaders had sought and been consistently denied. The Crown's failure to do what Te Rohe Pōtae leaders had sought left Ngāti Tūwharetoa with no means of protecting tribal lands other than by applying to the court, thereby effectively forcing the breakup of the five tribes' shared rohe.<sup>1206</sup>

As described earlier, the leaders of the remaining Te Rohe Pōtae tribes regarded the Crown's acceptance of the Taupouuiatia application as a fundamental breach of the December 1883 agreement. Ormsby, appearing before the 1889 Taupouuiatia commission, said that Bryce had 'agreed that the block should be investigated as a whole', and that no claims would be recognised for parts of the block:

[Ngāti] Maniapoto put great faith in this arrangement and did not think of things outside of the agreement. I consider that the sitting of the Court at Taupo to deal with Taupouuiatia – a portion of the Rohepotae block – was a violation of this agreement.<sup>1207</sup>

By encouraging and then accepting the Taupouuiatia and Waimarino applications in spite of its earlier agreements, and without engaging in further consultation with Te Rohe Pōtae leaders, the Crown failed in its duty to act honourably and in good faith, and therefore breached the Treaty guarantee of tino rangatira-tanga and the principle of partnership. These applications, combined with the Crown's failure to empower Te Rohe Pōtae Māori to determine land titles among themselves, left the remaining tribes with little option but to place their own lands before the court. Once the Taupouuiatia and Waimarino hearings began, it was no longer possible for the promised Crown grant to be issued over the territory covered by the December 1883 agreement. Te Rohe Pōtae tribes were instead set on a course that would ultimately lead to individualisation and fragmentation of title, and a breakdown of communal authority which would render land vulnerable to sale against community wishes, as we will see in chapters 10 and 11.

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1204. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 333.

1205. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 330–331, 333.

1206. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 330–331; Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, pp 231–232, 291.

1207. Waitangi Tribunal, *The Pouakani Report*, pp 140–141.

### **8.9.4.2 *Did the Crown honour the commitments Ballance made at Kihikihi in February 1885?***

As discussed in section 8.8.5, Ballance made 20 distinct promises or assurances to Te Rohe Pōtae leaders during the February 1885 hui at Kihikihi, and it was on the basis of these promises that Te Rohe Pōtae leaders consented to the railway. Many of those promises concerned land title determination and administration. Some concerned other matters, such as prospecting and liquor control. Crown counsel submitted that it had 'kept largely to the core elements' of this and other agreements.<sup>1208</sup> The Crown kept some of its promises and, either by act or omission, failed to keep others. Some promises – such as those concerning the railway and land purchasing – will be considered in depth in later chapters. We will consider each promise or assurance in turn.

#### **8.9.4.2.1 INCREASING THE POWERS OF THE KAWHIA NATIVE COMMITTEE TO INQUIRE INTO LAND TITLES**

Ballance promised that the Kawhia Native Committee would have its powers increased to allow it to make initial title determinations, with the court ratifying those arrangements and considering appeals. This followed the December 1883 assurances by Bryce that the committee already had powers to inquire into land titles, subject to confirmation by the court.

Following Kihikihi, Ballance introduced no legislation to increase the powers of native committees. Ballance later told Te Rohe Pōtae leaders he had been unable to introduce new legislation because of the pressure of other business, but this was an excuse. Without addressing land title issues, Ballance found time to draft and introduce the Native Land Disposition Bill 1885, which later became the Native Land Administration Act 1886. He also found time to introduce the Native Land Court Consolidation Bill, later the Native Land Court Act 1886, which consolidated all existing Māori land laws. Either Bill provided him with an opportunity to amend the Native Committees Act; this was simply a course the Government chose not to take. By failing to empower the committees as promised, the Crown breached its duty of good faith. By failing to provide for Te Rohe Pōtae Māori to manage land title determination as they wished, the Crown breached its obligation to act in accordance with their tino rangatiratanga, and breached the principle of autonomy.

Ballance also told Te Rohe Pōtae leaders at Kihikihi that he would consider amending native land laws to prevent claims to the court by people who had little or no interest in the land. We do not know what consideration he gave to this matter. He did not introduce any statutory amendments to give effect to the suggested change.

#### **8.9.4.2.2 BALLANCE'S PROMISED SYSTEM FOR ADMINISTERING MĀORI LAND**

Ballance made three promises with respect to administration of Māori land. First, he promised that elected owner committees would determine how their lands

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1208. Submission 3.4.6, p12.

would be managed and would make all decisions about sale or lease. No lands would be sold or leased without the committee's consent. Secondly, he promised that three-person boards with Māori representation (and possibly a Māori majority) would manage all land sales and leases on the owners' behalf. They could do nothing without the consent of owner committees, which would retain the 'fullest power'. The boards would comprise a Crown-appointed commissioner, the chair of the district's native committee, and one other, possibly elected by Māori. Thirdly, he promised that all sales or leases would be 'submitted for public competition, so that the highest price will be obtained for the land'.

The legislation he subsequently introduced resembled the system he described, but differed from it in material ways. The Native Land Alienation Restriction Act 1886 provided for committees of owners (known as block committees) to make decisions about private sales or leases, but these would then be administered by a Crown commissioner, not a board with Māori representation. And the Crown would be allowed to bypass the owner committee and the commissioner, buying directly from individuals or communities. One of the effects of these changes was to exclude Māori from any role in managing land transactions. Another was to prevent hapū from having full communal control over their lands, because the Crown could buy directly from individuals. A third effect was that land would not be sold on an open market, because the Crown would not have to compete with private buyers.

Te Rohe Pōtae leaders expressed strong opposition to these changes and in particular to the provision that allowed the Crown to bypass block committees and buy directly from owners. As discussed earlier, the Native Land Administration Act went further than any previous law towards providing for Māori communities to make communal decisions about land; but it only partially delivered that objective. Other Tribunals have found the Crown breached the Treaty by enacting this law, and we agree.

By failing to keep its promises, the Crown breached its duty to act honourably, fairly, and in good faith. By enacting legislation for the administration and settlement of Māori land without the consent of Māori leaders, and by enacting legislation that failed to effectively provide for communal management of Māori land, the Crown failed to recognise and protect their tino rangatiratanga, and therefore breached the principle of autonomy and its duty of active protection.

As we will see in chapter 11, the Crown in 1887 repealed the Native Land Administration Act and replaced it with a new law that made no provision for communal management of Māori land, and excluded private buyers and lessees from Te Rohe Pōtae, further aggravating these breaches of Ballance's Kihikihi promises.

#### **8.9.4.2.3 RATING OF MĀORI LAND**

Ballance promised that Māori land would not be subject to rates unless it had been leased, sold, or cultivated. He undertook to write a letter confirming that. The Government subsequently determined that no action was needed to keep this promise, and no letter should be written, because the Crown and Native Lands

## 8.9.4.2.4

Rating Act 1882 already exempted the Kawhia, East Taupo, and West Taupo counties (which together covered most of Te Rohe Pōtae other than Mōkau) from rates.<sup>1209</sup>

Under the Act, the only rateable land within the district lay south of the Mōkau River, and then only if it was within five miles of a public road.<sup>1210</sup> Nonetheless, in the 1885–86 financial year, rates were levied on some Māori lands in counties overlapping Te Rohe Pōtae, specifically Karioi, Whāingaroa, and Clifton. But, according to Robinson and Christoffel, it is impossible to determine whether the rates were levied within this inquiry district. The Crown and Native Lands Rating Act 1882 was repealed in 1888. Thereafter, the Rating Act 1882 applied. Under its provisions, Māori land was only subject to rates if occupied by a non-Māori.<sup>1211</sup>

So far as we can determine, the Crown honoured the substance of this promise.

## 8.9.4.2.4 THE CROWN'S LAND PURCHASING INTENTIONS

During the Kihikihi hui, Ballance assured Te Rohe Pōtae leaders that the Crown was 'not anxious' to buy Māori land and intended to acquire only what it needed for the railway – a corridor of 1–2 chains wide, and 5–10 acres for stations. He said that so long as Māori voluntarily made land available for settlement by leasing, the Government would not interfere. Ballance did not specify how much land would need to be made available, or when, but rather stressed that all decisions would be left to hapū. Ballance also assured Te Rohe Pōtae leaders that Māori landowners would be left to enjoy the benefit of rising land prices. Ballance anticipated that land prices would increase up to tenfold in value. We accept that Ballance was not offering a guarantee. His comments nonetheless suggest that the district's Māori would retain a substantial proportion of their land.

As we have described, soon after Ballance's return to Wellington, other Ministers were pressuring him to buy considerably more land than was needed for the railway, in order to ensure that the Crown shared in the benefit of rising land prices. By August, Ballance was publicly committing to the Crown purchase of 1.5 million acres of railway land out of the 4.5 million-acre railway district. From that time on, the Crown was actively preparing to purchase land in this and neighbouring districts.

We do not think that Ballance's assurance can be interpreted as a promise that the Crown would buy no land at all other than what was needed for the railway. He had said only that he was 'not anxious' to do so and would not do so if the land was settled by other means. But Ballance did promise that Māori would be given an opportunity to make their own decisions about settlement; the Crown would begin purchasing only if settlement did not occur. The Crown had breached this

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1209. 'Native Land Disposition Bill', 3 August 1885, NZPD, vol 52, pp 408–409, 411–412; doc A71, pp 267–268.

1210. Document A71, p 268.

1211. Document A71, pp 267, 270.

promise within months of the Kihikihi hui by committing to a large-scale purchasing programme of its own.

By failing to keep its promise, the Crown breached its duty to act fairly, honourably, and in good faith. By committing to a large-scale purchasing programme for Te Rohe Pōtae lands without first seeking or obtaining the consent of the district's leaders, the Crown failed to actively protect Te Rohe Pōtae Māori rights in land, and breached the Treaty guarantee of tino rangatiratanga and the principles of autonomy and partnership.

Although it made preparations for purchasing, the Crown did not in fact begin to purchase until 1890. We will consider the Crown's purchasing programme, and the laws under which it was conducted, in chapter 11.

#### 8.9.4.2.5 RAILWAY CONSTRUCTION

At the Kihikihi hui, Ballance made four promises about the railway:

- ▶ The Crown would take land no more than 1–2 chains wide for the railway corridor, and 5–10 acres for stations.
- ▶ Once owners were identified, they would be paid for the land that was taken for the railway corridor and stations, and for any timber or other resources used. The amounts paid would be determined on the same basis as if the land was being taken from Europeans. Te Rohe Pōtae Māori later agreed to gift one chain for the corridor and 1–3 acres for stations.
- ▶ Māori communities would be awarded contracts for the construction of parts of the railway. Therefore 'a large amount of the money' from the construction would go to the people directly.
- ▶ The railway would not interfere with waterways and would do '[n]o injury whatever' to Māori land.

As already discussed, Te Rohe Pōtae leaders subsequently elected to gift one chain of land for the railway corridor, and one to three chains for the stations. Crown counsel submitted that the Crown paid for additional lands. We will consider the Crown's compliance with Ballance's railway promises in chapter 9.

#### 8.9.4.2.6 POWERS OF NATIVE COMMITTEES

During the Kihikihi hui, Ballance made two promises about district native committees' powers in addition to the land title determination promises already discussed. First, Ballance said he would grant the chairman of the Kawhia Committee power to grant or withhold consent for gold prospecting. As discussed earlier, we do not have specific evidence of Ballance giving this instruction, but it seems that he did so at some stage early in 1885. Thereafter, the committee managed gold prospecting in the district with some assistance from the Crown agent George Wilkinson. Secondly, Ballance said he would introduce legislation giving district native committees the same powers as courts to hear civil disputes up to a certain value, and it would no longer be necessary for disputing parties to agree to place their dispute before the court. Ballance repeated this promise when he met Te Rohe Pōtae leaders again in April 1886. It was never carried into effect, and

there is no evidence that Ballance or any other Minister subsequently reopened negotiations on this matter. This was a breach of the Crown's duty to act honourably, fairly, and in good faith, and a breach of the Crown's duty to respect the tino rangatiratanga of Te Rohe Pōtae Maori.

In addition to these promises, Ballance said he would consider giving district native committees some source of revenue, possibly by empowering them to collect dog tax from Māori in their districts. He also said he would consider introducing small payments to native committee chairmen. As noted in section 8.9.2.2, Ballance later arranged for Ormsby to receive a £50 annual payment, though it was not clear whether this was intended to be an honorarium or funding for the committee's activities.

#### 8.9.4.2.7 CONTROL OF LIQUOR

Ballance promised to address gaps in the Kawhia Licensing Area. As noted in section 8.9.4, the licensing area was amended on several occasions during 1886 and 1887. So far as we can determine, Ballance kept this specific promise. As we will see in later chapters, the prohibition was not effectively enforced and ultimately proved ineffectual, leading Wahanui and other leaders to seek new ways to address this issue. As noted in section 8.8.5.2, we see liquor control as reflecting a broader desire of Te Rohe Pōtae Māori leaders to exercise mana whakahaere with respect to social issues, in order to protect and advance their people's well-being.

#### 8.9.4.2.8 PARTICIPATION IN PARLIAMENT AND LAWMAKING

Ballance made two promises at Kihikihi about Māori involvement in Parliament and lawmaking. First, he said that Māori would be consulted on all legislation affecting them. More specifically, he said he would circulate a Bill during 1885 proposing new Māori land laws. Ballance did circulate his proposed Bill in 1885 and received a considerable amount of feedback from Māori communities. Ballance also toured Māori communities late in 1885 and in 1886 during the parliamentary recess, again holding discussions about his legislative plans. As other Tribunals have noted, he probably consulted more than any previous Native Minister.<sup>1212</sup> Secondly, Ballance promised to press for an increase in the number of Māori Members of the House of Representatives, so that Māori had proportionate representation. There is evidence that Ministers discussed this, but there is no evidence of any further consultation on the matter, let alone any concrete proposal for legislative reform.

We note that Ballance had promised only to seek this reform – he did not suggest that the Government would necessarily agree. In our view, he kept his promise. However, by failing to take the matter further, the Government was choosing to set aside the very real concerns that many Māori leaders had expressed about their influence on legislative processes. At the heart of all of their concerns was the fact that it was mainly settlers who devised Māori land laws – Māori members of the House of Representatives were too few in number to have real influence.

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1212. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 354–356.



## 8.10 CONCLUSION

The Tribunal's principal function is to consider claims by Māori alleging that the Crown has breached the Treaty and its principles. In Te Rohe Pōtae, claimants' understanding of the Treaty relationship is fundamentally shaped by their understanding of the 1883–85 negotiations and agreements – which they understand collectively as Te Ōhākī Tapu. Before we directly address questions of Treaty principle, it is therefore necessary to address the differing claimant and Crown understandings about the nature of Te Ōhākī Tapu.

### 8.10.1 Te Ōhākī Tapu

The claimants put it to us that Te Ōhākī Tapu is a matter of deep significance to them, because it contains the sacred words of their tūpuna rangatira as well as the honour of the Crown. They described Te Ōhākī Tapu variously as a declaration of Te Rohe Pōtae Māori rights of self-determination; as a series of agreements between Māori and the Crown; and as a single, overarching agreement or compact under which Te Rohe Pōtae Māori acknowledged the Crown's right to make laws and govern, and the Crown agreed to recognise and protect their authority and right of self-government within their rohe. They argued, also, that the Crown had not negotiated in good faith, in that it led them to believe that it would respect their authority and right of self-government when it never intended to honour that assurance. And they argued, furthermore, that the Crown failed to honour the specific promises it had made about Māori land laws and other matters throughout the 1883–85 negotiations.

The Crown acknowledged that it made representations to Te Rohe Pōtae Māori which it subsequently did not honour and that it should have re-engaged with Te Rohe Pōtae leaders over these matters. But it did not accept the claimants' view of the overall significance of the 1883–85 negotiations for the Treaty relationship. The Crown regarded Te Ōhākī Tapu as a matter of importance only to the claimants. Crown counsel submitted: 'The term carries with it a sense of looking back to an important series of events in history and symbolises the importance of events and agreements to Rohe Potae Māori.'<sup>1213</sup>

In our view, the components of Te Ōhākī Tapu should be of equal significance to the Crown today as they are to the claimants, because they refer to events and agreements upon which the entire Treaty relationship between the Crown and Te Rohe Pōtae Māori hangs.

#### 8.10.1.1 *The declaration of Te Rohe Pōtae Māori tino rangatiratanga*

Te Ōhākī Tapu originated as a declaration by Te Rohe Pōtae Māori of the mana and tino rangatiratanga that they and their tūpuna had held and exercised for generations. Counsel for the Ngāti Maniapoto Trust Board described this as a 'declaration of ongoing autonomy' and 'an assertion of the right to govern within the Rohe Potae.'<sup>1214</sup> This was a right that had been in existence for many centuries. And

<sup>1213</sup>. Submission 3.4.301, p 1.

<sup>1214</sup>. Submission 3.4.1, para 5.

it was a right that had been guaranteed to Te Rohe Pōtae Māori by the Treaty of Waitangi.

Te Rohe Pōtae Māori declared their mana and tino rangatiratanga to the Crown through a series of actions during 1883. The first action was the laying down of pou roherohe to mark the external boundary of Te Rohe Pōtae. Through this process, which was led by the senior Ngāti Maniapoto rangatira Taonui Hikaka, he, Wahanui, and others hoped to establish a basis on which the traditional owners of Te Rohe Pōtae lands could advocate on behalf of their authority, as represented in their relationship with their customary lands, which they believed had been guaranteed to them by the Treaty. Rangatira and their communities from various iwi – Ngāti Maniapoto, Ngāti Raukawa, Ngāti Tūwharetoa, and Whanganui, and later Ngāti Hikairo – came to join in this cause. It was a bold initiative that would require the active maintenance of community support.

During their March and December 1883 negotiations with the Crown, Te Rohe Pōtae leaders asserted their tino rangatiratanga by restricting the Crown's access to the district and declaring that further access would only be granted if the Crown used its lawmaking powers to acknowledge their rights of self-government.

In their June 1883 petition, they outlined the rights that were guaranteed to them under article 2 of the Treaty, 'i tino whakapumautia ai te tino rangatiratanga, me te kore ano hoki e whakaraurua ta matou noho i runga i o matou whenua.' We translate this as: 'which fully guaranteed to us our absolute chiefly authority, as well as confirming to us our absolute and undisturbed possession of our lands.'<sup>1215</sup>

These were:

- ▶ The right to determine the ownership to their lands and associated resources;
- ▶ The right to determine the current and future management and use of their lands and associated resources;
- ▶ The right to determine how they would deal with matters of importance to the health and well-being of their people.

The petition recognised the Crown's desire to exercise its practical authority in Te Rohe Pōtae, particularly the Crown's wish to construct a railway line through the district. It laid down the requirement that, in order for Te Rohe Pōtae Māori to agree to the construction of the railway through their territory, the Crown would have to guarantee and provide for those rights through the use of its legislative powers. Rewi Maniapoto put this most succinctly when, in early 1884, he wrote to the Government, saying: 'We are very desirous of obtaining self government. You are anxious for railways; give us what we desire and we will give you what you want.'<sup>1216</sup>

Later, in speaking before Parliament, Wahanui argued that the Crown must use its legislative powers to provide for 'te mana whakahaere i toku whenua' (translated at the time as 'full power and authority over my own lands'). As explained in section 8.7.3, we do not think this request can be read down to refer only to

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1215. Our translation differs from that in the original, which described the effect of articles 2 and 3 as confirming 'to us the exclusive and undisturbed possession of our lands.'

1216. Copy of letter (in English only) from Rewi Maniapoto, 26 January 1884 (doc A78, p1018).

questions of land title and administration, though those were Wahanui's most immediate concerns at the time. Rather, mana whakahaere referred more broadly to the rights of rangatira to exercise political authority, and social and economic leadership, in service of their people's well-being. It was, in other words, an assertion of the rights of Te Rohe Pōtae people to autonomy or self-determination that should have been recognised and protected by the colony's laws. We therefore understand mana whakahaere as representing the way in which tino rangatiratanga could be given practical effect, supported by legislation. Wahanui used the analogy of a watchmaker who is given a watch to fix: the Crown was to be entrusted with the role of using its lawmaking powers to protect the tino rangatiratanga of Te Rohe Pōtae Māori, and in turn provide means by which they could exercise their autonomy.

For the claimants, there was a tapu element to the actions taken by Te Rohe Pōtae Māori at this time, from the laying down of the boundary to the declaration of their rights. In a letter to the Crown shortly before the petition was submitted, Rewi Maniapoto explained that 'Te Ki Tapu', the sacred word of the people, was that the encircling boundary of Te Rohe Pōtae would never be broken: the iwi and hapū of Te Rohe Pōtae would continue to exercise mana in respect of their lands and waterways. Tom Roa told us that 'Te Ki Tapu' represented the commitment of the people made on their behalf by rangatira: 'the word of Rangatira held sway, committing the people, and later, should the commitment made by the Rangatira be broken, redress was to be sought, sometimes as a consequence, blood was spilt.'<sup>1217</sup>

Te Rohe Pōtae Māori had maintained their mana and tino rangatiratanga for more than four decades since the signing of the Treaty. What was new in 1883 was their demand to the Crown to actively protect that tino rangatiratanga, in particular by enacting laws to protect their rights to retain, use and manage the district's lands as they wished. In pushing for the Crown to enact these laws, Te Rohe Pōtae Māori were acknowledging the Crown's right of kāwanatanga. In return, they demanded and expected that kāwanatanga would be used to actively protect and give practical effect to their tino rangatiratanga. We recognise and agree with the petitioners' understanding of the Treaty of Waitangi in this respect: the Crown had a responsibility to use its powers of kāwanatanga to give effect to the exercise of tino rangatiratanga, and to act in partnership with Māori to bring into effect arrangements by which this should occur.

### **8.10.1.2 Opportunities for the Crown to give effect to the terms of the Treaty**

There were significant opportunities for the Crown to give practical effect to the terms of the Treaty through the series of engagements that took place from March 1883 through to the end of 1885. Despite the fact that Native Minister Bryce occasionally acted in a blunt fashion, the Crown recognised the need to engage Te Rohe Pōtae Māori in dialogue and to gain their consent before encroaching on their lands. This was an acknowledgement that, in practical reality, Te Rohe Pōtae

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<sup>1217</sup>. Document H9(c), pp 2–3.

Māori continued to be able to enforce the aukati and maintain their authority within it.

The agreement between Bryce and Te Rohe Pōtae Māori leaders on 16 March 1883 was a watershed moment in this respect. The agreement made both parties aware of the other's ultimate objectives and established a process by which those objectives could be advanced through negotiation. Progress was also made towards achieving those objectives – the Crown could commence its exploratory railway survey, and Te Rohe Pōtae Māori would submit their petition for the Crown's consideration.

In his letter, Bryce described this as the 'friendly relations now established between your tribe and me'. Later, Wahanui said that this moment presented an opportunity to enter into a meaningful partnership ('te piringa pono'), but only if the Crown proceeded in accordance with the sacred word of the people – te kī tapu. The March 1883 agreement helped establish a process by which both parties could engage with each other on a reciprocal basis.

As we explained in section 8.3.4, the 16 March agreement had constitutional significance, both because it was an agreement between Treaty partners and because it established, for this first time, a process through which those partners would be able to bring the terms of the Treaty into practical effect in this district.

A number of opportunities arose during the subsequent 1883–85 negotiations for the Crown to use its powers of kāwanatanga to give practical effect to the terms of the Treaty. The first opportunity arose when Te Rohe Pōtae Māori submitted their petition. At that stage, the Government could have looked to pass bespoke legislation giving effect to the plain terms of the petition, or to consider an alternative model based on the native committees Bills that had been put up from 1880–82, which provided Māori with a more substantive role in the land title determination process.

The next opportunity arose following the December 1883 agreement to survey the external boundary. The Government could have completed that work and then turned to re-engage with Te Rohe Pōtae Māori over how their authority could be enabled while allowing for the railway to be introduced into the district. A further opportunity emerged when the Stout–Vogel ministry first came to power, when member of the House of Representatives Wi Pere proposed measures for empowering the native committees, alongside the proposals that the Government was contemplating for the railway and land settlement.

The most significant opportunity came in the agreements reached between Te Rohe Pōtae Māori and John Ballance during the hui at Kihikihi in February 1885. At that point, the Crown still had the opportunity to redress its Treaty breaches that had arisen in the course of previous negotiations. After all, title had yet to be determined to the land, and no purchasing in the district had yet occurred.

This could have been achieved first through Ballance and the Government of which he was a part recognising that 'self-government' (which he referred to in generous terms when speaking to Tāwhiao at Whatiwhatihoe in 1885) was not only a guaranteed right under the Treaty, but something that could have been given practical effect. Ballance came close by making a range of promises to Te

Rohe Pōtae Māori in response to their demands: empowering native committees to become courts of first instance in determining land titles and to regulate other matters; providing for committees of owners to manage Māori lands; and expanding the area in which sales of alcohol were prohibited.

The agreements reached at Kihikihi were the closest the Crown came to acknowledging that, in order to gain Te Rohe Pōtae Māori agreement to constructing the railway, it would have to provide formal recognition of their authority in accordance with their right of *tino rangatiratanga*. But Ballance would not give way on all of their demands. Most crucially, he did not concede that the Native Land Court would not be involved in determining the title to their lands. However, Te Rohe Pōtae Māori recognised that in order for the terms of the Treaty to be brought into practical effect in the district, they would need to compromise on some areas. They accepted Ballance's assurances on the grounds that what he offered was the best means by which they could secure their authority in the district, from which they could work with the Crown in partnership into the future.

Ballance's promises were the high-water mark in the relationship between Te Rohe Pōtae Māori and the Crown. They represented the furthest that the Crown was willing to commit in providing for Te Rohe Pōtae Māori authority. But they were no more than a high-water mark; unlike the tide of settlement that Bryce accurately predicted, these waters were quick to recede.

### **8.10.1.3 *The Crown's failure to recognise Te Rohe Pōtae Māori tino rangatiratanga***

It is for this reason that we do not agree with counsel for the Ngāti Maniapoto Trust Board that Te Ōhāki Tapu included 'a promise by the Crown that [the] governing autonomy [of Te Rohe Pōtae Māori] would be recognised and respected in all respects, including within laws passed by Parliament.'<sup>1218</sup> The promises Ballance made at that hui – even construed at their most generous – did not amount to a promise by the Crown that their governing autonomy would be recognised *in all respects*. No matter how we might look at his promises, neither Ballance, nor other ministers in his Government, nor those who were in power before him, were willing to acknowledge the Treaty guarantee of *tino rangatiratanga* for what it was: a powerful guarantee of autonomy and self-determination in all spheres of life, which qualified the Crown's right to govern and make laws. Rather, they saw the Treaty as offering, at most, very limited rights of self-government subject to the colony's laws, along with a guarantee of rights to possess land which (in their view) were sufficiently protected by existing native land laws.

The promises Ballance made at Kihikihi nonetheless won the agreement of Te Rohe Pōtae leaders. They agreed because Ballance had gone further than any other Minister in offering Te Rohe Pōtae Māori a significant degree of control over title determination and land administration, and because they feared the offer might be withdrawn if it was not accepted. Had Ballance's promises been brought into effect, it might have been possible for Te Rohe Pōtae Māori and the Crown to keep working together to give practical effect to the terms of the Treaty in this

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1218. Submission 3.4.1, para 5.

district in a manner that was appropriate for new circumstances such as the arrival of public works, settlement, and Crown institutions. Any such solutions would have required ongoing negotiation between Te Rohe Pōtae leaders and the Crown, meeting as formal equals.

The Crown did not follow this course. It did not implement Ballance's promises, and nor did it pursue an ongoing partnership with Te Rohe Pōtae Māori. It did not see the Treaty in those terms. From its point of view, it had acquired supreme authority in 1840 and was negotiating only in order to bring that power into practical effect within this district. It appeared willing to provide for Māori autonomy only to the extent that was necessary to win Māori consent for the railway and for Native Land Court applications.

The Crown's attitude to the Treaty was most starkly illustrated in Bryce's and Stout's communications with the British government. From their point of view, the colonial government was meeting the Crown's Treaty obligations by providing legal recognition for Māori ownership of land under the Native Land Act (see sections 8.5.1.1 and 8.9.1.2). Much like the court itself, following the transfer of responsible government, Māori had no right of appeal against decisions made by the responsible ministers of the day. This was amply demonstrated when the British Government declined to consider Tāwhiao's petition and instead returned it to the colonial government to consider.

A notable aspect of the Crown's approach in this respect was that at no point did it declare its position on the Treaty to Te Rohe Pōtae Māori directly. Te Rohe Pōtae Māori, by contrast, approached matters openly and transparently, such was their commitment to upholding their article 2 and 3 rights by demanding statutory protection for them. The Crown chose not to take up the opportunities that were presented by Te Rohe Pōtae Māori, and instead pushed ahead with its objectives of 'opening' the territory for the railway, the Native Land Court, and European settlement.

#### **8.10.1.4 *Te Ōhākī Tapu – a demand to give practical effect to the terms of the Treaty***

As noted in section 8.2.3.1, the 'ōhākī' referred to by the claimants was that which originated in 'Te Kī Tapu' – the declaration in the petition of 1883 of Te Rohe Pōtae Māori mana and tino rangatiratanga. Te Kī Tapu expressed their desire for mana whakahaere, as guaranteed to them by the Treaty of Waitangi. It indicated what would be needed to give practical effect to the terms of the Treaty, and it gave guidance on how the Crown could provide statutory recognition for the article 2 guarantee of tino rangatiratanga. We also recognise that the Crown not only refused to take up Te Kī Tapu at the time, but it also actively disregarded it. For successive generations of Te Rohe Pōtae Māori, Te Kī Tapu became Te Ōhākī Tapu.

We are led to these conclusions partly due to our understanding of what an 'ōhākī' is in the Māori idiom. In te reo Māori, an 'ōhākī' is an utterance of great significance – one that is made by one party to another on the assumption that it must be given effect. It is a declaration that is associated with a dying (or sometimes

parting) wish. As Nigel Te Hiko told us, however, ‘The Ohaaki Tapu in my view was not a ‘dying wish’ . . . in a literal sense. Instead a metaphorical interpretation should be attributed.’ Mr Te Hiko emphasised the enduring nature of an ōhākī, the ‘hau’ (breath) ‘giving life to the kupu so that these words survive long after death.’ This, in turn, was intensified by the tapu nature of the ōhākī.<sup>1219</sup> We understand the ‘ōhākī’ of Te Rohe Pōtae leaders to have been their declaration to the Crown of how it could give practical effect to the Treaty within the territory defined by the June 1883 petition.

In our view, Te Ōhākī Tapu represents the enduring wish of Te Rohe Pōtae people for a healthy and functioning Treaty relationship based on the mutual exchange of rights and powers enshrined in the Treaty, and on the expectation of mutual benefit on which the Treaty was based. As we have seen, Te Rohe Pōtae Māori, through the course of the negotiations, acknowledged that the proper sphere for the exercise of kāwanatanga resided in Parliament, in its capacity to make laws for the benefit of Māori and New Zealanders generally. In terms of the Treaty relationship, the Crown’s role, through legislation, was to provide for and protect the rights that were guaranteed to Māori under the Treaty. So long as Parliament passed laws for the benefit of Māori and in a manner that was consistent with their tino rangatiratanga, it would be in fulfilment of its obligations under the Treaty.

Equally, Te Ōhākī Tapu expressed the right of Te Rohe Pōtae Māori to tino rangatiratanga, and the practical manner in which that right would be exercised in their territory. This was not simply an acknowledgement of existing rights and authority under which Te Rohe Pōtae Māori would continue to practise their own laws and customs in their communities. Rather, it involved statutory recognition of enduring rights of self-determination even as the colony developed and settlement occurred, along with recognition for and empowerment of institutions that were equipped to negotiate these new circumstances.

Te Rohe Pōtae Māori described these powers using the term ‘mana whakahaere’, which was translated at the time as ‘full power and authority’. We understand this in simple terms as referring to the practical exercise of the right of autonomy and self-government. More specifically, it referred to the power of Te Rohe Pōtae Māori to organise and exercise mana in the context that was presented to them in engaging with the Crown and with settlers as the colony expanded into their territories. This power of mana whakahaere was a practical expression of the Treaty’s guarantee of tino rangatiratanga under article 2 of the Treaty.

In the mid-1880s, the powers that Te Rohe Pōtae Māori sought primarily concerned their lands. Te Rohe Pōtae leaders wanted institutions that would allow them to exercise chiefly authority in determining the ownership of their land, and in deciding whether and how that land would be used for the communal benefit through development or, in some cases, alienation. Part of this exercise involved marking out the specific territory within which chiefly authority would endure,

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1219. Document 112, pp14–15.

and protecting it in law and in tikanga. This, too, was in keeping with the Treaty's guarantee of tino rangatiratanga under article 2.

Te Rohe Pōtae leaders also wanted powers to enable them to exercise authority in respect of issues of concern to their communities, such as the distribution of alcohol in their territory. This was also in keeping with their understanding of the provisions of article 2.

Te Rohe Pōtae Māori stood to benefit from their relationships with settlers, should they have chosen to engage in the economic activities that might have occurred in the rohe as a result of lifting the aukati. While they did not seek economic development at the cost of their land and authority, they expected – and were promised by the Crown – that in opening their territory in a controlled fashion they would have the potential of deriving some economic benefit. This particularly applied to the construction of the railway and any benefits that stood to be derived from having settlers in their midst, including growth in the value of their land. The most important point was that if any opportunities did arise, they would have the potential to benefit equally alongside any other section of the population: the Crown would not advantage one party over another. In respect of land, Māori would be able to determine the extent to which settlement would occur, and the pace at which it would occur. This was their right, under both articles 2 and 3 of the Treaty.

In short, we recognise Te Ōhākī Tapu as a series of negotiations and agreements that were founded on the declaration by Te Rohe Pōtae Māori in 1883 that the Crown should give practical effect to the terms of the Treaty. The utmost importance of these negotiations can be seen in the use by Ngāti Maniapoto leaders of the 1880s of the phrase 'Te Kī Tapu', or the 'sacred word', to describe the conduct they sought from the Crown. Their significance can also be seen in the term 'ōhākī, a last request or testament, which indicates the responsibility and legacy that these events created for Te Rohe Pōtae Māori. In our view, the negotiations of the 1880s constituted a demand by Te Rohe Pōtae Māori that the Crown use its power of kāwanatanga to provide statutory recognition for the article 2 guarantee of tino rangatiratanga. They were therefore an opportunity to advance the Treaty relationship to a new level, with the following essential features:

- ▶ The recognition by Te Rohe Pōtae Māori of the Crown's right of kāwanatanga, as exercised first and foremost through Parliament.
- ▶ The protection and provision by the Crown for the exercise of the mana whakahaere (full control and authority) and tikanga (law and values) of Te Rohe Pōtae Māori within their own lands. The exercise of mana whakahaere included, among other things:
  - means by which Te Rohe Pōtae Māori could exercise full authority and power over their lands, including by determining ownership of land and the future management, use, and disposition of that land;
  - means by which Te Rohe Pōtae Māori could have authority over matters of importance to the well-being (economic, social, and cultural) of their people, including social issues such as the control of alcohol in their territory; and



- the mutual benefit arising from any Crown initiatives in the territory that Te Rohe Pōtae Māori agreed to, notably (at that time) those deriving from the construction of the North Island Main Trunk Railway.

The details of this relationship – including the institutions and laws that would be required to give practical effect to both kāwanatanga and tino rangatiratanga in this district – required negotiation, in keeping with the Treaty principle of partnership. New circumstances would inevitably arise over time which would need to be worked out through discussion and dialogue.

While the details of the 1883–85 negotiations reflected the parties' particular concerns at the time, the relationship that Te Rohe Pōtae Māori sought with the Crown was an enduring one. Te Ōhāki Tapu continues to be of profound importance to the claimants, and – as we have noted previously – in our view it should have been given effect by the Crown. The events, negotiations, and agreements that comprised what claimants now call Te Ōhāki Tapu were all attempts by Te Rohe Pōtae Māori to develop a functioning relationship with the Crown in which there was a place in the district for both kāwanatanga and tino rangatiratanga. The Crown did not provide for this in the 1880s. If it is serious about its Treaty relationship with Te Rohe Pōtae Māori, it must do so now.

### **8.10.2 The Crown's Treaty breaches and the prejudice suffered by Te Rohe Pōtae Māori**

While the Crown had many opportunities to respond practically and reasonably to Te Ōhāki Tapū and to give practical effect to the terms of the Treaty, it did not take advantage of them; in fact, there were many occasions on which it took the opposite path. Many of the actions the Crown took during the 1883–85 negotiations and agreements and their immediate aftermath were in breach of its Treaty obligations and had the effect of narrowing the options available to Te Rohe Pōtae Māori as the relationship with the Crown proceeded through successive stages. This led to Te Rohe Pōtae Māori accepting compromises to their Treaty rights, in order to secure the minimal concessions the Crown was prepared to offer.

The Crown's Treaty breaches after Te Rohe Pōtae Māori agreed to the railway construction caused widespread and long-lasting damage to the tino rangatiratanga of Te Rohe Pōtae Māori and to the relationships between Te Rohe Pōtae iwi and hapū. The lifting of the aukati, for example, followed the Crown's encouragement and acceptance of Native Land Court claims for lands within the 1883 petition area. However, the court's processes dealt a fatal blow to the determination of Te Rohe Pōtae Māori to maintain their external boundary. This was precisely the result the Crown desired.

#### **8.10.2.1 The Crown's response to the June 1883 petition**

The Crown's acts in response to the June 1883 petition, in which Te Rohe Pōtae Māori set out their Treaty rights, were in breach of the Treaty. The legislation that was passed, providing for some minimal reforms to the Native Land Court process and for the creation of native committees, was not an adequate response in the circumstances. The Government had no intention of making further reforms;

nor are we convinced that the Government was hampered in its ability to do more. The Crown's failure to contemplate and put into effect a meaningful measure in response to the petition of Te Rohe Pōtae Māori constitutes a breach of the Treaty principles of autonomy and partnership, and the Crown's obligation to actively protect the tino rangatiratanga of Te Rohe Pōtae Māori. This was the first of the Crown's Treaty breaches during the period of the negotiations, which had significant effects on Te Rohe Pōtae Māori.

In the months following the hui, Bryce held back competing applications to the Native Land Court, in accordance with the December 1883 agreement, but he also encouraged iwi and hapū who had concerns about the boundary survey to resolve their differences in court when the time was right. His Government made no effort to address Te Rohe Pōtae leaders' concerns about the Native Committees Act or other Māori land laws. On the contrary, his Government developed policies aimed at supporting large-scale Crown purchasing of Māori land along the railway line, its intention being to use profits from that purchasing to fund the railway. Although the Government did not get an opportunity to implement this policy before it lost office at the 1884 election, the policy increased tensions among Te Rohe Pōtae tribes.

#### **8.10.2.2 *The Stout–Vogel Government's initial approach to the railway and Māori land reforms***

When the Stout–Vogel Government came to office in August 1884, it signalled its intention to press ahead as quickly as possible with the railway. Wahanui travelled to Wellington and spoke to both houses of Parliament, making clear that Te Rohe Pōtae leaders would consent to the railway only if the Crown enacted laws to recognise and give effect to their 'mana whakahaere' ('full power and authority') over their whenua (territories). The Government made no effort to meet these demands. On the contrary, it actively rejected opportunities that were presented to it, first when Rees and Wi Pere presented proposals for land titles to be awarded to hapū and native committee powers to be increased, and, secondly, when it rejected a Legislative Council amendment to the Native Land Alienation Restriction Bill which would have empowered native committees to determine who owned land. If the Crown was unwilling to empower native committees in this manner, it could have explored alternatives with Te Rohe Pōtae Māori, but it chose not to. By declining opportunities to provide for the mana whakahaere of Te Rohe Pōtae Māori, and in particular to provide for Te Rohe Pōtae Māori to determine iwi and hapū boundaries among themselves, the Crown breached the Treaty guarantee of tino rangatiratanga and the principle of partnership.

While it had not met the preconditions that Wahanui and other Te Rohe Pōtae leaders had put in place, the Crown nonetheless pushed on with its railway plans, announcing the preferred railway route, allocating funds for railway construction and land purchasing, beginning detailed surveys, and announcing plans to call for tenders for construction of the railway. Against strong opposition from Wahanui, it also enacted the Native Land Alienation Restriction Act 1884, prohibiting all

private alienation of Māori land in Te Rohe Pōtae and other areas surrounding the railway, while allowing the Crown to make purchases. By pressing ahead with preparations for the railway, and for settlement of the district, without first obtaining the consent of Te Rohe Pōtae Māori, and by enacting legislation that restricted the property rights of Te Rohe Pōtae Māori without their consent, the Crown failed to actively protect their rights in land, and breached the Treaty guarantee of tino rangatiratanga and the principle of partnership. These breaches did not immediately affect the landholdings of Te Rohe Pōtae Māori, but did limit the options of Te Rohe Pōtae leaders in future dealings with the Crown. Their stance in future negotiations was influenced by the knowledge that the Crown would not always honour their demands and was determined to give its railway and settlement objectives priority over their Treaty rights.

### **8.10.2.3 *The effect of Ballance's promises at the Kihikihi hui***

Ballance had a significant opportunity to put matters right at the Kihikihi hui and went further than any of his predecessors in making promises to empower native committees and protect the rights of Māori landowners. In making these promises, Ballance did not clearly explain that the Government had yet to make decisions and that it was therefore possible that some of his promises might not come to fruition. Nor was he fully open about the Government's intentions to purchase land within the district. Te Rohe Pōtae leaders were making decisions about the future of their district and its land and were therefore entitled to nothing less than full disclosure of the Crown's goals and policies, including any areas of uncertainty. By failing to be fully open, Ballance denied Te Rohe Pōtae Māori the opportunity to make a fully informed decision about his proposals, or about the railway. Through his actions, the Crown therefore breached its duty to negotiate fairly, honourably, and in good faith.

### **8.10.2.4 *The Crown's failure to keep its promises***

In December 1883, the Crown promised to survey the external boundary of Te Rohe Pōtae as described in the June 1883 petition. According to the letters that were exchanged between the parties, a Crown grant to the petitioners would follow completion of the boundary survey. Bryce promised to hold back competing Native Land Court applications until the boundary survey had been completed. The Crown did not keep these promises. In 1884, its surveyors excluded the Mokau-Mohakatino and Mohakatino-Parinihi blocks as they had already been before the court for title determination. By following this course, the Crown was insisting that its land title determination processes, to which Te Rohe Pōtae Māori had never consented except to the extent necessary to confirm the boundary, would take precedence over the clearly expressed wishes of Te Rohe Pōtae leaders, and over the terms of the 1883 agreement. This was a plain breach of the Treaty guarantee of tino rangatiratanga, and of the Crown's duty to act honourably and in good faith in its relationships with Te Rohe Pōtae Māori. The Crown's failure to consult on this matter meant that Te Rohe Pōtae leaders entered their February

1885 negotiations with the Crown under the impression that the boundary would be honoured. Had they known it would not be, they might have made different decisions.

Later, in 1885, the Crown encouraged and then accepted Native Land Court applications for the Taupouiatia and Waimarino blocks. Both of these blocks encroached on the external boundary of Te Rohe Pōtae as described in the June 1883 petition. The Central North Island and National Park Tribunals found that these applications could have been avoided if the Crown had taken reasonable steps to empower the tribes involved to determine land title among themselves. By encouraging and then accepting the Taupouiatia and Waimarino applications in spite of its earlier agreements, the Crown failed in its duty to act honourably and in good faith, and therefore breached the Treaty guarantee of tino rangatira-tanga and the principle of partnership. These applications, combined with the Crown's failure to empower Te Rohe Pōtae Māori to determine land titles among themselves, left the remaining tribes with little option but to place their own lands before the court. Once the Taupouiatia and Waimarino hearings began, it was no longer possible for the promised Crown grant to be issued over the territory covered by the December 1883 agreement. Te Rohe Pōtae tribes were instead set on a course that would ultimately lead to individualisation and fragmentation of title, and a breakdown of communal authority which would render land vulnerable to sale against community wishes, as we will see in chapters 10 and 11.

At Kihikihi in February 1885, Ballance made numerous promises and assurances to Te Rohe Pōtae leaders, and it was on the basis of these promises and assurances that they gave their consent to the railway. The Crown acknowledged that it promised to provide native committees with a greater role in Native Land Court processes and 'a measure of self-government'; that it promised to empower committees of owners to control alienation of land; and that it promised that all land sales and leases would take place in a free market. It acknowledged that it had 'failed to consult or re-engage with Rohe Pōtae Māori when it did not fulfil these representations, and thereby breached the Treaty of Waitangi and its principles by not acting in good faith and by failing to respect their rangatiratanga'.<sup>1220</sup> We agree with this concession, while noting that the Crown also breached the principle of partnership by failing to re-engage over these promises. Even though it had chosen not to honour key elements of the February 1885 agreement, the Crown nonetheless went ahead with construction of the railway.

We also concluded that the Crown failed to honour Ballance's assurances about the Crown's land purchasing intentions. Ballance had given assurances that the Crown intended only to acquire small amounts of land along the railway line so long as Te Rohe Pōtae Māori voluntarily made land available by leasing. By August 1885, Ballance had publicly committed to buying 1.5 million acres of Māori land along the railway line, and from that time the Crown began to actively prepare for land purchasing on a significant scale, for example by voting funds and appointing

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1220. Submission 3.4.307, para 66.

purchase agents. By failing to keep its promise, the Crown breached its duty to act fairly, honourably, and in good faith. By committing to a large-scale purchasing programme for Te Rohe Pōtae lands without first seeking or obtaining the consent of the district's leaders, the Crown failed to actively protect Te Rohe Pōtae Māori rights in land and breached the Treaty guarantee of tino rangatiratanga and the principles of autonomy and partnership. Because the title determination process had not begun in Te Rohe Pōtae, the Crown could not immediately begin purchasing and would not do so until 1890 (see chapter 11).

#### **8.10.2.5 *The Crown's failure to give effect to the tino rangatiratanga of Te Rohe Pōtae Maori***

The essence of what Te Rohe Pōtae Māori sought, in return for the railway, was for the Crown to give practical effect to their tino rangatiratanga (or, to use the term they adopted, their mana whakahaere). As discussed in section 8.10.1.3 and in the sections immediately above, the Crown repeatedly failed to take reasonable steps to do this. It failed to complete the agreed survey of the external boundary. It repeatedly failed to take opportunities to provide for Te Rohe Pōtae Māori to determine land titles among themselves, or to provide for Te Rohe Pōtae communities to administer their lands as they wished. It pressed ahead with preparations for the construction of the railway and the purchasing of Te Rohe Pōtae Māori lands, without first obtaining the consent of Te Rohe Pōtae leaders. (Ultimately, as we will see in a later chapter, it also failed to provide for mana whakahaere with respect to social issues, in particular the control of liquor.) In all of these ways, it failed to honour the Treaty guarantee of tino rangatiratanga, failed to actively protect Te Rohe Pōtae Māori in possession and authority over their lands, and thereby breached the principle of autonomy.

### **8.11 PREJUDICE**

Te Rohe Pōtae Māori suffered significant and long-lasting prejudice from these Treaty breaches.

The first effect was felt on the relationship between the iwi of Te Rohe Pōtae: Ngāti Maniapoto, Ngāti Raukawa, Ngāti Tūwharetoa, Ngāti Hikairo, and Māori of the northern Whanganui region. Rangatira from these iwi had established a process under tikanga, through Taonui Hikaka's process of setting out pou roherohe in the boundaries of the district, to protect the mana and tino rangatiratanga of communities. This was done with the intention that their traditional forms of authority could be maintained, through traditional means of decision-making. That was their right to do so under the Treaty.

However, the Crown's actions caused significant damage to these relationships, which began to tell from shortly after the June 1883 petition was submitted to Parliament. The iwi were soon pitted against each other, which led to applications to the Native Land Court from Ngāti Tūwharetoa and Whanganui groups for the determination of title to their lands both in and outside the rohe. This caused

damage to their tikanga, with long-term ramifications, particularly as the land came before the court.

The Crown's actions also caused significant damage to the ability of Te Rohe Pōtae Māori to exercise their mana and their tino rangatiratanga in respect of their lands and their communities. This could be seen most notably in the swift decline of the Kawhia Native Committee, which had so much promise as a body to exercise mana whakahaere had it been properly empowered. The prejudice they suffered in this respect feeds directly into our analysis of issues in the subsequent chapters of our report, where we consider matters such as railway construction, title determination, land alienation, and control of liquor.

While the direct impacts of the Crown's actions are discussed in these chapters, the long-term ramifications were felt by Te Rohe Pōtae Māori in other areas of life well into the twentieth century, and therefore feature as part of our consideration of issues in the chapters that follow.

As a consequence of the Crown's actions, Te Rohe Pōtae Māori have had their ability to exercise their tino rangatiratanga and their mana in respect of their ancestral lands, waterways, and associated resources seriously damaged. Their economic base was seriously undermined, leaving them unable to participate on an equitable basis in the colonial economy. Although connections with these lands and resources have continued, Te Rohe Pōtae Māori have not been able to utilise or care for them in the ways they had in the past.

### 8.12 SUMMARY OF FINDINGS

Our key conclusions and findings in this chapter have been:

- ▶ We recognise Te Ōhākī Tapu as a series of negotiations and agreements that were founded on the declaration by Te Rohe Pōtae Māori in 1883 that the Crown should give practical effect to the terms of the Treaty. The utmost importance of these negotiations can be seen in the use by Ngāti Maniapoto leaders of the 1880s of the phrase 'Te Kī Tapu', or the 'sacred word', to describe the conduct they sought from the Crown. Their significance can also be seen in the term ōhākī, a last request or testament, which indicates the responsibility and legacy that these events created for Te Rohe Pōtae Māori. In our view, the negotiations of the 1880s constituted a demand by Te Rohe Pōtae Māori that the Crown use its power of kāwanatanga to provide statutory recognition for the article 2 guarantee of tino rangatiratanga. They were therefore an opportunity to advance the Treaty relationship to a new level, with the following essential features:
  - ▶ The recognition by Te Rohe Pōtae Māori of the Crown's right of kāwanatanga, as exercised first and foremost through Parliament.
  - ▶ The protection and provision by the Crown for the exercise of the mana whakahaere (full control and authority) and tikanga (law and values) of Te Rohe Pōtae Māori within their own lands. The exercise of mana whakahaere included, among other things:
    - means by which Te Rohe Pōtae Māori could exercise full authority and

- power over their lands, including by determining ownership of land and the future management, use, and disposition of that land;
- means by which Te Rohe Pōtae Māori could have authority over matters of importance to the well-being (social, economic, and cultural) of their people, including social issues such as the control of alcohol in their territory; and
  - the mutual benefit arising from any Crown initiatives in the territory that Te Rohe Pōtae Māori agreed to, notably including (at that time) those deriving from the construction of the North Island Main Trunk Railway.
- The details of this relationship – including the institutions and laws that would be required to give practical effect to both kāwanatanga and tino rangatiratanga in this district – required negotiation, in keeping with the Treaty principle of partnership. New circumstances would inevitably arise over time which would need to be worked out through discussion and dialogue.
- The Crown failed to take up this opportunity, and at times actively undermined it. During the course of the negotiations that were entered into from March 1883, and following the agreement of Te Rohe Pōtae Māori to the railway, the Crown failed to provide for or actively protect the rights that were guaranteed to Te Rohe Pōtae Māori under article 2, and breached the principle of autonomy.
- On several occasions during the 1883–85 negotiations and agreements, the Crown failed to be fully open with Te Rohe Pōtae Māori about its policies or intentions, or misled Te Rohe Pōtae Māori, breaching its obligation to act fairly, honourably, and in good faith. It thereby breached the principle of partnership.
- In respect of specific events:
- In its response to the June 1883 petition, which included the Native Committees Act 1883 and the Native Lands Amendment Act 1883, the Crown failed to empower Te Rohe Pōtae Māori to determine land titles among themselves, failed to empower Te Rohe Pōtae communities to manage lands as they wished, and failed to prohibit land sales, thereby breaching the Treaty principles of autonomy and partnership, and the Crown's duty to actively protect the tino rangatiratanga of Te Rohe Pōtae Māori.
  - By informing Te Rohe Pōtae leaders that they would have to make an application to the Native Land Court in order to have the boundary of the June 1883 petition area surveyed, the Crown misled them and therefore breached its Treaty obligation to negotiate honestly and in good faith, and therefore breached the principle of partnership.
  - By pressing ahead with preparations for the railway, and for settlement of the district, without first providing for the mana whakahaere of Te Rohe Pōtae Māori (in particular by providing for them to determine land titles among themselves), the Crown failed to actively protect their rights in land, and breached the Treaty guarantee of tino rangatiratanga and the principle of partnership.
  - By enacting the Native Land Alienation Restriction Act 1884 while

disregarding opportunities to empower native committees to determine land titles, the Crown breached the Treaty guarantee of tino rangatiratanga and the principle of partnership.

- By refusing to complete its survey of the external boundary as agreed in December 1883, the Crown breached the Treaty guarantee of tino rangatiratanga and failed in its duty to act honourably and in good faith in its relationships with Te Rohe Pōtae Māori.
  - In the February 1885 negotiations at Kihikihi, the Native Minister John Ballance was not fully open about the Crown's land purchasing intentions, or about areas of uncertainty in government policy with respect to native committees. Te Rohe Pōtae Māori may have made different decisions about the railway if they had been fully informed. The Crown therefore breached its duty to negotiate fairly, honourably, and in good faith.
  - Following the Kihikihi hui, the Crown introduced and enacted the Native Land Administration Act 1886 and the Native Land Court Act 1886, without keeping its promises to increase the powers of native committees or fully empowering Māori landowners to make communal decisions about land management and disposition. The Crown thereby breached its duty to act honourably, fairly, and in good faith, failed to actively protect the authority of Te Rohe Pōtae Māori, and breached the Treaty guarantee of tino rangatiratanga and the principle of autonomy.
  - By committing in 1885 to a large-scale land purchasing programme for Te Rohe Pōtae lands without first seeking or obtaining the consent of the district's leaders, and in spite of previous assurances to Te Rohe Pōtae leaders which had contributed to their decision to consent to the railway, the Crown breached its duty to act fairly, honourably, and in good faith, failed to actively protect Te Rohe Pōtae Māori rights in land, and breached the Treaty guarantee of tino rangatiratanga and the principles of autonomy and partnership.
  - By encouraging and then accepting the Taupouuiatia and Waimarino applications in spite of its December 1883 promise to hold back applications that breached the boundary, the Crown failed in its duty to act honourably and in good faith, and breached the Treaty guarantee of tino rangatiratanga and the principle of partnership.
- Te Rohe Pōtae Māori suffered prejudice from these Treaty breaches through:
- damage to relationships between hapū and iwi of Te Rohe Pōtae, which undermined their ability to act collectively to preserve their mana whakahaere;
  - the loss of control over the title determination process, when the land subsequently went through the Native Land Court;
  - the loss of control over their ability to determine the management and disposition of their land interests, particularly whether their land should be alienated or not; and
  - the loss of control over certain social issues that affected them.



## CHAPTER 8 APPENDIX I

### THE 1883 PETITION OF THE FOUR TRIBES

Reproduced from AJHR, 1883, J-1, pp 1-4

Ki te Kawana o te Koronui o Niu Tireni ki nga Mema o nga Whare e rua.

HE PITIHANA tenei na matou na nga IWI o MANIAPOTO, o RAUKAWA,  
o TUWHARETOA, o WHANGANUI, ki te PAREMETE: TENA KOUTOU.

E INOI atu ana matou kia tino tirohia e koutou, kia tino whakaarohia ano hoki nga mea e whakapouri nei ia matou, e arai mai nei i mua i o matou aroaro; na te mea, ko aua tikanga e whakapouri nei ia matou, i ahu mai ia koutou i te pakeha te nuninga, ko te take, na runga in nga ture e hanga ana e koutou.

Kua tino tirohia hoki e matou te aronga o te mahinga a nga ture i hanga nei e koutou, i te tuatahi tae mai ana ki o tenei ra, e ahu katoa ana te aronga o aua ture ki te tango i nga painga i whakaturutia kia matou e nga wahi tuarua tuatoru o te Tiriti o Waitangi, i tino whakapumautia ai te tino rangatiratanga, me te kore ano hoki e whakararua ta matou matou noho i runga i o matou whenua.

Ko nga ture katoa I hanga nei e koutou mo te taha ki o matou whenua, kaore rawa matou i kite painga i roto o aua ture, ana whakamahia ki te whakarite whakawa ki runga ki nga whenua Maori i roto i nga Kooti Whenua Maori ki Kemureti me era atu wahi; a, kua waiho aua tikanga e mahia nei ki nga Kooti Whenua hei tikanga whakapouri hei pikaunga taimaha anohoki ki runga kia matou. Na runga i to matou kuare ki te whatu o roto o aua ture, riro ana matou te whakawai e nga Horo Whenua me a ratou tangata, kia tukua etehi o matou whenua kia Kootitia kia tuturu ai o matou whenua kia matou; E Pa ma, i runga i te tukunga atu o etehi o matou whenua kia Kootita (sic), no wai te mana i tuturu ki runga ki aua whenua? He pono, i puta mai ano ki nga Maori he Tiwhikete hei whakaatu i tona tika ki runga ki te whenua i te mutunga iho o aua whakawa, otiia, na runga i te matau o te pakeha, wairangi noa te Maori ki te whakaae ki nga Roia e whakaturia mai ana e nga Horo Whenua, tohu noa matou, e no matou aua Roia; kaore, he kumekume i ngawhakawhakanga kia roa, kia nui ai nga moni e pau, kia kore ai nga Maori e kaha kit e utu, kia hopu ai o ratou ringa ki te wheneua, tona tukunga, iho, mau ana ko te wairua i nga Maori, ko te whatu, riro ke ana i nga Horo Whenua.

Kua oti hoki matou te karapoti e nga mahi nanakia katoa, e nga mahi whakawai a nga Horo Whenua tae mai ana ano ki etehi o nga Maori, me nga awhekaihe

kua oti nei te here e nga Kamupene kia ratou, hei taki atu ia matou ki roto ki nga kupenga a nga Kamupene.

I runga i te nui rawa o to matou raruraru ki te kimi i etehi tikanga hei wawao i o matou whenua, i nga mate kua oti nei te whakatakoto, ka ui matou mehemea kaore he ture hei peehi mo enei mahi kino, ka utua mai kahore, heoiano tona tikanga me haere tahi ki te Kooti.

Na ia matou e kaha ana ki te pupuru i o matou whenua, e mohio ana matou kei te tahuri to koutou kawanatanga ki te whakatuhera i to matou takiwa, ia koutou e mea nei ki te hanga i nga Rori, i nga Ruuri teihana, me nga Rerewe, koia ka whakawatea i te ara hei mahinga mo enei mahi kino ki runga ki o matou whenua i te mea kaore ano i hanga paitia nga tikanga mo nga ra e takoto mai nei.

Me whakaae atu koia matou ki enei tikanga e mahia nei i runga i te kupu kore?

Ko ta matou kupu tenei, ki te waiho ko enei tikanga kua whakahuatia ake nei hei tikanga mo nga ra e takoto mai nei, e mahara ana matou kaore e tika kia whakatuheratia to matou takiwa ki enei tikanga whakarihariha.

He aha te pai kia matou o nga Rori, o nga Rerewe o nga Kooti Whenua, mehemea ka waiho enei hei ara rironga mo o matou whenua, ka ora noa atu hoki matou ki te noho penei, kua he Rori, kua he Rerewe kua he Kooti, otia, e kore matou e ora mehemea ki te kahore atu o matou whenua ia matou.

E hara i te mea e kuare ana matou ki nga painga e puta mai ana i roto i te oti o nga Rori o nga Rerewe, me era atu mahi pai a te Pakeha, kei te tino mohio matou, e ngari, ko o matou whenua te mea pai ake i enei katoa.

Ko nga mea tenei e whakapouri nei i a matou ko nga mea kua oti nei te whakamarama iho.

I roto ano i te tau nei, i whiriwhiria ai e nga hapu etehi tangata hei whakahaere i te rohe o to matou whenua, ki te whakaaraa pou hei tohu mo nga whenua e toe mai aua kia matou e tuku atu nei i tenei Petihana, kaore nei te Pakeha ki ta matou mohio iho e whai paanga ana ki te whenua i runga i te ritenga o te ture.

Ka tonu atu tenei matou kia whakamana mai e to koutou tino Whare enei tikanga ka tonoa atu nei.

1. E hiahia ana matou kia kore matou e mate i te nui rawa o nga rorerore o te whakamahinga o te Kooti Whenua Māori i te whakamahinga i o matou take whenua; kia wehe atu ano koki nga tikanga tahae, nga mahi haurangi, nga mahi whakatutua tangata, me nga mahi whakarihariha katoa e aru nei i muri i nga nohoanga o nga Kooti.

2. Me hanga mai ano hoki e te Paremete, tetehi ture hei whakapumau, i o matou whenua kia matou, me o matou uri, mo ake tonu atu, kia kore rawa e taea te hoko.

3. Kia waiho ma matou ano e whiriwhiri nga rohe o nga Iwi e wha kua whakahuaina ake nei, me nga rohe o nga hapu o roto o aua Iwi, me te aronga o te nui o te paanga o ia tangata ki nga whenua o roto o te whakahaerenga rohe ka tuhia iho nei ki tenei Petihana.

Koia tenei te rohe?—

Timata i Kawhia, ka rere mai ki Whitiura, tapahi tonu mai i runga o Pirongia, ka heke iho ki runga o Pukehoua, ki te puau o Mangauika, haere i roto o Waipa, te puau o Puniu, haere i roto o Puniu, te puau o Wairaka haere tonu Mangakaretu,

haere i uta, Mangere, ka makere ki roto o Waikato, haere tonu, te puau o Mangakino haere tonu, i roto o Waikato, te puau o Waipapa, haere i uta, te Parakiri, rere tonu Whangamata, Taporaroa, ka makere ki roto o Taupo, te au o Waikato, i waenganui o Taupo, ki Motuoapa, te Tokakopuru, Ngutunui, te Kopiha, te Whakamoenga, te Riaka, te Matau, rere tonu Hirihiri, Tauranga, rere tonu i roto o Tauranga te matapuna, ka tapahi i runga o Kaimanawa, te matapuna o Rangitikei, haere i roto o Rangitikei, te Akeake, haere i te rohe o Ruamatua, te matapuna o Moeawhango haere i te rohe o Rangipo, Waipahihi, ka makere ki Waikato ka haere i te au o Waikato, Nukuhaupe, ka kati ki Paretetaitonga, ka huri ki tua o Paretetaitonga, te Kohatu, Mahuia, te Rerenga o Toakoru, te Takutai, Piopioatea, te Ruharuha, Hautawa, te Hunua, Manganui, te Murumuru, te Iringa o te Whiu, te Makahiroi, Pukehou, Huirau, ka makere ki roto o Whanganui, Paparoa, haere i roto o te awa o Paparoa, te Maanga a Whatihua, rere tonu i roto o Paparoa, Makahikatoa rere tonu, ka piki i te Upoko o Purangi, te Ruakerikeri, te Puta o te Hapi, rere tonu te Araware, te matapuna o Pikopiko te Tarua te Kaikoara, te Patunga o Hikairo, te Kiekie, ka Makere ki Ohura rere tonu te Whauwhau, Kokopu, Oheao, haere i roto i Oheao, te Motumaire, piki tonu i te hiwi o te Motumaire, ka heke ki Taungarakau, rere tonu te puau o te Waitanga, haere tonu, te Rerepahupahu, haere, Opuhukoura, te Hunua, te Rotowhara, te Matai, Waitara te Matawai o Waipingao, ka puta ki te puaha, e ruatekau maero ki te Moana nui, rere atu i waenga moana, ki te taha hau-raro, ka huri mai ano ki Kawhia ki te timatanga.

4. A te wa e rite ai enei whakaritenga mo te aronga ki te whenua, me whakatu mai e te Kawanatanga etehi tangata whaimana, hei whakapumau i a matou whiri-whiringa me a matou whakaaetanga ki runga i te ritenga o te ture.

5. A te wa e oti ai te whakatau o te nui o te paanga o ia tangata o ia tangata ki te whenua, ka hiahia te tangata ki te reti, e kore e mana te reti e whakaritea e tona kotahi, e ngari me panui marire ki roto ki nga nupepa kua oti te whakarite mo taua mahi, hei whakaatu i te takiwa e hokona ai te rihi o aua whenua e hiahia ana ki aretia, kia ahei ai te katoa te haere mai ki te hokonga o aua rihi.

E hara i te mea he hiahia no matou ki te pupuru i nga whenua o roto i te whaka-haerenga rohe kua tuhia iho nei ki tenei Pitihana kia puru ki te Pakeha, ki nga mahi reti, ki nga Rori ranei kia kaua e mahia ki roto; i nga mahi ranei a te iwi nui kia kaua e mahia; e ngari he hiahia kia kore atu nga mahinga a nga Kooti Whenua ia ratou e mahi nei.

Kia mohio ano hoki koutou, ki te whakaaetia mai ta matou Pitihana ka tino awhina matou ki nga ritenga e nui haere ai nga ara, e puta mai ai nga painga ki tenei motu; a ka tino inoi tonu atu matou kia tino manakohia e koutou tenei Pitihana.

Ko nga kai awhina enei i tenei Pitihana ka whakapirihia mai nei ki tua.

WAHANUI

TAONUI

REWI MANIAPOTO

Me ona hoa e 412.

## Petition of the Maniapoto, Raukawa, Tuwharetoa, and Ehanganui Tribes

Presented to the House of Representatives, 26th June, and ordered to be printed.

[Translation.]

To the Governor of New Zealand and the Members of both Houses of Parliament.

This is a Petition from us the Maniapoto, Raukawa, Tuwharetoa, and Whanganui Tribes, to Parliament; Greeting.

Your petitioners pray that you will fully look into and carefully consider the matters which are the cause of much anxiety to us, and are raising a barrier in front of us, because these matters that are causing us anxiety have principally emanated from you, the Europeans, in the form of legislation.

We have carefully watched the tendency of the laws which you have enacted from the beginning up to the present day; they all tend to deprive us of the privileges secured to us by the second and third articles of the Treaty of Waitangi, which confirmed to us the exclusive and undisturbed possession of our lands.

We do not see any good in any of the laws which you have enacted affecting our lands, when they are brought into operation, in adjudicating upon lands before the Native Land Court at Cambridge and other places; and the practices carried on at the Land Courts have become a source of anxiety to us and a burden upon us.

Through our ignorance of those laws we have been induced by speculators (land-swallowers) and their agents to allow some of our lands to be adjudicated upon so that our lands might be secured to us.

Sirs, having allowed some of our lands to be adjudicated upon, who was it that became possessed of them? It is true that after the investigations the Natives received a certificate of title showing their right to the lands, but through the superior knowledge of the Europeans we accepted foolishly the lawyers recommended to us by the speculators (land-swallowers), thinking that they were to act in our interests, but in reality they were intended to prolong the investigations, thereby increasing the expenses to so great an extent that the Natives were unable to defray them, so that they (the speculators) might seize the land, the result being that we secure the shadow and the speculators (land-swallowers) the substance.

We are beset on every side by outrageous practices and the temptations we are exposed to by speculators and even Maoris and half-castes, whom the companies have secured to decoy us into the nets of the companies.

In our perplexity to devise some means by which we could extricate our lands from the disasters pointed out, we ask, is there not a law by which we could suppress these evils? and we are told that the only remedy is to go to the Court ourselves.

Now, while we are striving to keep our lands, we are aware that your Government is trying to open our country by making roads, carrying on trig. surveys and railways, thereby clearing the way for all these evils to be practised in connection with our lands before we have made satisfactory arrangements for the future.

Are we to allow the present system to be carried on without remonstrance?

We wish to state that, if the above-mentioned practices are to be carried on in future, we think that it would not be right that our land should be rendered liable to such an objectionable system.

What possible benefit would we derive from roads, railways, and Land Courts if they became the means of depriving us of our lands? We can live as we are situated at present, without roads, railways, or Courts, but we could not live without our lands.

We are not oblivious of the advantages to be derived from roads, railways, and other desirable works of the Europeans. We are fully alive to these advantages, but our lands are preferable to them all.

The matters set forth above are the cause of our anxiety.

During the present year certain persons were selected by the hapus to define the boundaries of our lands, and erect posts to mark out the lands still remaining to us, your petitioners, upon which the European, to the best of our knowledge, has no legal claim.

We, therefore, pray that your Honourable House will give effect to the following:—

1. It is our wish that we may be relieved from the entanglements incidental to employing the Native Land Court to determine our titles to the land, also to prevent fraud, drunkenness, demoralization, and all other objectionable results attending sittings of the Land Court.

2. That Parliament will pass a law to secure our lands to us and our descendants for ever, making them absolutely inalienable by sale.

3. That we may ourselves be allowed to fix the boundaries of the four tribes before mentioned, the hapu boundaries in each tribe, and the proportionate claim of each individual within the boundaries set forth in this petition, which are as follows:—

Commencing at Kawhia, from thence to Whitiura, thence over Pirongia to Pukehoua, thence to the mouth of the Manganika, following up Waipa to the mouth of the Puniu, along the Puniu to the mouth of Wairaka, along Wairaka to Mangakaretu, from thence to Mangere, thence to the Waikato, following the Waikato to the mouth of Mangakino, thence still following the Waikato to Waipapa, thence to Parakiri, thence to Whangamata, thence to Taporaroa, thence to Lake Taupo, following the course of Waikato in the centre of Lake Taupo to Motu-o-Apa, thence to Tokakopuru, thence to Ngutunui, thence to Kopiha, thence to Whakamoenga, thence to Riaka, thence to Matau, thence to Te Hirihiri, thence to Tauranga, following up Tauranga to its source, thence to the summit of Kaimanawa, thence to the source of Rangitikei, following down to Te Akeake, thence along the boundary of Ruamatua to the source of the Moeawhango, following the boundary of Rangipo to Waipahihi, from thence into Waikato, following Waikato to Nukuhaupe, thence to Paretetaitonga, thence to Te Kohatu, thence to Mahuia, thence to Te Rerenga-o-Toakoru, thence to Takutai, thence to Piopioatea, thence to Te Ruharuha, thence to Te Hautawa, thence to Te Hunua, Manganui, Te Murumuru, Te Iringa-o-te-Whiu, Te Makahiroi, Pukehou, and Huirau, thence into Whanganui, thence to Te Paparua, along Paparua Stream to

Maanga-a-whatihua, thence to Paparoa, thence to Makahikatoa, thence over Te Upoko-o-Purangi to Te Ruakerikeri, thence to Puta-o-Hapi, Te Arawaere, thence to the source of Pikopiko, thence to Te Tarua te Kaikoara, Te Patunga-o-Hikairo, Te Kiekie, Ohura, Te Whauwhau, Kokopu, Oheao, thence over the Motumaire Ridge into Taungarakau, along Taungarakau to the mouth of Waitanga, following Waitanga to Te Rerepahupahu, following Rerepahupahu to Opuhukoura to Te Hunua, thence to Te Rotowhara, Matai, Waitara, Waipingao, following Waipingao out to the coast, thence twenty miles out to sea, and then taking a northerly course twenty miles at sea to Kahwia, the starting point.

When these arrangements relating to land claims are completed, let the Government appoint some persons vested with power to confirm our arrangements and decisions in accordance with law.

If, after any individual shall have had the extent of his claim ascertained, he should desire to lease, it should not be legal for him to do so privately, but an advertisement should be duly inserted in any newspaper that has been authorized for the purpose, notifying time and place where the sale of the lease of such land will be held, in order that the public may attend the sale of such lease.

There is no desire on our part to keep the lands within the boundaries described in this petition locked up from Europeans, or to prevent leasing, or roads from being made therein, or other public works being constructed, but it is our desire that the present practices that are being carried on at the Land Courts should be abolished.

We wish you to understand that, if our petition is granted, we will strenuously endeavour to follow such a course as will conduce to the welfare of this Island.

And your petitioner will ever pray, &c.

WAHANUI,  
TAONUI,  
REWI MANIAPOTO,  
And 412 others.

**WAHANUI'S SPEECHES TO PARLIAMENT**

**WAHANUI'S SPEECH TO THE HOUSE OF REPRESENTATIVES, 1 NOVEMBER 1884**

Wahanui spoke to the House of Representatives on 1 November 1884. His speech was in te reo Māori, with a translation by Captain Gilbert Mair. The speech and translation follow:

E te Pika tena koe me nga Mema o tenei Kaunihera, tena koutou. I hiahia ahau kia tae mai au ki tenei Whare ki te whakapuaki i te hiahia o toku iwi. I whaikupu ano ahau ki tera Whare o te Paremete i runga i aua hiahia o toku iwi. Tuatahi, ko te tino take o aua hiahia kia tau ano ki au te mana whakahaere i toku whenua, I raro ano i te mana o te Kawana. Kahore ano kia pa noa te ringa o te pakeha ki enei whenua. Kua roa ahau e noho ana i konei, kua kite hoki au i te Pire a te Kawanatanga. I kite au he nui rawa nga niho o taua Pire. He niho katoa kei te tinana a he tara ano kei te whiore e mau aua. No muri mai nei i taku whikorero ki tera Ware katahi au ka kite kua mahia paitia taua Pire e te Kawanatanga. Kua unuhia e te Kawanatanga te nuinga o nga niho o taua Pire, kotahi tonu te mea i kite au e mau tonu aua. Ka nui taku whakakino mo tenei niho e mau tonu nei, a e inoi ana ahau ki tenei Kaunihera kia kaua e whakamana taua rarangi o te Pire. E tono ana hoki au kia kaua e mana te Kooti ki runga ki aua whenua inainei. Kaore au i te ki me kaua rawa e mana te Kooti engari e mea ana ahau kaua e pa atu ki aua whenua i tenei wa, engari taihoa marire kia ta te manawa, kia taea ai te ata whakarite marire ki te Kawanatanga, a kia rite raano he tikanga hei reira e tika ai kia rapua he tikanga mo nga mahi o muri atu. Kaore au i te arai i te Kawanatanga, engari e hiahia ana ano ahau ki te whakahoia i a ratou, kia taea ai te whakahaere pai i taua takiwa. Koia nei te tuatahi o aku whakahe mo taua Pire. Tuarua, e hiahia ana ahau ki a whakamana te Komiti, kia tukua ma te Komiti e whakahaere katoa nga mahi i runga i nga whenua i roto i taua takiwa. Engari hoki ki taku titiro atu kua ahua ngawari mai te Kawanatanga ki ta matou i pai ai. E whakapuaki atu ana au i tenei tono inaianei kei raruraru ano tatou a muri rake nei, a ka kataina tatou e era atu Komiti me era atu whenua o te Ao. I mahara tonu au he mea tapu tenei Paremete, he tapu hoki ana mahi me haere i runga i te pono me te tika. Tuatoru, e hiahia ana ahau kia pai te hanga i nga ture mo nga iwi e rua, kia rite tahi te whakahaere mo te iwi Maori me te iwi Pakeha, kia pai ai te noho tahi i roto i nga tau e haere ake nei. Kati ra aku kupu mo tenei mea, heoi ano ra ka whakapai atu ahau kia koutou mo to koutou whakaae kia tae mai au ki to koutou aroaro. Kia

ora koutou e noho ana ikonei ki te mahi i nga ture i runga i te ngakau tika me te ngakau pai.<sup>1</sup>

Mr Speaker, salutations to you. To all the honourable members of this House, salutations. It was my great desire to speak before this House on behalf of my people. That brought me here. There are two subjects for which I was sent here. My first reason was to explain to you my sentiments; my second, that I might look upon the works that are being done in this House. I will now speak the wishes and the words of my tribe. The first subject on which I shall speak concerns our lands—the ancestral lands of myself and my people. I say that we wish to have the sole administration of those lands. Secondly, I do not wish the action of the Native Land Court to be brought into force over those lands. The reason of this request is, that the lands that I speak of are ancestral lands, and the hands of the Europeans have never touched them. No white man's foot has trodden upon those lands, nor has any European obtained authority over them, either by lease or otherwise. This is the reason why I say that we should have the administration of those lands; but afterwards I will ask this House to help me to devise a law for administering them. I have already mentioned my ideas on this subject to the Native Minister. His word to me was, "Your ideas are good." After I had been in this place some time, I saw the proposed Bill. When I saw this Bill I found that it had great sharp teeth from the head to the mouth, and there was a sting also in its tail. I saw that its teeth were very sharp, and were designed to swallow up the people, and that the sting also will destroy the land. When I saw those sharp teeth I thought in this way: This watch which I hold in my hand is mine; and, if it require repairs, let me take it to the watchmaker and have it repaired. I will explain to the watchmaker what requires to be done to it, and then he can repair it according to my directions. Then, when he has repaired it, he returns it to me, and I pay him for it, and then it is mine to do what I please with. I apply this idea to my land, and I think it is a parallel case to my land. I hope that the House will duly consider my words. Do not let the House be carried away with a desire to obtain lands, but rather let the House consider that which is just and right. These are my ideas on this subject, and since I have seen the Bill I asked the Native Minister if he would consent to my inserting some provisions. At present there is no embarrassment with regard to my land; the title to it is undisputed. But I am actuated by a fear that trouble will come upon it. That is why I come here now. The object of Tawhiao's visit to England was lest the laws passed in this House should injuriously affect his land, and it has been the head of the Government in England that has told Tawhiao to come back to New Zealand. Therefore I ask this House to pass just laws with regard to my land. I hope, also, that this House will carefully consider, carry out, and give effect to the laws of that great lady who lives in England—I mean the Queen—so that the laws for both races, the Natives and Europeans, may be carefully administered. Do not let such

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1. 'Nga Korero Paramete: 1881–1885', *He Reo Tūre No te Taha Kāwana/Language of the Crown*, New Zealand Electronic Text Collection, <http://nzetc.victoria.ac.nz/tm/scholarly/tei-NZPaV01NgaK-t1-g1-t4-body1-d3-d2-d1.html>, accessed 4 June 2018.



laws as some of the clauses in this proposed Bill be affirmed. They appear to have been drafted, or designed, without due consideration. These are my words to this House: I claim the consideration of this House, and ask it to give effect to my wish and the wish of my people, and that the authority over our lands may be vested in our Committee. Another request I have to make is that the sale of spirits within our district shall be stopped absolutely. I do not want that great evil brought upon our people. I hope this House will be strong in preventing this evil coming upon us and upon our people. That is all I have to say, and I can only add that it is my great desire and wish that you pass just laws with respect to my land and my people.<sup>2</sup>

#### **WAHANUI'S SPEECH TO THE LEGISLATIVE COUNCIL, 6 NOVEMBER 1884**

E te Pika tena koe me nga Mema o tenei Kaunihera, tena koutou. I hiahia ahau kia tae mai au ki tenei Whare ki te whakapuaki i te hiahia o toku iwi. I whaikupu ano ahau ki tera Whare o te Paremete i runga i aua hiahia o toku iwi. Tuatahi, ko te tino take o aua hiahia kia tau ano ki au te mana whakahaere i toku whenua, I raro ano i te mana o te Kawana. Kahore ano kia pa noa te ringa o te pakeha ki enei whenua. Kua roa ahau e noho ana ikonei, kua kite hoki au i te Pire a te Kawanatanga. I kite au he nui rawa nga niho o taua Pire. He niho katoa kei te tinana a he tara ano kei te whiore e mau aua. No muri mai nei i taku whikorero ki tera Ware katahi au ka kite kua mahia paitia taua Pire e te Kawanatanga. Kua unuhia e te Kawanatanga te nuinga o nga niho o taua Pire, kotahi tonu te mea i kite au e mau tonu aua. Ka nui taku whakakino mo tenei niho e mau tonu nei, a e inoi ana ahau ki tenei Kaunihera kia kaua e whakamana taua rarangi o te Pire. E tonono ana hoki au kia kaua e mana te Kooti ki runga ki aua whenua inainei. Kaore au i te ki me kaua rawa e mana te Kooti engari e mea ana, ahau kaua e pa atu ki aua whenua i tenei wa, engari taihoa marire kia ta te manawa, kia taea ai te ata whakarite marire ki te Kawanatanga, a kia rite raano he tikanga hei reira e tika ai kia rapua he tikanga mo nga mahi o muri atu. Kaore au i te arai i te Kawanatanga, engari e hiahia ana ano ahau ki te whakahoia a ratou, kia taea ai te whakahaere pai i taua takiwa. Koia nei te tuatahi o aku whakahe mo taua Pire. Tuarua, e hiahia ana ahau ki a whakamana te Komiti, kia tukua ma te Komiti e whakahaere katoa nga mahi i runga i nga whenua i roto i taua takiwa. Engari hoki ki taku titiro atu kua ahua ngawari mai te Kawanatanga ki ta matou i pai ai. E whakapuaki atu ana au i tenei tono inaianei kei raruraru ano tatou a muri rake nei, a ka kaitaina tatou e era atu Komiti me era atu whenua o te Ao. I mahara tonu au he mea tapu tenei Paremete, he tapu hoki ana mahi me haere i runga i te pono me te tika. Tuatoru, e hiahia ana ahau kia pai te hanga i nga ture mo nga iwi e rua, kia rite tahi te whakahaere mo te iwi Maori me te iwi Pakeha, kia pai ai te noho tahi i roto i nga tau e haere ake nei. Kati ra aku kupu mo tenei mea, heoi ano ra ka whakapai atu ahau kia koutou mo to koutou

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2. 'Native Land Settlement Bill', NZPD, 1884, vol 50, pp555-556.

whakaae kia tae mai au ki to koutou aroaro. Kia ora koutou e noho ana ikonei ki te mahi i nga ture i runga i te ngakau tika me te ngakau pai.<sup>3</sup>

Mr Speaker, I have to salute you and the honourable members of this Chamber. I have wished to be able to explain before this Chamber the desires of my people. I have already had an opportunity of addressing the other Chamber on the subject of these desires of my people. The first, the principal, object that I have in view is that I should have the full control and power over my own lands, subject to the authority of His Excellency the Governor. These lands, so far, have not been touched by the hands of Europeans. I have been here some time, and I have seen the Bill introduced by the Government. I saw that there were a great number of teeth in that Bill. The whole body was covered with teeth, and it also had a tail with a sting in the end. After I had an opportunity of addressing the other Chamber, I found that the Government had made improvements in it. They drew [most of] the teeth of that Bill, with the exception of one, which now remains in it. I have a strong objection to that tooth which now remains, and I beseech this House not to give power to that clause as it stands. And now I request that the Court may not have jurisdiction over the districts referred to for the present. I do not say always, but for the present, so that we may have time to consult with the Government and to make satisfactory arrangements; and, when the law is agreed to, then we can discuss the prospects for the future. I do not wish to oppose the Government, but I wish to work together with them, in order that we may arrange to deal satisfactorily with that district. That is the first objection which I have. Secondly, I should wish that my Committee—that is, the Native Committee—should be empowered, so that all dealings and transactions within that proclaimed district should be left in the hands of that Committee. But I am glad to say that I see that the Government have been more inclined to deal favourably with us. I make this request now, in order that we may not get into a muddle hereafter, and be made a laughing-stock to all the other colonies (sic) and people. I have always considered that this Assembly should be regarded as sacred, and that its work should be sacred, and should be carried out with truth and equity. Thirdly, I wish to see laws carefully framed for the protection of both races, and that the Natives may be treated in the same way as Europeans, in order that they may live amicably together in the future. I have nothing further to say, except to thank you for allowing me to come here, and to wish you prosperity for the future, and that you may long remain here to deal with the laws in a just and true spirit.<sup>4</sup>

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3. 'Nga Korero Paramete: 1881–1885', *He Reo Tūre No te Taha Kāwana/Language of the Crown*, New Zealand Electronic Text Collection, <http://nzetc.victoria.ac.nz/tm/scholarly/tei-NZPaV01NgaK-t1-g1-t4-body1-d3-d2.html>, accessed 4 June 2018.

4. 'Native Land Alienation Restriction Bill', 6 November 1884, NZPD, vol 50, p 427. Minor amendments to translation by the Waitangi Tribunal.

## CHAPTER 9

### TE TUARA O TŪRONGO: THE NORTH ISLAND MAIN TRUNK RAILWAY

‘The backbone of our ancestor Turongo – that is, the Main Trunk Railway route – we will give to you for running the train-wheels on, right through the Ngatimaniapoto district.’<sup>1</sup>

#### 9.1 INTRODUCTION

On 15 April 1885, over a thousand Māori and settlers gathered on the banks of the Pūniu River near Te Awamutu to witness the turning of the first sod of the middle section of the North Island Main Trunk Railway (NIMTR).<sup>2</sup> Standing under a ceremonial arch, Wahanui turned the first three sods, which Premier Stout wheeled in an ornamental barrow, tipping them out amidst loud cheers from the crowd and the singing of ‘God Save the Queen.’<sup>3</sup> Following the ceremony, Stout spoke of the turning of the sod as symbolic of a new era of ‘peaceable relations between Europeans and Maoris.’ To those Māori present, he promised a share in the long-term economic prosperity the railway would bring. Wahanui then announced to the crowd that the railway line would thereafter be known as ‘Turongo.’<sup>4</sup> Celebrations were said to have continued into the night.<sup>5</sup>

The NIMTR was the most significant public works project in Te Rohe Pōtae. Construction of the line began in the north of the inquiry district in 1886 and reached its southern boundary in 1903. The first North Island Main Trunk train completed the journey from Auckland to Wellington in August 1908. Later that year, New Zealand Prime Minister, Joseph Ward, marked the NIMTR’s official opening by driving the last spike of the railway at Manganuioteao, near Ōhākune,

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1. The opening quote of this chapter is attributed to Te Rohe Pōtae rangatira Rewi Maniapoto and Wahanui at the 1885 ceremony to mark the turning of the first sod of the central section of the North Island Main Trunk Railway: doc A20 (Cleaver and Sarich), p 142.

2. ‘The North Island Trunk Railway. Turning the First Sod’, *Te Aroha News*, 18 April 1885, p 7; AJHR, 1885, D-6, pp 2–3.

3. ‘The North Island Trunk Railway. Turning the First Sod’, *Te Aroha News*, 18 April 1885, p 7; AJHR, 1885, D-6, p 4; Neill Atkinson, *Trainland: How Railways Made New Zealand* (Auckland: Random House, 2007), p 45.

4. Document A20, pp 73–74. See the first sidebar in this chapter for an explanation of the name Tūrongo.

5. RS Fletcher, *Single Track: The Construction of the Main Trunk Railway* (Auckland: Collins, 1978), p 125.

to the south of this inquiry district. A major milestone in the development of New Zealand's transport infrastructure nationally, the railway has an added symbolic significance in this inquiry. As seen in chapter 8, the consent of Te Rohe Pōtae leaders to the railway marked the end of the aukati and the beginning of a new era of Crown–Māori relations in the district.

The main source of evidence relied on this chapter is Philip Cleaver and Jonathan Sarich's research report, 'Turongo: The North Island Main Trunk Railway and the Rohe Potae, 1870–2008'.<sup>6</sup> Other research reports relied upon include those by Cathy Marr and Brent Parker.<sup>7</sup> The chapter also draws on claimant evidence, Government records, the comprehensive body of Waitangi Tribunal reports and scholarship relating to public works issues, as well as general histories of the main trunk line and New Zealand railways history more broadly.

### 9.1.1 The purpose of this chapter

During railway negotiations with the Crown between 1883 and 1887, Te Rohe Pōtae Māori agreed to the railway's construction through their territory based on a series of specific Crown agreements. Whether the Crown kept to these agreements, known by Te Rohe Pōtae Māori as Te Ōhākī Tapu, is the subject of this and other chapters of this report. In this chapter, we focus on Crown agreements relating to the railway's construction. Specifically, we concentrate on whether the Crown took more land for the railway's initial construction than Māori agreed to, whether Māori were adequately compensated for the use of their land and resources to build the railway, the employment of Māori on the railway line, its environmental effects, and whether the Crown adhered to its promise to fence the line. More generally, we consider whether Te Rohe Pōtae Māori and the Crown gained mutual benefits from the railway's construction and whether the Crown had an ongoing Treaty duty to consult Te Rohe Pōtae Māori in decisions concerning the railway's construction.

In chapter 8 we described the series of negotiations and agreements known to claimants as Te Ōhākī Tapu. We recognised the 1883 petition of the 'four tribes' as a declaration that the Crown should give practical effect to the terms of the Treaty. We also found that the negotiations constituted a demand that the Crown use its power of *kāwanatanga* to provide statutory recognition of the *tino rangatiratanga* of Te Rohe Pōtae Māori. Agreement to build the NIMTR, a major public work, through Te Rohe Pōtae was one of the most significant outcomes of those negotiations. While Te Rohe Pōtae Māori would later gift part of the land required for the railway, the formal transfer of railway lands to government ownership took place under public works legislation and, in acquiring the land, the Crown

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6. Document A20.

7. Marr, 'Te Rohe Potae Political Engagement 1864 – 1886' (document A78); Tauariki, Ngaia, Roa, Maniapoto-Anderson, Barrett, Douglas, Joseph, Meredith, and Wessels, 'Ngāti Maniapoto Mana Motuhake: Report for Ngāti Maniapoto Claimants and the Waitangi Tribunal' (document A110); Parker, 'Report on the North Island Main Trunk Railway Compensation Hearing' (document A96).

### The naming of the line Tūrongo

After turning the first sods of the middle section of the North Island Main Trunk Railway, Wahanui offered the name Tūrongo for the section. According to George Wilkinson, Rewi Maniapoto, who was standing beside Wahanui, called out the name Tūrongo to signal his agreement.<sup>1</sup>

As discussed in chapter 2, Tūrongo was a famed Ngāti Maniapoto and Tainui ancestor. Son of Tāwhao and half-brother of Whatihua, Tūrongo travelled inland from Kāwhia and established the settlement of Rangiatea, near Ōtorohanga. Over time, Tūrongo's descendants came to occupy the region from Pirongia and Wharepūhanga south to Tūhua, while Whatihua's descendants lived in coastal regions from northern Kāwhia to Pirongia.<sup>2</sup>

Wahanui's naming of the railway after Tūrongo was a declaration of his mana. However, in his speech at the 1886 sod-turning ceremony, he took care to emphasise that this act of mana should not be seen as encroaching upon the rights of iwi and hapū who occupied land on each side of the railway track.

It does not affect the land on either side of the chain wide, because each person knows the name of his own piece. The person of rank has his own portion, and so has the person of low degree, and it is not a proper thing for a person who is of rank to contest a person of low degree with regard to the title to his land.<sup>3</sup>

In 1905, Ngāti Tūwharetoa leader Te Heuheu Tukino, who was present at the 1885 ceremony, recalled hearing Rewi Maniapoto and Wahanui telling Stout that '[t]he backbone of our ancestor Turongo – that is, the Main Trunk Railway route – we will give to you for running the train-wheels on, right through the Ngatimaniapoto district'.<sup>4</sup> To end the sod-turning ceremony, Stout confirmed that indeed 'this section should be called Turongo'. At this point, Rewi introduced Stout to his only child and whāngai daughter Ngahua.<sup>5</sup>

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1. Document A110 (Meredith), p 678.

2. Document A110 (Maniapoto-Anderson), pp 195–196; doc A98 (Thorne), p 76; doc A97 (Borell and Joseph), p 33; transcript 4.1.1, p 15 (Tom Roa, Ngā Kōrero Tuku Iho hui, Te Kotahitanga Marae, 1 March 2010).

3. Document A110, p 678; G. T. Wilkinson, 'The North Island Main Trunk Railway (Report on the Ceremony of Turning the First Sod Of)', at Puniu, 15th April 1885; AJHR, 1885, D-6, p 4.

4. Document A20, p 142.

5. Document A20, p 74. We heard about Rewi Maniapoto's whāngai daughter Ngahua at the first of our Ngā Kōrero Tuku Iho hui, at Ōtorohanga, from her mokopuna Amiria Emery. Transcript 4.1.1, p 170 (Amiria Emery, Ngā Kōrero Tuku Iho hui, Te Kotahitanga Marae, 2 March 2010).

followed the procedures set down in that legislation. Therefore, as well as assessing whether the Crown kept to the agreements negotiated with Māori in the 1880s, we also measure its conduct against well established Treaty jurisprudence on public works takings.

This chapter covers the construction of the NIMTR within the inquiry district from the negotiation and planning stages until it was opened for traffic in 1903. Although largely focused between 1885 and 1903, it examines some issues beyond that scope, including payment of compensation and the completion of fencing. This chapter has some discussion of the administration and purchasing of Māori land in this period, but these topics are dealt with more fully in chapters 10 and 11 respectively.

The chapter does not include the railway's role in the introduction of alcohol into the district or the rating of lands adjacent to the railway. Nor does it cover various other twentieth-century issues raised by claimants, including post-1903 land takings and compensation, surplus lands and land disposals, employment, long-term economic benefits from the NIMTR's operation, and the restructuring and privatisation of the NIMTR. The cumulative impacts of the NIMTR on Te Rohe Pōtae Māori will be further addressed in future chapters of this report.

### **9.1.2 How the chapter is structured**

Section 9.2 examines relevant Tribunal jurisprudence and the submissions of the parties to establish the issues for determination in this chapter. Section 9.3, on the NIMTR negotiations, opens by placing the railway in its broader historical context. It then briefly reviews this report's previous discussion of the Te Ōhākī Tapu negotiations up to 1885, before detailing further negotiations between the Crown and Māori concerning the railway from 1885 to 1887. Next, section 9.4 offers a narrative account of the NIMTR's construction between 1886 and 1903. Section 9.5 sets out the Tribunal's analysis and findings on the key areas of land takings, land gifting, compensation, labour contracts, resource use, the environmental impacts of construction, and the fencing of the line. Section 9.6 outlines the prejudice suffered by Te Rohe Pōtae Māori, and section 9.7 contains a summary of our findings. Appendix 1 contains more detailed information about the land gifted and taken for the NIMTR, and the compensation paid.

### **9.2 ISSUES**

This section summarises the existing Tribunal jurisprudence on railways and public works, and derives from these a set of standards for Crown action in respect of public works takings for the NIMTR. An extended discussion of the jurisprudence on public works will be provided in a future chapter of this report. The section then discusses the positions of the parties, including a concession from the Crown, before setting out the key issue questions for the chapter.

### 9.2.1 What other Tribunals have said

The findings of previous Tribunals on the 1883–85 negotiations between the Crown and Te Rohe Pōtae Māori, most notably the Central North Island and Whanganui Tribunals, have already been discussed in chapter 8.

The taking of Māori land for railways and other public works has been extensively covered by past Tribunals. This chapter provides a brief summary of past Tribunal findings on public works before setting out the Treaty standards arising from this jurisprudence, which determine whether a particular taking may be regarded as Treaty-compliant.

Tribunal jurisprudence on public works stretches back to the 1990s. A significant report of that decade, *Te Maunga Railways Land Report*, considered the 1955 taking under public works legislation of land from Te Maunga, near Papamoa, for railway housing, and the Crown's Treaty obligations in returning that land under the offer-back provisions introduced in the Public Works Act 1981. The Te Maunga Tribunal found any compulsory acquisition of Māori land to be a breach of the plain meaning of article 2 of the Treaty, in particular its guarantee of te tino rangatiratanga and the undisturbed possession of Māori lands. In the English version of the Treaty, it went against the text outlining that Māori could retain their land until they wished to sell it.<sup>8</sup>

Another key principle, established by the Ngāti Rangiteaorere Tribunal, is that the Crown is obliged to consult with Māori before compulsorily acquiring their land.<sup>9</sup> Later Tribunals have built on this finding, arguing that any taking of Māori land without notice or genuine consultation with Māori owners automatically breaches the principle of partnership.<sup>10</sup> In addition, past Tribunals have found that the Crown breached the principle of partnership by introducing public works legislation without the consent of Māori, whether through failure to provide for Māori self-government institutions or through introducing the legislation at a time when Māori had no representation in Parliament.<sup>11</sup>

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8. Waitangi Tribunal, *Te Maunga Railways Land Report* (Wellington: Brooker's, 1994), pp 67–71, 81.

9. Waitangi Tribunal, *The Ngati Rangiteaorere Claim Report* (Wellington: Brooker & Friend Limited, 1990), p 47.

10. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 2, pp 837, 872; Waitangi Tribunal, *Tauranga Moana 1886–2006, Report on the Post-Raupatu Claims*, 2 vols (Wellington: Legislation Direct, 2010), vol 1, p 273; Waitangi Tribunal, *Te Kāhui Maunga: The National Park District Inquiry Report*, 3 vols (Wellington: Legislation Direct, 2013), vol 2, pp 742–743, 766–767.

11. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 819, 837, 839; Waitangi Tribunal, *Tauranga Moana*, vol 1, pp 273, 283; Waitangi Tribunal, *The Wairarapa ki Tararua Report*, 3 vols (Wellington: Legislation Direct, 2010), vol 2, pp 782, 800; Waitangi Tribunal, *Te Kāhui Maunga*, vol 2, p 742.

Further breaches, this time of article 3 and the related principle of equity, occurred when different mechanisms existed for the taking of Māori land than for general land, and where Māori were disadvantaged by these differences.<sup>12</sup>

### 9.2.2 Treaty standards for public works takings

The jurisprudence on railways and public works forms the basis for the Treaty standards against which we will assess all land takings for railways in this chapter. These standards will be considered further in the Public Works chapter to be released in a future part of the report. They are:

- for any proposed public works involving Māori land, the Crown has a duty to consult with Māori landowners and obtain their consent;<sup>13</sup>
- the Crown should only resort to compulsory acquisition of Māori land as a last resort, and only in the national interest;<sup>14</sup>
- the Crown must never compulsorily acquire Māori land for public works purposes if an alternative site is available.<sup>15</sup> In other words, the Crown must distinguish between site-dependent takings and those which could be situated in locations other than Māori land;
- in cases of essential site-dependent takings involving Māori land, the Crown has a protective duty to take measures to minimise the impact on Māori landowners, including by ensuring that sites such as wāhi tapu, urupā, and kāinga are excluded from these takings;<sup>16</sup>
- alternative options to obtaining freehold title (such as arranging a leasehold, easement, licence, covenant or joint ownership arrangement) should be considered before resorting to permanent alienation;<sup>17</sup> and,

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12. Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 3, pp 1096–1097; Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 873; Waitangi Tribunal, *Tauranga Moana*, vol 1, pp 282, 286.

13. Waitangi Tribunal, *The Ngati Rangiteaorere Claim Report*, p 47; Waitangi Tribunal, *The Ngai Tahu Ancillary Claims Report* (Wellington: GP Publications, 1995), p 11; Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 839; Waitangi Tribunal, *Tauranga Moana*, vol 1, pp 273, 282–283, 291; Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 2, pp 793, 801–802; Waitangi Tribunal, *Te Kāhui Maunga*, vol 2, pp 742–743.

14. Waitangi Tribunal, *The Ngai Tahu Ancillary Claims Report*, pp 11, 21; Waitangi Tribunal, *Turangi Township Report* (Wellington: Brooker's, 1995), pp 285–286; Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 819, 867–872; Waitangi Tribunal, *Tauranga Moana*, vol 1, p 295; Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 2, p 781.

15. Waitangi Tribunal, *Te Maunga Railways Land Report*, p 70; Waitangi Tribunal, *Turangi Township Report*, pp 364–365; Waitangi Tribunal, *Tauranga Moana*, vol 1, pp 276–277.

16. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 851–852; Waitangi Tribunal, *Tauranga Moana*, vol 1, pp 279–280, 297; Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 2, pp 794, 799.

17. Waitangi Tribunal, *The Ngai Tahu Ancillary Claims Report*, p 11; Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 839; Waitangi Tribunal, *Tauranga Moana*, vol 1, pp 297–298; Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 2, p 801.



- compensation should be awarded in a fair and timely manner, and land exchanges should be preferred to monetary compensation where the affected landowners agree.<sup>18</sup>

### 9.2.3 Crown concessions in this inquiry

The Crown has made one concession in relation to the NIMTR. The Crown concedes that some owners of the Rangitoto–Tuhua block were not compensated for land taken for the railway’s construction, and that this failure to pay compensation ‘was a breach of the Treaty of Waitangi and its principles.’<sup>19</sup> The Crown does not specify which subdivisions of the Rangitoto–Tuhua block it failed to pay compensation for land taken.

### 9.2.4 Claimant and Crown arguments

The claimants’ overall submissions on the NIMTR focused on the question of whether the Crown kept to the agreements it made during the mid-1880s concerning the railway’s construction and operation.<sup>20</sup> There were also many specific claims which provide more detail on the railway’s impact on particular claimants and claimant groups, some of which are discussed in this chapter, as well as future chapters of the report.<sup>21</sup> Whereas the 1880s negotiations covered many aspects of the ongoing relationship between the Crown and Te Rohe Pōtae Māori after the lifting of the aukati, here we are specifically concerned with the Crown’s undertakings relating to the railway up until 1903.

Both parties agreed that, in statements at Kihikihi in February 1885, and in continuing negotiations with Te Rohe Pōtae Māori between 1885 and 1887, Ballance and Stout made a series of specific agreements concerning the railway’s

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18. Waitangi Tribunal, *The Ngati Rangiteaorere Claim Report*, p 48; Waitangi Tribunal, *The Ngai Tahu Ancillary Claims Report*, p 11; Waitangi Tribunal, *Turangi Township Report*, p 373; Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 841; Waitangi Tribunal, *Tauranga Moana*, vol 1, pp 291–292; Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 2, pp 796, 801–802; Waitangi Tribunal, *Te Kāhui Maunga*, vol 2, pp 752–753.

19. Submission 3.4.293, p 2.

20. Submission 3.4.121.

21. Wai 440 (submissions 3.4.198); Wai 472, Wai 847, Wai 986, Wai 993, Wai 1015, Wai 1016, Wai 1054, Wai 1058, Wai 1095, Wai 1115, Wai 1437, Wai 1586, Wai 1608, Wai 1612, Wai 1965, Wai 2120, Wai 2335 (submission 3.4.140); Wai 551, Wai 948 (submission 3.4.250); Wai 784 (submission 3.4.147); Wai 846 (submission 3.4.251); Wai 1099, Wai 1100, Wai 1132, Wai 1133, Wai 1136, Wai 1137, Wai 1138, Wai 1139, Wai 1798 (submission 3.4.189 and 3.4.189(a)); Wai 1482 (submission 3.4.154(a)); Wai 1523 (submission 3.4.157); Wai 1593 (submission 3.4.230); Wai 2014 (submissions 3.4.208); Wai 556, Wai 616, Wai 1377, Wai 1820 (submission 3.4.279); Wai 1606 (submission 3.4.169(a)); Wai 1823 (submission 3.4.178); Wai 1824 (submission 3.4.181); Wai 1894 (submission 3.4.145); Wai 762 (submission 3.4.170); Wai 928 (submissions 3.4.175(a)); Wai 1255 (submission 3.4.199); Wai 1309 (submission 3.4.220); Wai 1455 (submission 3.4.156); Wai 1704 (submission 3.4.297); Wai 1640 (submission 3.4.191); Wai 48, Wai 81, Wai 146 (submission 3.4.211); Wai 1197, Wai 1388 (submission 3.4.209); Wai 37, Wai 933, Wai 1196 (submission 3.4.239); Wai 366, Wai 1064 (submission 3.4.205); Wai 833, Wai 965, Wai 1044, Wai 1605 (submission 3.4.227); Wai 845 (submission 3.4.166); Wai 987 (submission 3.4.167); Wai 1147, Wai 1203 (submission 3.4.151); Wai 1299 (submission 3.4.234); Wai 1447 (submission 3.4.187); Wai 1594 (submission 3.4.164(a)); Wai 483 (submission 3.4.135); Wai 1327 (submission 3.4.249(c)).

construction and operation. Both parties also accepted that the Crown was, in its own words, ‘honour bound’ as Treaty partner to uphold its specific agreements to Te Rohe Pōtae Māori, and that if unable to fulfil any aspects of these agreements, the Crown had an obligation to consult Te Rohe Pōtae Māori.<sup>22</sup> The Crown further agreed that Te Rohe Pōtae Māori could reasonably have expected consultation on ‘the local details of lands to be taken for the railway corridor and its operation.’<sup>23</sup>

Significant points of difference remained, however, in how the parties interpreted the Crown’s undertakings concerning the railway between 1883 and 1887, in what they saw as their implications for future Crown conduct, and in their view of whether the Crown fulfilled its agreements.

The claimants argued that rangatira agreed to the construction of the railway on the basis of what they saw as historical and ongoing commitments concerning the railway. There was no time limit on these commitments, and they could reasonably be expected to continue after the railway’s completion and into the present day.<sup>24</sup> In the Crown’s view, the 1880s agreements related primarily to the period of the railway’s construction and did not bestow an ongoing duty to consult with Te Rohe Pōtae Māori over management and governance decisions concerning the railway’s operation beyond 1903.<sup>25</sup> These competing views around the Crown’s railway commitments in the twentieth century will be addressed in future chapters of this report.

The claimants said that the Crown broke many of its promises concerning the construction of the NIMTR through the inquiry district. In their submissions, the claimants differentiated between two distinct ‘phases’ of railway construction. The first phase involved the sections of railway from the Pūniu River south to Mokau Station (also known as Puketutu Station) constructed during the 1880s. The second phase related largely to the land between Mokau Station and the southern boundary of the inquiry district at Taringamotu, north of Taumarunui, constructed during the 1890s and early 1900s.

During the first phase, the claimants said, the Crown mostly honoured its commitments to Te Rohe Pōtae Māori concerning the railway’s construction. It consulted with Te Rohe Pōtae Māori on the route of the line and negotiated with Māori (through the Kawhia Native Committee) to pay for stone and timber used in its construction.<sup>26</sup> It granted small work contracts to Māori and fenced both sides of the railway.<sup>27</sup> It also made some attempt to pay compensation to Māori landowners (although the claimants disputed whether this compensation ever reached the landowners).<sup>28</sup>

However, by the second phase of construction, beginning in the 1890s, the claimants said that the Crown had largely lost sight of its earlier agreements with

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22. Submission 3.4.293, pp 1–2, 14; submission 3.4.121, p 85.

23. Submission 3.4.293, p 13.

24. Submission 3.4.121, p 13.

25. Submission 3.4.293, pp 147–148.

26. Submission 3.4.121, pp 16–17, 76.

27. Submission 3.4.121, p 16.

28. Submission 3.4.121, p 24.

Te Rohe Pōtae Māori. It took far more than the one chain width of track Ballance had promised. It refused to pay Māori for land taken for the railway.<sup>29</sup> It took gravel for railway construction from Te Rohe Pōtae Māori lands without consulting or compensating the owners.<sup>30</sup> Later, the Crown took land for gravel pits under public works legislation, thus denying Te Rohe Pōtae Māori income from future royalties.<sup>31</sup> Contracts for the railway's construction were not set aside for Māori, and the Crown's lack of consultation with Māori over the route of the railway led to the desecration of urupā and wāhi tapu.<sup>32</sup> While the Crown eventually fenced the railway, it did not do so until 1909, causing many stock losses for Māori with lands adjoining the railway.<sup>33</sup>

By contrast, the Crown said that it 'kept largely to the core elements of its agreements with Rohe Pōtae Māori in respect of the construction of the NIMTR'.<sup>34</sup> However, it also cautioned the Tribunal to be 'realistic' in its assessment of the Crown's past conduct and account for the 'many factors' which influenced the railway's construction and operation, such as its cost, size, and the technical challenges encountered.<sup>35</sup> In relation to the claimants' contention that it took too much land for the railway, the Crown contended that Ballance made 'broadly consistent' statements about how much land would be required for the railway.<sup>36</sup> However, it also noted that, at the time, a detailed survey of the railway had not yet been completed and that it was 'clear' that the 'actual amount of land that would be needed' might vary.<sup>37</sup> The Crown further submitted that its takings were necessary for the 'safe, efficient, and viable' operation of the railway and to provide for the 'future requirements' of what was a major piece of public infrastructure.<sup>38</sup>

On the issue of work contracts for Māori, the Crown noted that by the 1890s, the Government had moved away from issuing private contracts for the line's construction towards employing Public Works Department gangs to carry out the work. However, in the Crown's view, this did not mean that local Māori were not employed on the line's construction after this date.<sup>39</sup> Concerning payment for resources used in railway construction, the Crown said that it 'generally' compensated Māori for construction materials.<sup>40</sup>

Regarding the environmental impacts of the NIMTR's construction, the Crown acknowledged it had a duty to ensure that wāhi tapu and taonga were not harmed during the railway's construction, both as an 'implicit' part of the Te Ōhākī Tapu

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29. Submission 3.4.121, p 85.

30. Submission 3.4.121, p 85.

31. Submission 3.4.121, p 77.

32. Submission 3.4.121, p 21.

33. Submission 3.4.121, pp 23–24; doc A20, p 122.

34. Submission 3.4.293, p 22.

35. Submission 3.4.293, p 2.

36. Submission 3.4.293, p 10.

37. Submission 3.4.293, p 11.

38. Submission 3.4.293, pp 78–79.

39. Submission 3.4.293, p 140.

40. Submission 3.4.293, p 105.

negotiations and as a Treaty obligation, as long as ‘it was reasonable to do so’.<sup>41</sup> The Crown said it deeply regretted instances identified by claimants ‘where the construction of the railway prejudicially affected the environment of Rohe Pōtae Māori and their wāhi tapu and other sites of significance’.<sup>42</sup>

However, it denied that these instances of damage amounted to a Treaty breach and submitted that the Tribunal must weigh up a range of factors in considering whether the Crown has breached the Treaty in relation to damage to wāhi tapu, including the Crown’s ‘knowledge’ of an area’s significance to Māori and the extent to which it was ‘reasonably possible’ to avoid such damage.<sup>43</sup>

The Crown acknowledged that individual Māori may have been prejudiced due to stock losses caused by its delay in fencing the southern portions of the line, but maintained that the time taken was reasonable due to financial and ‘practical considerations’.<sup>44</sup>

### 9.2.5 Issues for discussion

Having reviewed the Tribunal Statement of Issues for this inquiry<sup>45</sup> and briefly summarised the parties’ arguments, these are the issues that will be determined in this chapter:

- Did the Crown keep to its specific agreements concerning the planning and construction of the railway, as negotiated between Te Rohe Pōtae Māori, Bryce, Ballance, and Stout between 1883 and 1887?
- What land did Māori agree to gift to the Crown for the railway, and did the Crown fairly compensate Māori for lands taken for the railway outside of this gifting?
- In acquiring land for the railway under public works legislation, and in its later construction of the NIMTR, did the Crown adhere to the standards for Treaty-compliant public works takings?
- Did Te Rohe Pōtae Māori and the Crown gain mutual benefits from the railway’s construction?

## 9.3 NIMTR NEGOTIATIONS

### 9.3.1 Introduction

In chapter 8 we discussed in detail the series of negotiations between the Crown and Te Rohe Pōtae Māori over the opening of the district to the NIMTR and settlement. In April 1885, Te Rohe Pōtae leaders gave their consent to the railway on the basis of assurances that the Crown would enact laws to protect their communal authority over their lands. Their consent was also subject to certain conditions being met concerning the railway’s construction.

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41. Submission 3.4.293, p 114.

42. Submission 3.4.293, p 121.

43. Submission 3.4.293, p 121.

44. Submission 3.4.293, p 30.

45. Submission 1.4.003, pp 35–39.

For both parties, the railway agreement marked the culmination of a series of negotiations that had been taking place since the late 1870s. In those negotiations, the Crown had sought Te Rohe Pōtae Māori agreement for the railway and, more generally, for the district to be opened to Crown institutions and settlement. Te Rohe Pōtae Māori, in turn, demanded that the Crown to use its lawmaking powers to protect their rights of tikanga and mana whakahaere over their lands and resources, as was guaranteed by their tino rangatiratanga under article 2. As discussed in chapter 8, this request was the essence of Te Ōhāki Tapu.

In this section, we summarise the key components of the specific agreements reached in regard to the railway up to April 1885 and consider the significance of these agreements, as perceived and understood by both parties at the time.

### 9.3.2 The NIMTR in historical context

From its beginnings in England in the 1830s, the railway was the ultimate symbol of nineteenth-century empire, modernity, and the industrial age.<sup>46</sup> As Britain broadened and consolidated its colonial reach throughout the world, railways followed closely behind.

In the settler colonies of Canada and Australia, railways were a critical tool for opening up new resources and vast new tracts of territory for European settlement, displacing indigenous populations in the process.<sup>47</sup> In India, railway construction was critical to the extension of British military power over the subcontinent.<sup>48</sup>

In 1870s New Zealand, railway construction was at the heart of a comprehensive programme of public works and assisted immigration spearheaded by the ‘father’ of New Zealand rail, Colonial Treasurer Julius Vogel. Vogel’s scheme aimed, in part, to stimulate the stagnant economy that characterised the years following the 1860s wars by borrowing money from Britain to encourage immigration and build public infrastructure needed for economic development.<sup>49</sup>

However, Vogel’s public works scheme had even bolder aims beyond boosting the lagging colonial economy. Vogel hoped that the scheme would revitalise the ‘colonizing spirit’, achieving by ‘peaceful Pakeha conquest’ what the wars of the 1860s had failed to do: the overcoming of Māori resistance and the opening up of the North Island’s interior to European settlers.<sup>50</sup> Speaking in Parliament in 1870 in support of the policy, Premier Fox expressed hope that it would ‘reillumine’ the ‘sacred fire’ of colonisation in New Zealand.<sup>51</sup> Central to the Government’s plan to revitalise New Zealand’s colonial project was an ambitious programme of railway construction: the Government promised to construct over 1,000 miles of railway within nine years, including a trunk system running the length of the two main islands.<sup>52</sup>

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46. Atkinson, *Trainland*, p 10; doc A20, p 18.

47. Document A20, pp 18–19.

48. Document A20, p 18.

49. Document A20, pp 23–24.

50. Atkinson, *Trainland*, pp 28–30.

51. Document A20, p 22.

52. Atkinson, *Trainland*, pp 28–30.

Vogel's policies, which were adopted by other colonial governments, contributed to exponential growth in New Zealand's public railway system. In 1870, when Vogel took office as colonial treasurer, New Zealand had just 76 kilometres of public railways; by 1880, that had grown to 1,828 kilometres.<sup>53</sup> This included a line from Auckland to Te Awamutu on the edge of the aukati, which opened in 1880.<sup>54</sup> Two years earlier, the Government (under Premier Sir George Grey) had announced plans to complete the railway from Auckland to Wellington via Taranaki, and Parliament had authorised construction of Wellington–Foxton and Te Awamutu–New Plymouth segments of the line.<sup>55</sup> However, this plan could only proceed if the Government acquired land in Te Rohe Pōtae – a district that had been protected since the war from settler encroachment and remained under the authority of the Kīngitanga and its tribes. The Government's interest in this district extended well beyond the railway; it also wanted to assert its sovereignty over the district. It faced further pressure from business interests who saw opportunities to profit from land dealing and timber milling if the district could be opened up.<sup>56</sup>

As discussed in chapter 8, negotiations occurred between Ministers and Te Rohe Pōtae Māori during the 1870s, principally concerning the terms on which the Kīngitanga might accept the colonial Government's authority, but also sometimes concerning the railway. No agreement was reached during this period. In the following paragraphs, we rely on content from chapter 8 to summarise briefly the negotiations and agreements which followed.

In 1880, the failure of previous negotiations and deteriorating economic climate led the new Government (under Premier John Hall) to abandon temporarily plans for the completion of the NIMTR through Te Rohe Pōtae to Taranaki.<sup>57</sup> By 1882, the Government was facing considerable pressure from settlers (particularly in Auckland) to complete the railway.<sup>58</sup> In August, Parliament enacted the North Island Main Trunk Railway Loan Act 1882, allowing the Government to raise a loan for completion of the NIMTR (see section 8.3.2). By this time, it had resumed negotiations with Tāwhiao, but had not sought – let alone received – consent for the railway. The Government's negotiations with the Kīngitanga collapsed in October and from then on, the Crown would deal almost exclusively with tribal leaders, particularly those of Ngāti Maniapoto.<sup>59</sup>

In general terms, the negotiations would follow a familiar pattern, in which the Government would ask Te Rohe Pōtae leaders to consent to the railway, but then press ahead with its plans before that consent was forthcoming, while ignoring the principal demands made and conditions imposed by Te Rohe Pōtae leaders.

In November 1882, Bryce wrote to Wahanui urging him to open the district to roads and railways, promising that such works would greatly enhance the value

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53. Document A20, p 24.

54. Document A20, pp 36, 44.

55. Document A20, p 37.

56. Document A20, pp 37–38.

57. Document A20, p 44.

58. Document A41 (Loveridge), pp 20–21.

59. Document A78 (Marr), pp 668–705.

of Māori lands in the district. Wahanui undertook to consider the proposal.<sup>60</sup> Although, in March 1883, without having obtained consent, Bryce instructed the surveyor Charles Hursthouse to carry out exploratory surveys along the proposed railway route from Alexandra through the Mōkau area to Taranaki. When Te Rohe Pōtae Māori discovered this was happening, they escorted Hursthouse out of the district (see section 8.3.2.1). Wahanui and Bryce continued to correspond, and during 1883 the negotiations finally began to advance, as discussed in sections 8.3.3 to 8.7.1.<sup>61</sup>

In September 1884, a select committee came together to determine the best railway route out of a possible four. Wahanui met with the select committee and emphasised that Te Rohe Pōtae Māori had only agreed to exploratory railway surveys. Once the Crown had decided on a route, they still needed to seek the consent of any Māori affected, which would only occur once the Crown had put in place satisfactory laws for the protection of Māori land. Ballance also met with Wahanui that month to negotiate the terms on which consent for the railway might be given.<sup>62</sup>

The select committee decided upon the central route for the NIMTR from Te Awamutu to Marton on 9 October. This route, the committee reasoned, was the best of the four in terms of land opened for settlement, directness and speed of the route, and connections with existing settlements.<sup>63</sup> Although the Government had sought Wahanui's views, it had certainly not obtained consent for construction to begin on any of these routes. Nonetheless, it began to make provisions for railway construction and for acquisition and settlement of Te Rohe Pōtae lands. In November, two laws were enacted to serve these purposes. As discussed in section 8.7.2 of chapter 8, the Native Land Alienation Restriction Act 1884 prohibited all private land dealings in a 4.5-million-acre area along the railway route in order to prevent private speculation in lands the Crown wanted to open for settlement. The Railways Authorization Act 1884 formally authorised construction of the NIMTR along the Te Awamutu–Marton route, under the provisions of the Public Works Act 1882.

Soon afterwards, Ballance gave a speech describing the railway as 'a great work', which the Crown had a duty to complete 'without any delay'. The railway would 'open up' the entire 4.5 million acres for European settlement, thereby 'dissipating the depression' and instead bringing 'grand prosperity' to the North Island.<sup>64</sup> As discussed in section 8.8.1, although he had not yet obtained consent for the railway, Ballance announced that construction would begin in February 1885 with a ceremony to turn the first sod. By this time, the Government was undertaking practical steps to begin construction, including sending a team of surveyors to fix the exact location of the line. The Department of Works planned to call for construc-

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60. Document A78, pp 700–701.

61. See also doc A110, pp 630–631; doc A78(a) (Marr document bank), vol 2, pp 522, 524.

62. Document A78, pp 1068–1069; doc A41, pp 149–150.

63. E Richardson, 22 October 1884, NZPD, vol 49, pp 596–598.

64. Document A78, pp 1105–1106; doc A78(a), vol 6, pp 2921–2922.

tion tenders in February. Te Rohe Pōtae leaders expressed considerable frustration over this turn of events, regarding it as a breach of Bryce's May 1883 agreement to complete the exploratory survey and return to negotiations.<sup>65</sup> Ballance agreed to meet them at Kihikihi in February 1885, and it was there that agreement was reached for construction of the railway.

### 9.3.3 Further NIMTR negotiations, 1885–87

At the February 1885 Kihikihi hui, Ballance made a series of agreements with Te Rohe Pōtae leaders about various matters, including land titles, land administration, liquor control, and the railway. Te Rohe Pōtae leaders consented to the railway based on these agreements.

As discussed in section 8.8.5.2 of chapter 8, Ballance told Māori at Kihikihi that the railway corridor would be no more than one chain in width, 'except where it runs along the side of hills where cuttings are made, where a little more will be required—perhaps two chains', with 'perhaps five acres, or, for some stations where there is likely to be a large settlement, ten acres, for each station'; that the Crown would fully compensate Māori for any land taken for the railway, including timber used in railway construction; that the Crown would award Māori contracts to construct certain sections of the railway; and that the railway would do '[n]o injury whatever' to Māori land.<sup>66</sup>

Regarding payment for lands taken for the railway, Ballance agreed that the Government would compensate Te Rohe Pōtae Māori in the same way as it did Europeans affected by public works takings:

Now we propose to deal with the Natives in the matter of this line precisely as we should deal with Europeans. The law is the same in both cases. We have considered the principle that, if we take land for public purposes such as a railway, we have the right to pay for it.<sup>67</sup>

Beyond this passing mention of public works in relation to compensation, there was little specific discussion of the legal mechanism by which the Government proposed to transfer the lands for the NIMTR into its ownership. This is despite the fact that, by the time of the February 1885 hui, the Government had already enacted legislation authorising the railway's construction under the Public Works Act 1882.<sup>68</sup>

In section 8.8.3, we noted that on 27 February 1885, following a major tribal gathering, John Ormsby telegraphed Ballance confirming the agreement of Te Rohe Pōtae Māori to the railway, on the condition that the railway line would be one chain wide, and that all land taken for the railway be paid for. He further

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65. Document A78, pp 1109–1110.

66. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 22–24.

67. 'Notes of Native Meetings', AJHR, 1885, G-1, p 22.

68. For further discussion of the legislative mechanisms by which land was taken for the railway, see section 9.4.2.1 of this chapter.



### Links and chains: units of measurement used in this chapter

A chain is a unit of measurement used for land distances, especially roads and railways. A chain measures 22 yards (20.1168 metres). A link is 0.01 of a chain (20.1168 centimetres). The measurement survives today in the form of the 'Queen's Chain'.

specified that Māori consent to the railway was conditional upon the full length of the railway being fenced on both sides. On 4 March 1885, Wahanui wrote to Ballance, confirming that Te Rohe Pōtae Māori had 'met and agreed to allow the railway to proceed' on the condition that the railway would be one chain wide. However, he asked that 'consideration of the question of the land required for the railway, the land on either side of the railway, and that required for stations' be 'deferred' until a later visit.<sup>69</sup>

The Government initially declined Wahanui's request that he be the one to turn the first sod on the railway, but agreed that Māori could assist in the ceremony.<sup>70</sup> The land that would be required for the railway also came under discussion at the April 1885 sod-turning ceremony, as outlined in section 8.8.4 of chapter 8. During the speeches following the turning of the sod, which were recorded by George Wilkinson, Hopa Te Rangianini warned Stout that he should take only 'the line for the railway, from one end to the other'. He added:

You must not by-and-by branch off in the direction of Taupo, because I shall cause you trouble, if you do that. Or if you branch off in any other direction I shall cause you trouble. All the affection that the Maoris wish to show to you in this matter is this line of railway only. After this is done, and I see how we get on together, then I may alter my mind.<sup>71</sup>

Following Te Rangianini's speech, Taonui stated that he intended to 'say a word or two' to Ballance about the 'work or carrying-out of this railway' and 'the position of the stations', but that he would reserve these for when Ballance was present.<sup>72</sup> In addition, there was the prospect that Te Rohe Pōtae Māori might gift land for the railway, an idea which had been raised even prior to the Kihikihi hui, although it is not clear from where it originated. In November 1884, Ballance told Parliament that Māori leaders, including Wahanui, had indicated that they would gift the land required for the NIMTR.<sup>73</sup> Similarly, during his North Island tour of

69. Document A20(a) (Cleaver and Sarich document bank), pp 37–38; doc A20, p 73.

70. Document A20(a), pp 37–38; doc A20, p 73.

71. Wilkinson, 'The North Island Main Trunk Railway', AJHR, 1885, D-6, pp 4–5.

72. Wilkinson, 'The North Island Main Trunk Railway', AJHR, 1885, D-6, p 5.

73. Document A20, p 139.

early 1885, Ballance encouraged Whanganui Māori at Rānana to gift land for the railway.<sup>74</sup>

Two decades later, Te Heuheu Tukino, as noted earlier in this chapter, recalled a conversation he had heard at the ceremony between Rewi Maniapoto, Wahanui, and Premier Stout, during which Te Rohe Pōtae leaders had offered to gift the lands for the railway without payment: 'We will not ask for any payment; we will not ask for any tax or consideration at all; there it is; we give it to you for nothing; take it.'<sup>75</sup> This offer, which may have been the subject of private conversation between Te Rohe Pōtae rangatira and the Premier rather than the formal speech-making, was not recorded in any of the official accounts of the ceremony.<sup>76</sup>

Nevertheless, in August 1885, Wahanui told the Maori Affairs Committee that the idea to gift land for the track and stations had 'emanated from ourselves, without asking for compensation or payment.'<sup>77</sup> He explained: 'My sincere wish is that prosperity may come to the Government of the colony; that the railway should be made. We will give the land for the railway and for the railway stations. This is my contribution; this proves my love to the undertaking.'<sup>78</sup> But he concluded his statement with a challenge to the Crown to reciprocate: 'I want to know what return the Maoris are to get. We show our love to Europeans; what return will they make for our giving our land for the railway and the railway stations?'<sup>79</sup>

Further details of the gifting were worked out in hui and written correspondence between Te Rohe Pōtae and government representatives during 1886 and 1887. On 4 March 1886, Ormsby wrote to Wilkinson on behalf of the Kawhia Native Committee. In his letter, which has only survived in English translation, Ormsby confirmed that Te Rohe Pōtae Māori agreed to gift 'one chain in width for the line' and 'one acre each for the small stations and three acres each for the large one'. Lands 'taken outside these areas' or 'damaged' such as 'through removal of earth' were to be paid for.<sup>80</sup> He asked the Government to appoint an official to fix the value of these lands. The conditions of the gifting, Ormsby informed Wilkinson, repeated earlier statements Wahanui had made to the Under-Secretary of Native Affairs.<sup>81</sup>

Ormsby made similar statements concerning the gifting at a meeting with Ballance at Te Kōpua in mid-April 1886. At the meeting, which was attended by Wahanui and around 60 other Māori, Ormsby repeated his request to Ballance, on behalf of the Kawhia Native Committee, that the Government appoint an official to work with a Māori representative to assess the value of the land taken over the

74. Document A20, p 139.

75. Document A20, p 142.

76. Document A20, p 142.

77. Native Affairs Committee, 'Report on the Native Land Disposition Bill', AJHR, 1885, 1-2B, p 8; doc A20, p 141.

78. Native Affairs Committee, 'Report on the Native Land Disposition Bill', AJHR, 1885, 1-2B, p 8.

79. Native Affairs Committee, 'Report on the Native Land Disposition Bill', AJHR, 1885, 1-2B, p 8.

80. Document A20, p 142; doc A20(a), p 205.

81. Document A20, p 142; doc A20(a), p 205.

one chain width gifting.<sup>82</sup> After giving his view that ‘the railway itself was good payment’ for Māori, Ballance went on to explain that the cause for the delays in payment was finding the owners to pay them and that the Government would welcome the committee’s assistance.<sup>83</sup>

Later that year, on 28 September 1886, Wahanui telegraphed Ballance to confirm the agreement of Te Rohe Pōtae tribes to the gifting of one chain of land stretching from the banks of the Pūniu River to Te Rerenga-o-toa Kohuru, south of the inquiry district near the settlement of National Park, as well as three acres for principal stations and one to two acres for smaller stations.<sup>84</sup> Ballance accepted the tribes’ ‘generous proposal’ and assured Wahanui again that any land taken beyond this gifting would be paid for.<sup>85</sup> At a further hui in January 1887, Ballance again stated that the Government would compensate Māori for any land taken beyond one chain wide for the track and three acres for stations.<sup>86</sup> At no point in these discussions did Ballance raise the Government’s plans to transfer the gifted lands into its ownership using public works legislation.

The Crown’s agreements, as well as the conditions on which Te Rohe Pōtae Māori agreed to the railway’s construction between 1885 to 1887, can be summarised as follows:

- the Crown would take 1–2 chains for the width of the railway corridor (including cuttings into hillsides) and 5–10 acres for stations;
- Māori owners would be fully compensated for any land taken for the railway, once ownership of the land had been determined, and the Crown would compensate Māori for any timber or resources used in construction. However, Te Rohe Pōtae Māori later agreed to gift one chain for the corridor, and 1–3 acres for stations;
- Māori would be awarded contracts to construct certain sections of the railway;
- the railway would not interfere with waterways, and would do ‘[n]o injury whatever’ to Māori land;
- the full length of the track would be fenced on both sides and in a timely manner, which was a condition on which Te Rohe Pōtae Māori would allow the construction of the railway; and,
- the section of the track lying within the inquiry district was to be named ‘Turongo’, as declared by Wahanui at the turning of the sod ceremony in 1885.

In section 9.4, we assess whether the Crown adhered to these specific agreements during the railway’s construction, as well as measuring its conduct against the Treaty standards for public works takings set out in section 9.2.2.

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82. GT Wilkinson, ‘Reports from Officers in Native Districts: Waikato (including Kawhia, Waipa, and Upper Mokau)’, AJHR, 1886, G-1, p 7.

83. ‘Meeting at Kopua’, *Waikato Times*, 15 April 1886, p 2; doc A20, p 143.

84. Document A20(a), p 206. The five tribes named were Ngāti Maniapoto, Ngāti Raukawa, Ngāti Tūwharetoa, Whanganui, and Ngāti Hikairo.

85. Document A20(a), p 207.

86. Document A20, p 143.

## 9.4 THE CONSTRUCTION OF THE NIMTR

### 9.4.1 Introduction

The North Island Main Trunk Railway enters the inquiry district at the Pūniu River south of Te Awamutu. Soon afterwards, it passes to the west of Tokanui, the location of a former psychiatric hospital and the modern-day Waikeria Prison, before crossing Te Kawa Swamp, a significant wetland and mahinga kai for Te Rohe Pōtae Māori until its drainage for pasture in the twentieth century.

The line then travels through the historic Māori settlement of Ōtorohanga, crossing the Waipā, a major tributary of the Waikato River. It next passes through Hangatiki and Te Kumi, close by the Waitomo, Ruakuri, and Aranui Caves, before entering the township of Te Kūiti in the Mangaokewa Valley. After entering the Waiteti Valley and crossing a major viaduct over the Waiteti Gorge, it then climbs, tracking in a south-easterly direction through the rugged hill country of the upper Ōngarue Valley.

Between the watersheds of the upper Mōkau and Whanganui Rivers, it enters the Poro-o-tarao tunnel through Tihikārearea hill, where it begins its descent, weaving alongside the Ōngarue River, which it crosses three times before reaching Taumarunui. Shortly before arriving at Taumarunui, the railway passes through Ōkahukura, where it meets the location of a now-closed branch line to Stratford. The line exits our inquiry district at the Taringamotu Stream, just north of Taumarunui.

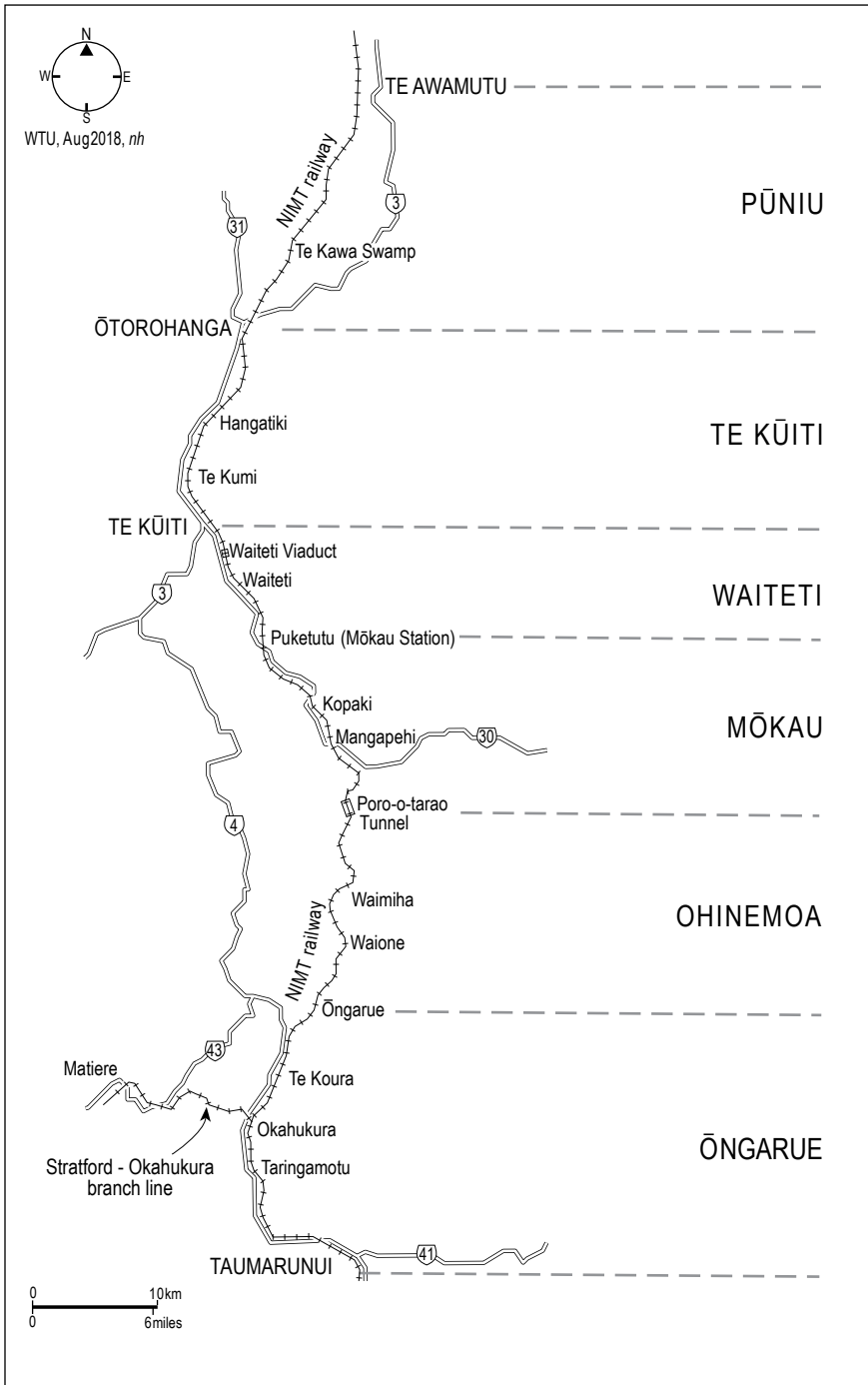
The NIMTR was constructed through the inquiry district between 1885 and 1903, with work advancing on the next stage as soon as the previous stage was complete. By the 1880s, the construction and operation of the national railways network was the responsibility of two government departments. The Public Works Department, established in 1870, took responsibility for the planning and construction of new lines. The Railways Department, established in 1880, was responsible for the operation and ongoing maintenance of the country's railways.<sup>87</sup>

As noted in section 9.3.2, planning for the construction of the NIMTR through the King Country was well underway before Te Rohe Pōtae Māori had even consented to the railway's construction through their territory. Soon after Parliament voted in favour of the central route in October 1884, the Public Works Department instructed its surveyors to carry out more detailed surveys of the proposed line. The line was to be constructed in sections, progressing north to south through the inquiry district.

The Government advertised the first contracts for the line's construction from the northern end at Te Awamutu and the southern end at Marton in February 1885. The department awarded the contract for the construction of the 15-mile two-chain (24.14 kilometres) stretch of the line running from Te Awamutu south

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87. Atkinson, *Trainland*, p 38; Rosslyn J. Noonan, *By Design: A Brief History of the Public Works Department Ministry of Works, 1870–1970* (Wellington: Government Printer, 1975), p 39.



Map 9.1: North Island Main Trunk Railway route

Date	Event
July 1880	North Island Main Trunk Railway line completed as far south as Te Awamutu.
January 1884	Government surveyor John Rochfort completes his initial survey of the central route through the inquiry district.
9 October 1884	Parliamentary select committee reports in favour of the central route.
24 October 1884	Parliament approves the construction of the NIMTR along the central route.
15 April 1885	Wahanui and Premier Robert Stout turn the first sod of the NIMTR at a ceremony on the banks of the Pūniu River.
April 1885	Public Works Department awards the first contract for construction of the railway within the King Country for the Pūniu section (from Te Awamutu to Ōtorohanga).
August 1885	Public Works Department awards contract for the construction of the Poro-o-tarao section (including tunnel).
1886	Work begins on the Poro-o-tarao tunnel.
19 August 1886	Public Works Department awards contract for the construction of the Te Kūiti section (from Ōtorohanga to Te Kūiti).
8 March 1887	Pūniu section of the line (Te Awamutu to Ōtorohanga) opened to traffic.
9 March 1887	Public Works Department contracts the construction of the Waiteti section of the railway (Te Kūiti to Mokau Station, including the Waiteti Viaduct).
2 December 1887	Construction of the Te Kūiti section of the line completed.
8 May 1889	The NIMTR officially opened as far south as Mōkau Station. <sup>1</sup>
27 August 1890	Construction of Poro-o-tarao tunnel completed. <sup>2</sup>
September 1892	Construction work commenced on the Mōkau section of the railway (from Mokau Station to Poro-o-tarao tunnel).
21 December 1896	Mōkau and Poro-o-tarao sections officially opened for traffic.
December 1897	Work commenced by this date on the construction of the Ohinemoa section (from Poro-o-tarao tunnel to Te Kawakawa, south of Ōngarue).
23 August 1901	Ohinemoa section completed.
1 December 1903	NIMTR officially opened to traffic as far as Taumarunui, just south of our inquiry district.

1. Fletcher, *Single Track*, p 137.

2. Fletcher, *Single Track*, p 137; 'Public Works Statement', AJHR, 1891, D-1, p 9.

Table 9.1: Timeline of NIMTR construction within the inquiry district

to Ōtorohanga (the Pūniu section) in April 1885, the same month as the turning of the sod ceremony officially marking the beginning of construction on the line.<sup>88</sup>

Further south, the department contracted the construction of a 53-chain tunnel (1.7 kilometres) at Poro-o-tarao, through the range dividing the Mōkau and Whanganui catchments, in August 1885.<sup>89</sup> Construction of the Pūniu section of the line, including four stations, was complete as far as Ōtorohanga by February 1887 and opened for traffic on 8 March 1887.<sup>90</sup>

The Public Works Department contracted the 10-mile 59-chain (17.28 kilometres) section of the line running south from Ōtorohanga to Te Kūiti (Te Kūiti section) in August 1886. A contract for the construction of the eight-mile 53-chain (13.94 kilometres) Waiteti section of the railway, south from Te Kuiti Station to Mokau Station, including the construction of a major viaduct over the Waiteti Gorge, was let in March 1887.<sup>91</sup>

The railway construction workers, or ‘navvies’, employed on the NIMTR from the mid-1880s represented the first major influx of Europeans into the inquiry district. While the exact number of construction workers employed is unknown, the total is likely to have been in the many hundreds, if not thousands.<sup>92</sup> By 1900, for instance, close to 400 men were said to have been working on the northern end of the railway alone.<sup>93</sup>

In some cases, makeshift construction camps became permanent settlements, such as Te Kūiti, which started life as a railway camp near the existing Māori settlement of Tokangamutu.<sup>94</sup> In other cases, settlements all but vanished from existence after workers moved on to the next section of line, such as Carson’s camp located south of Waimiha, which housed workers on the southern section of the line between Poro-o-tarao tunnel and Ōngarue from 1897 to 1902.<sup>95</sup> Railway construction workers therefore proved transitory, but sometimes workers stayed on to lease or purchase land from Māori, joining the permanent settled population of the district.<sup>96</sup>

On 8 May 1889, the stretch of the NIMTR from Te Awamutu south to Mokau Station (including the Pūniu, Te Kūiti, and Waiteti sections) was officially opened

88. ‘The General Assembly’, *New Zealand Herald*, 26 August 1885, p 6; ‘Public Works Statement (by the Minister for Public Works, the Hon. Edward Richardson)’, AJHR, 1886, D-1, p 4.

89. ‘Public Works Statement (by the Minister for Public Works, the Hon. Edward Richardson)’, AJHR, 1887, D-1, p 33.

90. ‘Public Works Statement’, AJHR, 1887, D-1, p 33.

91. ‘Public Works Statement’, AJHR, 1887, D-1, p 33.

92. Document A20, p 122.

93. PJ Gibbons, ‘Some New Zealand Navvies: Co-Operative Workers, 1891–1912’, in *New Zealand Journal of History*, vol 11, no 1, 1977, p 55.

94. Document A20, p 123; Christine Johnson, Ruth Larsen, and Kevin Ramshaw, comps, *Main Trunk: Portrait of a Railway, A Celebration of 100 Years of North Island Railway History*, (Wellington: Grantham House, 2008), pp 48–50.

95. Document A20, pp 123–124.

96. Document A20, p 124.

for traffic.<sup>97</sup> Meanwhile, work continued on the Poro-o-tarao tunnel section. The section was originally contracted with the goal that it would open in August 1887, but poor access and rough terrain delayed its completion, which did not occur until August 1890.<sup>98</sup>

From the late 1880s, with New Zealand continuing to feel the effects of a long economic recession and global shortage of credit, construction on the central section of the NIMTR slowed.<sup>99</sup> Apart from the work on the Poro-o-tarao tunnel, no further work had been completed on the sections of line south of Mokau Station by July 1890, when the department reported that works on the NIMTR were 'at a standstill'.<sup>100</sup>

By 1892, construction work had resumed on the Mōkau section of the line, running from Mokau Station south to the Poro-o-tarao tunnel and the section was officially opened to traffic in December 1896.<sup>101</sup> The same month, work had begun on the Ohinemoa section, running south from the Poro-o-tarao tunnel through to Te Kawakawa, near Ōngarue. Although, progress was slow, as poor weather and difficult conditions hampered construction crews.<sup>102</sup>

Further south, however, little new work was completed on the line for close to a decade. In 1892, a select committee appointed to inquire into the NIMTR recommended that all new construction be suspended until finance for the line was confirmed, Crown land purchasing was further advanced, and the issue of the NIMTR's route finally settled. Regarding finance, the 1892 select committee estimated the cost of constructing the line at £2,007,985, almost twice the Government's initial calculations of £1,293,134.<sup>103</sup> The committee's recommendation that new work be halted until Crown purchasing was further advanced on the adjoining blocks was aimed at minimising the Government's costs in purchasing such lands, which was similar to a policy outlined by Richard Seddon as new Minister of Public Works a year earlier:

If we proceed with the construction of [the North Island Main Trunk Railway] to any material extent, it will happen that the further we progress through or approach towards Native lands the more difficult it will become for the Government to deal with the Natives, and the higher the price we shall have to pay. . . . The Government considers, therefore, that it would be folly, under these circumstances, to construct these railways much further until arrangements have been made with the Natives for the purchase of their lands, and with the owners of private lands that they will

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97. Fletcher, *Single Track*, p 137.

98. Fletcher, *Single Track*, pp 132, 137.

99. Document A20, p 93.

100. 'Public Works Statement (by the Minister for Public Works, the Hon. Thomas Fergus, 25th July 1890), AJHR, 1890, D-1, p 4.

101. 'Public Works Statement (by the Hon. W. Hall-Jones, Minister for Public Works, 14th December, 1897), AJHR, 1897, D-1, p v.

102. 'Public Works Statement', AJHR, 1897, D-1, p v; Fletcher, *Single Track*, p 193.

103. Document A20, p 93.



lease or dispose of the lands to be benefited, on terms to be agreed upon between the Government and the owners of such lands.<sup>104</sup>

In line with this policy, the Crown, from 1892, embarked upon a large-scale purchasing programme in the inquiry district, purchasing Te Rohe Pōtae Māori land using funds from the North Island Main Trunk Loan Application Act alongside its regular purchasing.<sup>105</sup> We discuss Crown purchasing in relation to the railway, and more generally, in chapter 11 of this report.

Further grounds for the select committee's recommendation that new work be halted on the NIMTR lay in continuing disputes over the route the railway should take south of Ōngarue.<sup>106</sup> By 1899, the Government had completed detailed surveys for the original central route, as well as three alternative routes to Taranaki, via Ngaire, Waitara, and Awakino. Based on these surveys, the Government decided to proceed with the central route as planned, while recommending that a branch line be constructed to Taranaki, via Ngaire.<sup>107</sup>

From 1899, the pace of construction work on the NIMTR picked up considerably. With surveys of the proposed lines complete, uncertainty no longer existed over the line that the railway would take south of Ōngarue. Meanwhile, settler pressure was building on the Government to complete the line, with the Public Works Department noting in 1899 that '[n]umerous petitions have been presented to the House praying for the early completion of the North Island Main Trunk Railway.'<sup>108</sup> By September 1900, 350 men were said to be at work on the Ohinemoa section of the line alone.<sup>109</sup>

Construction was further boosted in 1901, when the Government took out a public works loan of £1,000,000, most of which was put towards the completion of the NIMTR. By September 1902, the Ohinemoa section had been opened for goods traffic, and work was progressing on the Ōngarue section of the line.<sup>110</sup> With the completion of the Ōngarue section of the line, the NIMTR was officially opened for traffic from Auckland as far as Taumarunui on 1 December 1903.

The NIMTR took another five years to construct, reaching completion in 1908, with the cost of construction estimated at over £2,500,000.<sup>111</sup> The railway's

104. 'Public Works Statement (by the Minister for Public Works, The Hon. R. J. Seddon, 8th September, 1891)', AJHR, 1891, D-1, p 7.

105. Document A20, p 93.

106. 'Report of the North Island Main Trunk Railway Committee', AJHR, 1892, I-9, p 1.

107. 'Public Works Statement (by the Hon W. Hall-Jones, Minister for Public Works 12th September, 1899)', AJHR, 1899, D-1, pp 105-113; 'Report of the North Island Main Trunk Railway Committee', AJHR, 1892, I-9, p 1.

108. W. Hall-Jones, 28 September 1900, NZPD, vol 114, p 377.

109. 'Public Works Statement (by the Hon. W. Hall-Jones, Minister for Public Works, 28th September, 1900)', AJHR, 1900, D1, p v.

110. 'Public Works Statement (by the Hon. W. Hall-Jones, Minister for Public Works, 22nd October, 1901)', AJHR, 1901, D-1, pp i-ii; 'Public Works Statement (by the Hon W. Hall-Jones, Minister for Public Works, 16th September, 1902)', AJHR, 1902, D-1, pp v-vi; Johnson, Larsen, and Ramshaw, *Main Trunk*, pp 48-50.

111. Document A20, p 98.

arrival in Te Rohe Pōtae transformed the inquiry district in both immediate and long-lasting ways, which although outlined briefly in the following paragraphs, will be analysed in more detail in future chapters of this report. It opened vast new areas of land for settlement and farming in Te Rohe Pōtae, and provided the means of transporting those settlers' produce to market.<sup>112</sup> Further, most of the new European settlers in the inquiry district, whose numbers increased from around 1,400 in 1901 to 12,000 in 1911, settled in areas close to the railway.<sup>113</sup> The native townships of Ōtorohanga, Te Kūiti, and Taumarunui would become the principal service centres of the King Country, with their growth linked directly to the railway and the employment opportunities and general economic activity it opened up.<sup>114</sup> Issues related to how Te Rohe Pōtae Māori benefited from employment and economic opportunities arising from the operation of the NIMTR will be discussed in future chapters of this report. In particular, Te Kūiti and Taumarunui were known as 'railway towns', with much of their employment and economic activity centred around servicing the railway. During the NIMTR's construction, Te Kūiti formed the base for rail construction further south, while Taumarunui became a major rail depot for the North Island from 1903.<sup>115</sup>

In Te Rohe Pōtae, as elsewhere, the railway was the harbinger of massive environmental change, as the line made new lands accessible to settlers and new industries viable. The opening of new lands for farming led to the mass conversion of forest and swamps into pasture.<sup>116</sup> The felling of the central North Island's 'Great Bush' was made possible using the railway to transport logs. The railway also opened new areas of the country to tourism, a burgeoning industry in early twentieth-century New Zealand. From the early 1900s, the Department of Tourist and Health Resorts, initially founded as a division of the Railways Department, launched an ambitious programme of scenic reserve creation across the country. The acquisition of lands near to, or visible from, the NIMTR became a major focus of scenery preservation officials. As we will see in future parts of this report, Te Rohe Pōtae Māori would be impacted directly by such land takings. However, we now turn to detailing essential issues concerning the construction of the NIMTR.

#### **9.4.2 Land takings for the initial construction of the NIMTR**

As the railway advanced southwards from 1885, the Government moved to secure land for the railway's construction. Between 1886 and 1902, the Crown would use public works legislation to transfer into Crown ownership approximately 1,087 acres of Māori land for the railway line and related purposes. The same legal process applied both to land that Māori had agreed to gift and to lands outside of the gifting. Post-1903 land takings will be discussed in a future chapter of this report.

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112. Atkinson, *Trainland*, p 65.

113. Document A20, p 193.

114. Document A20, p 210.

115. Document A20, pp 208–209.

116. Atkinson, *Trainland*, p 65.

### 9.4.2.1 *The legislative framework*

By the time of the North Island Main Trunk Railway's construction through the inquiry district, legislation allowing the Government to acquire land compulsorily for public works purposes had been in place for several decades. Land for the railway's construction through Te Rohe Pōtae was acquired under the Public Works Act 1882 and its successor legislation, the Public Works Act 1894.<sup>117</sup> We discuss the development of public works legislation in general in the Public Works chapter, which will be released in a future part of this report. For present purposes, however, it is important to note that in the period critical to the construction of the NIMTR, the provisions for railway takings were different from those for other types of public works taking.

In the Public Works Act 1882, the taking of land for railways was dealt with in Part VI. There, section 129 stipulated that before anything else could happen, a special Act had to be passed giving authority for the railway line to be made. That Act had to give the line's start and end points and 'state as nearly as may be' the route it would take in between. In the case of the NIMTR, the empowering Act was the Railways Authorization Act 1884. A schedule to that Act described the line as running 'from a point at or near Marton to Te Awamutu via Murimotu, Taumarunui, and the Ongarue River Valley'.<sup>118</sup>

Thus, with the railway legally authorised, the land takings for its construction then had to be carried out according to the procedures set out in public works legislation. Under section 130 of the Public Works Act 1882, the governor was required to issue a proclamation defining the middle line of the railway or a section of it and to deposit plans of the affected land in the office of the registrar of the Supreme Court for public inspection. Only after the plans had been desposited could the Crown actually take the land.

Nevertheless, once a middle-line proclamation had been issued, the land in question could be entered and construction begin. The same section of the Act also required the Minister to give notice of the taking to all owners and occupiers of the land 'so far as they can be ascertained'. It specified, however, that such notice could occur at any time before or *after* (emphasis added) the taking. Moreover, it also provided a legal loophole for non-notification by specifically stating that an omission to notify the owners would not invalidate the taking.<sup>119</sup> The 40-day window for lodging objections, allowed in the case of other types of public work, did not apply to railway takings unless particularly provided for in a special Act.<sup>120</sup>

In short, these separate provisions for railway takings included the right to occupy land without a survey and begin construction without prior notification or

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117. Document A20, p146. Both Acts required that railways be made under authority of a special Act that described the line of the railway and its two end points. In the case of the NIMTR, the empowering Act was the Railways Authorization Act 1884. Section 3 of the Act provided for the cost of the railway to be funded out of moneys appropriated by Parliament for that purpose. Section 8 incorporated the Public Works Act 1882 and its amendments into the Act; see also doc A20, pp146–147.

118. Document A20, pp146–147.

119. Public Works Act 1882, ss130–131.

120. Public Works Act 1882, ss130–131.

consultation with owners. Owners who resisted the Government's incursion into their lands risked arrest. The provisions were repealed in the Public Works Acts of 1894, 1908, and 1928 and were not repealed until a major overhaul of the Public Works Act in 1981.<sup>121</sup>

While on the face of it these provisions did not differentiate between Māori-owned and general land, Part 11 of the 1882 Act did contain provisions for the taking of Māori land. As historian Cathy Marr noted, this was the first time that public works legislation made the distinction.<sup>122</sup> These separate procedures were set out in sections 23 to 26 of the Act. They empowered the Crown to take any Māori land required for a public work, once an order in council had been passed defining in general terms the land needed. Two months after the gazetting of such an order, the Crown could enter and take the land without directly notifying or gaining consent from the owners. These separate provisions for takings of Māori land continued in force up to late 1887. In that year, the Act was amended so that when Māori land was being taken for railway purposes, only the provisions of the legislation relating to railways had to be followed.<sup>123</sup>

Moreover, there was also the so-called 'five per cent rule'. From the 1860s, this rule had permitted governments to take up to 5 per cent of any block that had passed through the Native Land Court and use it for the purposes of roads or railways, as outlined in legislation such as the Native Lands Act 1865 and Native Land Court Act 1886. The right was initially limited to 10 years after the Native Land Court had issued a certificate of title, but was later extended to 15 years. The Crown was not required to notify or compensate landowners for takings under the 5 per cent rule. We discuss the Government's use of the 5 per cent provisions to acquire land for roading in a future part of our report. Here we are concerned with their use to acquire land for railways. Writing in 1927, the year the 5 per cent rule was finally removed from legislation, Apirana Ngata commented to Peter Buck that 'the railways have been notorious offenders' in their use of the rule.<sup>124</sup>

#### 9.4.2.2 *Takings by proclamation*

As noted previously, the Railways Authorization Act 1884 permitted the Government to begin construction of a line from Te Awamutu to Marton, under the provisions of the Public Works Act 1882. The next step in the formal process of acquiring the land for the railway took place on 2 April 1885. That day, the governor issued an order in council proclaiming the area that would be required for the central section of the line, from the Pūniu River in the north to Marton in the south.<sup>125</sup> The proclamation declared that 'a railway, having an average width of three hundred links [three chains] . . . shall be constructed on or through all lands

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121. Document A20, p164.

122. Cathy Marr, *Public Works Takings of Maori Land, 1840–1981*, Waitangi Tribunal Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1997), pp 105–110; doc A20, p146.

123. Public Works Act Amendment Act 1887, s13(3).

124. Document A20, p172.

125. Document A20, pp147–148.

held or occupied by Native owners; the total length being two hundred and ten miles or thereabouts.<sup>126</sup>

It will be noted that this April 1885 proclamation, which applied to the inquiry district as well as an area south of the district, immediately departed from Ballance's statements at Kihikihi only two months earlier that takings for the track would generally be one chain in width 'except where it runs along the side of hills where cuttings are made, where a little more will be required – perhaps two chains'.<sup>127</sup> Nevertheless, the April 1885 order in council was only the first of a series of required steps to delineate formally the land to be taken for the railway, and did not necessarily indicate the final area of land that would be needed for the railway's construction.

On the same day as its 2 April 1885 order in council, the Crown issued three 'middle-line' proclamations which, along with their associated public works plans, effectively defined the route to be taken by the three sections in question. The total distance involved was around 30 miles.<sup>128</sup> Proclamations defining the middle line for further sections of the railway were then issued as construction progressed. The issuing of each of these proclamations meant that the Department of Public Works could then immediately enter upon the land named in the proclamation and construct the railway. As each section of the line was finished, and more detailed surveys completed, the governor issued a series of *Gazette* notices formally taking the land for the railway. Each notice referred to Public Works Department plans defining the area of land being taken.<sup>129</sup> Public works notices of intention to take land were also to be put in the Māori equivalent of the *Gazette* called *Kahiti*, as well as on the notice board at local post offices.<sup>130</sup>

The land for the construction of the railway through the inquiry district, including takings for stations and quarries, was formally taken in nine separate proclamations between 29 April 1886 and 29 November 1902 and generally followed the order of construction from north to south. The exception was where additional land was taken to adjust existing takings or for other purposes such as ballast pits.<sup>131</sup>

126. Document A20, pp 147–148. Part VI of the Public Works Act 1882 contained specific provisions relating to public works takings for railways. These required that railway takings were to be made under the authority of special legislation. For the central section of the North Island Main Trunk Railway this was the Railways Authorization Act 1884.

127. 'Notes of a meeting between the Hon. Mr Ballance and the Natives at the Public Hall at Kihikihi, on the 4th February, 1885', AJHR, 1885, G-1, p 22; doc A20, p 79.

128. Document A20, p 148.

129. *New Zealand Gazette*, 1886, p 596 (PWD plan 13652); *New Zealand Gazette*, 1888, p 455 (PWD 15097), *New Zealand Gazette* 1888, p 386 (PWD 13652A); *New Zealand Gazette*, 1888, pp 386–387; *New Zealand Gazette*, 1888, p 1281; *New Zealand Gazette*, 1895, p 1448; *New Zealand Gazette*, 1899, p 1121; *New Zealand Gazette*, 1902, pp 2420–2421; *New Zealand Gazette*, 1902, p 2618. These *Gazette* notices were accompanied by 79 separate Public Works Department plans of the area to be taken. For copies of these plans, see doc A140(a)(i) (Parker document bank).

130. Document A63 (Alexander), pp 19, 35, 76; Marr, *Public Works Takings of Maori Land*, p 138.

131. Document A140 (Parker), p 3.

Overall, between 1886 and 1902, the Government took around 1,087 acres of land to construct approximately 70.5 miles of railway through the inquiry district.<sup>132</sup> This total included 24.9 acres taken for ballast pits and a water reservoir in 1895 and 1902, respectively, and land acquired for railway stations.<sup>133</sup>

The Tribunal is aware of at least 16 NIMTR stations in the inquiry district.<sup>134</sup> Using historical Public Works Department plans and modern mapping, researcher Brent Parker has been able to estimate the area of land used for 10 of these stations: Te Mawhai, Te Kawa, Kiokio, Otorohanga, Hangatiki, Te Kuiti, Mokau, Mangapehi, Waimiha and Ongarue.<sup>135</sup> While the smallest station (Kiokio) was just over 1.7 acres in area, at least four stations (Otorohanga, Hangatiki, Mokau and Ongarue) exceeded the 10-acre maximum earlier indicated by Ballance.<sup>136</sup> In total, these estimates suggest that approximately 89.8 acres were taken for these 10 stations alone. Of the remaining six stations, insufficient information was available for Parker to venture any figures for Te Kumi and Kopaki. According to Parker, land takings for Okahukura Station did not form part of the initial takings for the railway.<sup>137</sup> We do not know the area for stations at Poro-o-tarao, Te Koura, and Taringamotu.

Even allowing that the six stations for which estimates are unavailable may have been smaller than the average of 8.98 acres per station and allowing a conservative figure of 5 acres per station (the minimum station area indicated by Ballance) this indicates that at least 114 acres may have been taken for 16 NIMTR stations in the inquiry district.

As to the track itself, Cleaver and Sarich estimated that 574 acres would have been taken in the inquiry district if the Government had strictly adhered to a

132. The gazetted takings for the railway indicate that the total area of land taken was 1,096 acres. However, adding up the total acreages taken from the Public Works Department plans that provided the supporting detail for these gazetted takings, indicates the total area taken to be approximately 1,087 acres. The reason for the discrepancy between these figures is unclear: see doc A20, p148; doc A140; table 9.1.

133. 24.4 acres was taken for a ballast pit at Mangaokewa in two separate takings in 1895; 0.5 of an acre was taken in 1902 for a water reservoir near Ongarue Station, on the Rangitoto-Tuhua 77 block; doc A140(a), pp3-5.

134. Parker's table of land takings in document A140(a) lists the following NIMTR stations: Te Mawhai, Te Kawa, Kiokio, Otorohanga, Hangatiki, Te Kuiti, Mokau, Mangapehi, Waimiha, Ongarue, Te Kumi, Kopaki, and Poro-o-tarao. A station existed at Okahukura, but Parker noted it did not form part of the initial takings for the railway: doc A140(a). In addition, Cleaver and Sarich mentioned additional stations at Te Koura and Taringamotu: doc A20, pp111, 121. It is unclear, however, whether these stations formed part of the initial takings for the NIMTR. Note: this figure does not include stations located on the Stratford-Okahukura branch line. Te Mawhai Station is the subject of a specific claim for Wai 440.

135. Te Mawhai Station (10 acres), Te Kawa Station (10 acres), Kiokio Station (1.7 acres), Otorohanga Station (12.5 acres), Hangatiki Station (11.3 acres), Te Kuiti Station (9.4 acres), Mokau Station (10.2 acres); Mangapehi (5.4 acres), Waimiha (6 acres), and Ongarue (13.3 acres): doc A140(d) (Parker appendix).

136. Cleaver and Sarich initially estimated an area of 12 acres 1 rood 5 perches for Mokau Station. In subsequent errata, they revised their estimate for this station to 9 acres 3 roods. See doc A20(d). For reasons of consistency, we have relied upon Parker's estimate of 10.2 acres for this station.

137. Document A140(d); doc A140(a), p 5 n

one-chain width, and calculated the length of the railway as being just over 71.5 miles.<sup>138</sup> However, there is an error in the original survey plans: the actual length of the railway through the inquiry district is closer to 70.5 miles (113.46 kilometres).<sup>139</sup> Furthermore, if one chain had been taken for the entire 70.5-mile length of the railway corridor, the area required for the track would have amounted to approximately 560 acres. As noted earlier, however, the total area taken for railway purposes was around 1,087 acres. Subtracting 138.9 acres from that to cover ballast pits, reservoirs, and railway stations, as calculated previously, we are left with 948 acres for 70.5 miles of track. This suggests that the width taken for the track was much closer to a 1.7-chain average than the one-chain width Ballance had specified in 1885. However, the fact that Ballance explained that up to two chains may be needed for cuttings means this average still falls within the range of takings for the track Te Rohe Pōtae Māori understood might need to occur. Nevertheless, the exact length of track which likely required taking two chains for cuttings is unknown, making it difficult to determine the extent to which the Government kept to its assurance of sticking to a one-chain width for the majority of the construction of the track. What is known is that all takings were from Māori land.

### 9.4.3 Gifted lands and compensation agreements

As discussed in section 9.3.3, the gifting of certain lands for the railway continued to be the subject of ongoing discussions between Te Rohe Pōtae Māori and Ballance during 1886 and 1887. During these discussions, Ballance accepted the offer of Te Rohe Pōtae leaders to gift one chain for the width of the railway, and between one and three acres for stations, and assured them that the Government would compensate Māori for any lands taken outside of the gifting. He did not elaborate on how the Government proposed to transfer any gifted lands into its ownership.

Te Rohe Pōtae Māori assented to the railway's construction through their territory based on exploratory surveys completed by the Government during 1884, a point we noted at section 9.3.2. However, the exact land to be taken (based on more detailed survey work) remained to be settled.<sup>140</sup> In addition, local agreements concerning the gifting, and compensation for the excess lands outside the gifting, remained to be worked out with affected hapū and iwi along the route of the proposed railway.

Between 1886 and 1888, government officials negotiated the details of the gifting with Māori owners of the blocks on the northern sections of the railway, from the Pūniu River as far south as Mokau Station.<sup>141</sup> Despite the wishes of Te Rohe Pōtae

138. Document A20(e) (Clever and Sarich errata), pp 1–2.

139. Document A140(b), paras 13–15.

140. Document A140(a)(i); see also doc A20, pp 148–149; transcript 4.1.7, p 64 (Tom Roa, hearing week 1, Te Tokanganui-ā-noho Marae, 5 November 2012). Public Works survey plans from 1897 describe the Rangitoto–Tuhua block sections (which all of the 1899 and 1902 railway takings were from) as 'Native Land not adjudicated upon'.

141. Specific claims encapsulated by this section include Wai 1386 (although the claimants did not present closing submissions), Wai 762, Wai 928, Wai 1255, Wai 1455, Wai 1147, and Wai 1203.

rangatira that the settlements for the railway be kept outside the Native Land Court, the Government would subsequently apply to the court to make formal orders of compensation for these blocks.<sup>142</sup>

The government's applications came before the court at Ōtorohanga in December 1890.<sup>143</sup> Government official Thomas Cheeseman attended the hearings on behalf of the Public Works Department, while some of the Māori owners of the blocks involved were also present. Cheeseman told the court that Māori had agreed to gift one acre for the railway, and three acres for each station, and that the Government would compensate the owners for any land taken beyond this. At that point, court minutes record that he produced correspondence in support of his statement (although the exact nature of these documents is not stated).<sup>144</sup> Cheeseman explained that he had tried to estimate the value of the land 'on a liberal scale' and reach settlements with Māori owners outside of the court.<sup>145</sup> The court's role in the negotiations was therefore limited to giving its sanction to informal agreements officials had already reached with Māori owners out of court. Concerning the offer of Wahanui and others to gift land for the railway, Cheeseman noted:

Some of the owners now say that they were not bound by Wahanui's arrangement, but others admit it as binding and wished to know the Court's opinion to have the question of how far the natives are bound by that agreement decided.<sup>146</sup>

Copies of the court's compensation orders have not been located as part of the research for this inquiry. However, surviving court minutes give some indication of what was gifted, as well as the varying levels of support for the gifting among hapū along the line.

The owners of at least three blocks were said to have agreed to keep to the original terms of the gifting. For instance, Cheeseman reported that the owners of the Otorohanga block had 'agreed to adhere to the original agreement with regard to the line and for the surplus have agreed to take £5 including damages & gravel pit'.<sup>147</sup> However, the owners of five other blocks did not wish to be paid any compensation, even where the land taken exceeded the gift. For instance, in relation to the Waikowhitiwhiti block, Cheeseman reported that 'Te Matapihi and her co-owners have agreed that they make no claim for any of the land (including the excess) taken for Railway purposes'. Te Matapihi, who was present, then confirmed to the court that 'they do not wish for any compensation'.<sup>148</sup> The owners of the Pokuru block, on the other hand, refused to gift any land and were awarded

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142. Document A96 (Parker), p 4.

143. Document A20, p 154; doc A20(a), p 64; doc A96, p 3.

144. Document A20, p 154; doc A20(a), p 64.

145. Document A20, p 154; doc A20(a), p 64.

146. Document A96, p 5; doc A20(a), p 64.

147. Document A20(a), p 68.

148. Document A20(a), p 68.



compensation for the full area taken.<sup>149</sup> In relation to this block, Mr Cheeseman reported that the block's owners have agreed to accept £60 to cover the 27 acres taken and that: 'These people would not agree to give any portions free.'<sup>150</sup>

The owners of the Te Kumi block agreed to gift one chain for the railway line and three acres for stations. While two of the block's owners, Raurau and Ngapera, initially accepted an offer of £8 10s for the excess lands, Raurau later stated that she wished to 'renounce her claim to compensation' on the basis that the area was a burial ground: 'she finds there are dead there, & she cannot take the money she asked for'.<sup>151</sup>

Regarding the northern sections of the railway, court minutes record that, during its Ōtorohanga sitting between 2 and 16 December 1890, the court confirmed compensation settlements with the owners of 11 blocks north of Te Kūiti, all corresponding to the Pūniu and Te Kūiti sections.<sup>152</sup>

In relation to the railway sections further south, an application to subdivide Rangitoto–Tuhua had also come before the court at its December 1890 sitting. Despite its title, Parker found that the application almost certainly referred not to the large Rangitoto–Tuhua block as such, but rather to the 9.5-mile stretch running from the southern boundary of the Te Kumi block in the north to Mokau Station in the south, through the Pukenui block and northern Rangitoto–Tuhua 68 (a length closely approximating to the Waiteti section of the railway).<sup>153</sup> Cheeseman's statements at the court hearing, in which he mentioned a valuation for 9.5 miles of line, support the conclusion that the Rangitoto–Tuhua application referred only to the Waiteti section.<sup>154</sup>

At the hearings, Cheeseman reported that the Ngāti Maniapoto rangatira Taonui Hikaka had spoken on behalf of Ngāti Rōrā and had agreed 'for self and people' to the gift of 'one chain wide and three acres for Stations, & also the right to fell the bush for a chain on each side of line'.<sup>155</sup> Ngāti Rōrā had extensive land interests that extended both north and south of their base at Te Kūiti.<sup>156</sup> His offer to gift land for the railway related only to the section as far south as Mokau Station, however, 'fresh arrangements . . . altogether' would need to be made for the 'continuation of the line beyond Mokau station'. Moreover, he did not 'wish the question of compensation for excess to be gone into until the line is completed through his land'.<sup>157</sup> Cheeseman at that point indicated that he did not wish to proceed any further with the 'Rangitoto case' for the time being, thus leaving matters unresolved.<sup>158</sup>

149. Document A20, p 156; doc A20(a), p 67.

150. Document A20(a), p 67.

151. Document A96, p 18.

152. Document A20(a), pp 64–73; doc A20, pp 154–155.

153. Document A96, pp 10–11.

154. Document A96, p 11.

155. Document A96, p 17.

156. As stated in chapter 2, Ngāti Rōrā interests included Hangatiki, Pureora, and Waimiha, and much of the Mōkau River catchment. The Pukenui block was awarded to Ngāti Rōrā in 1893: doc A60 (Berghan), pp 774–775.

157. Document A96, p 17.

158. Document A96, p 17.

Over the following decade, the Crown reached compensation arrangements for two further blocks along the railway line.<sup>159</sup>

The takings for the northern-most of these blocks, the Te Kuiti block, came back before the Native Land Court in 1899, after the Crown applied to subdivide the block. At the hearing, George Wilkinson informed the court that the Crown had acquired interests in the Te Kuiti block amounting to 1,908 acres, from which it planned to deduct 12.5 acres in exchange for the 1888 taking of seven acres of the block for the railway and the 1895 taking of 5.5 acres for the Mangaokewa ballast pit.<sup>160</sup> However, following further discussions, which are not recorded in court minutes, the court determined the following day that the Crown's interests in the block were as follows:

The area purchased is 1908 acres. Out of this is to be deducted the area of the ballast pit 5-2-5. Balance of Crown award 1902 acres, exclusive of the railway line, which has been given without payt [payment].<sup>161</sup>

Further south, the railway takings from the Pukenui block appear to have been subject to an out-of-court compensation settlement in 1899.<sup>162</sup> As seen previously, in 1888 the Crown took 87.5 acres from the Pukenui block for the Waiteti section. In February 1899, the Crown applied to the Native Land Court to define its interests in the Pukenui 2 block (the portion of the former Pukenui block containing the railway, created following the 1893 subdivision of that block).<sup>163</sup> Later that month, after negotiations between Ormsby, representing the owners, and Wilkinson, the Crown agreed to deduct around 106 acres from the Crown's award to compensate the Māori owners of Pukenui 2 for the 1888 railway taking of 87 acres, as well as 18 or so acres taken from the block for the Mangaokewa ballast pit in 1895.<sup>164</sup> Wilkinson noted that the arrangement avoided the need for a 'compensation court'.<sup>165</sup> The 87-acre taking apparently included the one chain width and 'excess'.<sup>166</sup>

South of Pukenui, the railway enters the Rangitoto–Tuhua 68 block. The Waiteti section of the railway ends at Mokau Station, part way through the block. The question of whether Te Rohe Pōtae Māori gifted land for the railway within the Rangitoto–Tuhua 68 block was disputed between the parties in this inquiry.<sup>167</sup> On this point, the claimants submitted that none of the land within the Rangitoto–Tuhua 68 block was gifted. They said that Taonui Hikaka's offer to gift land for

159. Document A96(c) (Parker document bank), p 20.

160. Document A96(c), p 20; doc A96(d), p 1. 18 acres, 3 roods and 31 perches was also taken from the Pukenui 2 block in 1895 for the same ballast pit.

161. Document A96(c), p 20; doc A96(d), p 3.

162. Subject of specific claims for Wai 556, Wai 616, Wai 1377, and Wai 1820.

163. Document A20, p 156; doc A140(b)(i), pp 29, 99–103; doc A60, p 775.

164. Document A20, p 156; doc A140(b), para 25; doc A140(b)(i), p 29.

165. Document A20, pp 156–157; doc A140(b)(i), p 29.

166. Document A140(b), para 25.

167. Submission 3.4.121, pp 44–46; submission 3.4.293, pp 61–67.

the railway as far south as Mokau Station was not taken up by the Crown, and that he had, furthermore, specifically declined to make any undertaking about land south of there.<sup>168</sup> The Crown argued that the gifting not only encompassed a one-chain corridor right through the Rangitoto–Tuhua 68 block, but may have extended south beyond the block’s southern boundary.<sup>169</sup> In support of its position, the Crown cited Parker’s research. Parker’s view that the gifting reached at least as far as the southern boundary of the Rangitoto–Tuhua 68 block relied on a series of correspondence produced in the context of later disputes over the fencing of the NIMTR in the 1900s.<sup>170</sup>

As discussed further in section 9.4.8, by the turn of the twentieth century, the Crown’s failure to complete fencing of the sections of railway south of Mokau Station was a major source of grievance for Māori landowners on either side of the line, and was the subject of several deputations and petitions. In several of these appeals, Te Rohe Pōtae Māori correspondents, including Ormsby himself, referred to an earlier agreement by the Government to fence the line as far south as the Poro-o-tarao tunnel, on the southern boundary of the Rangitoto–Tuhua 68 block.<sup>171</sup> In addition, WH Hales, then engineer-in-chief of the Public Works Department, wrote in 1905 that

when the railway construction was commenced the Native owners of the land between the Puniu River and Poro-o-tarao offered to give the land required for the railway free and the Government undertook to erect the fences along both sides of the line through this country.<sup>172</sup>

In our view, in the absence of any evidence of the Crown having reached separate settlements with the owners of the Rangitoto–Tuhua 68 block, such retrospective references to the gifting – produced in the context of discussions of the fencing of the line, not the gifting itself – are not in themselves sufficient to prove that the gifting extended any further than the southern boundary of the Pukenui block.

No individual compensation arrangements are known to have been attempted with the Māori owners of any of the blocks south of the Rangitoto–Tuhua 68 block, taken in 1899 and 1902.

The known details of the giftings and compensation agreements, as well as the lands taken outside of the giftings, are set out in table 9.1. To read an expanded version of this table, which includes the detailed calculations of the giftings and takings, as well as explanatory notes on the takings and compensation, refer to the appendix of this chapter.

168. Submission 3.4.121, pp 44–46.

169. Submission 3.4.293, pp 61–67.

170. Submission 3.4.293, pp 63–66.

171. Document A140(b), paras 10.1–10.11; doc A140(b)(i), p 1; doc A96(c), pp 19–20; doc A20(a), p 211.

172. Document A140(b), para 10.9; doc A140(b)(i), p 2.

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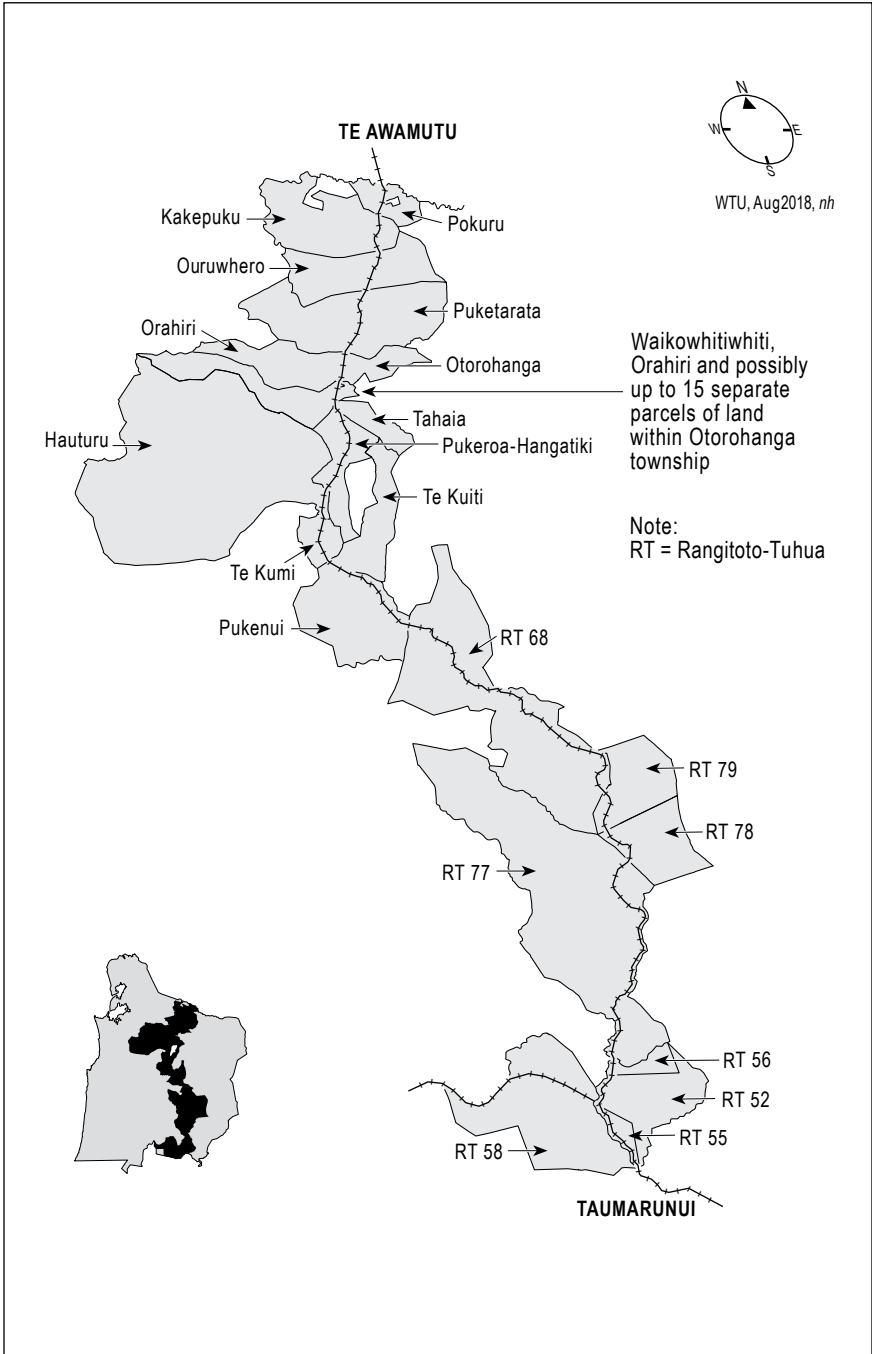
9.4.3

Block	Year of taking	Length of track through block (miles and chains)	Estimated area of taking (acres)
Pokuru	1886	1 mile 70 chains	26.9
Kakepuku 10 and 12	1886	2 miles 3 chains	23.1
Ouruwhero – North and South	1886	2 miles 28 chains	34.1
Puketarata 2 and 11	1886	3 miles 67 chains	37.3
Otorohanga	1886	1 mile 59 chains	17.6
Waikowhitiwhiti, Orahiri and Tahaia blocks	1886, 1888	1 mile 64 chains	30.1
Pukeroa- Hangatiki	1888	4 miles 59 chains	45.7
Hauturu	1888	1 mile 58 chains	19.4
Te Kumi	1888	2 miles 70 chains	32.5
Te Kuiti	1888	42 chains	7
Te Kuiti	1895	n/a	5.5
Pukenui	1888	4 miles 70 chains	87
Pukenui 2	1895	n/a	18.9
Rangitoto–Tuhua 68 (north of Mokau Station)	1888	4 miles 3 chains	77.5
Rangitoto–Tuhua 68 (south of Mokau Station)	1899	11 miles 7 chains	200.4
Rangitoto–Tuhua 79	1899, 1902	3 miles	46.5
Rangitoto–Tuhua 78	1902	2 miles 40 chains	63.1
Rangitoto–Tuhua 77	1902	13 miles 25 chains	219.3
Rangitoto–Tuhua 77	1902	n/a	0.5
Rangitoto–Tuhua 56	1902	1 mile	14
Rangitoto–Tuhua 52	1902	1 mile 75 chains	26.8
Rangitoto–Tuhua 55	1902	4 miles 11 chains	54
Rangitoto–Tuhua 58	1902	1 mile 7.1 chains	0.1
<b>Total</b>		<b>70 miles 38.1 chains<sup>1</sup></b>	<b>1087.3</b>

1. The distances cited in this chapter and in the appendix to this chapter are those from Te Awamutu, 2 miles 10 chains north of the start of our inquiry district. Taking into account the inaccuracy in the original survey of the Rangitoto-Tuhua 68 block, which overestimated the length of the line through that block by 2 miles 30 chains, the overall distance of the NIMTR between the northern and southern boundaries of our inquiry district can be calculated at 70 miles 38.1 chains.

Area gifted (acres)	Area of taking not gifted (acres)	Compensation agreed
0	26.9	£60
0	23.1	£26
26.1	8	£10 10s
20.9	16.4	£8 for excess in Puketarata 2; £7 10s for the one chain and the excess in Puketarata 11.
13.9	3.7	£5 (excess land), £3 (damage, gravel pit and removal of soil).
27.5	2.6	£3 10s for excess in Tahaia block. Store back-rent to be paid (Tahaia).
45.7	0	Fence to be straightened.
19.4	0	None.
32.5	0	None. Fence to be straightened. Gifting included right to fell timber one chain on each side of the track.
7	0	
0	5.5	Exchanged for land purchased by Crown in same block.
0	87	Exchanged for interests acquired by the Crown in the same block.
0	18.9	Exchanged for interests acquired by the Crown in the same block.
0	77.5	No compensation awarded for this taking.
0	200.4	No compensation awarded for this taking.
0	46.5	No compensation awarded for this taking.
0	63.1	No compensation awarded for this taking.
0	219.3	No compensation awarded for this taking.
0	0.5	No compensation awarded for this taking.
0	14	No compensation awarded for this taking.
0	26.8	No compensation awarded for this taking.
0	54	No compensation awarded for this taking.
0	0.1	No compensation awarded for this taking.
193	894.3	

Table 9.1: Giftings, land takings for the NIMTR and agreed compensation in the Te Rohe Pōtae district between 1886 and 1903, from north to south



Map 9.2: Land blocks through which the North Island Main Trunk Railway passes in the Te Rohe Pōtae district

As seen from table 9.2, between 1886 and 1902 the Crown formally took around 1,087 acres of Te Rohe Pōtae Māori land for the construction of the NIMTR through the inquiry district. Of this land, Te Rohe Pōtae Māori agreed to gift approximately 193 acres of land. The remaining 894.3 acres was not included in the gifting, and therefore was subject to the payment of compensation by the Crown.

The question of whether Te Rohe Pōtae Māori were fully and fairly compensated for these land takings is discussed in section 9.4.4.

#### 9.4.4 Fairness and payment of compensation

Between 1890 and 1899 the Government reached several individual compensation settlements with Māori owners of the blocks along the railway, from the Pūniu River as far south as the northern boundary of Rangitoto–Tuhua 68 block, for lands outside of the gifting. These are set out in table 9.2.<sup>173</sup>

As mentioned in section 9.4.3, in 1899, the court gave its sanction to two out-of-court agreements between government officials and Māori owners. In one of these, the Crown agreed to deduct 5.5 acres from interests it had acquired in the Te Kuiti block to compensate owners for the 1888 taking of 5.5 acres for the Mangaokewa ballast pit.<sup>174</sup> Similarly, in 1899, Native Land Court minutes noted that the Māori owners of the Pukenui 2 block, via their representative Ormsby, had reached agreement with the Crown's agent George Wilkinson to deduct 106 acres from the Crown's interests in the Pukenui 2 block as compensation for its earlier takings for the railway and part of the Mangaokewa ballast pit.<sup>175</sup>

For the blocks for which compensation settlements were reached, analysis by claimant counsel suggested that the rates per acre agreed exceeded the purchase price paid by the Crown in the same blocks and some cases were higher than the prices paid when the same land was on-sold to settlers a decade later. For instance, the owners of the Kakepuku block agreed to £26 in compensation for the taking of just over 23 acres for the railway, a rate of £1 2s 6d per acre. When the Crown began purchasing in the Kakepuku block in the late 1890s it paid only 6 shillings an acre and later onsold the same land to settlers for £1 per acre.<sup>176</sup>

The claimants concluded that the agreements confirmed by the court in the 1890s 'appea[r] to be fair considering what the Crown was to pay for similar land within a few years.'<sup>177</sup> Similarly, the rates awarded for lands taken in the Pokuru, Ouruwhero, Puketarata, and Te Kumi blocks ranged from £15 to £2 4s 8d an acre: all significantly higher than when the Crown began purchasing on the same blocks in the late 1890s and early 1900s.<sup>178</sup> Serious questions remain, however, over whether the compensation amounts awarded by the court ever reached the Māori owners of the blocks concerned.

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173. Specific claims encapsulated by this section include Wai 551, Wai 948, Wai 846, Wai 1455, Wai 1147, and Wai 1203.

174. Document A96(c), p 20; doc A96(d), p 1.

175. Document A20, p 156; doc A140(b), para 25.

176. Submission 3.4.121, pp 48–49.

177. Submission 3.4.121, p 48.

178. Submission 3.4.121, pp 48–49.

As explained in the detailed table in the appendix, the Māori owners of several blocks affected by the takings for the NIMTR requested that their compensation be put towards survey fees or exchanged for other Crown interests in the same blocks. The owners of the Pokuru block, from which the Government took 26.9 acres of land in 1886, had arranged for their compensation to be put towards survey fees, and in 1892 the court ordered that £58 17s 9d be paid to the surveyor-general. However, the survey costs remained unpaid in 1898. That year, Judge Walter Edward Gudgeon, who had been instructed to inquire into the unpaid compensation for the Pokuru block, confirmed the court's 1892 order that £58 17s 9d be put towards survey fees and the remainder paid to the block's owners, although no records have survived as to whether either of these payments were ever made.<sup>179</sup> The outstanding compensation for the Kakepuku 10 and 12 blocks was put towards survey liens in 1894.<sup>180</sup>

As seen in table 9.1, railway lands taken from the Pukenui 2 block in 1888, and 1895 takings from the Pukenui 2 and Te Kuiti blocks for the Mangaokewa ballast pit were exchanged with other interests the Crown had acquired in the blocks. This left compensation payments of £37 10s, relating to several blocks (Ouruwhero North and South, Puketarata 2 and 11, Otorohanga, Waikowhitiwhiti, Orahiri, Tahaia), outstanding.

Unfortunately, many of the relevant government files relating to the taking of lands for the railway's construction could not be located during the research for this inquiry.<sup>181</sup> Some clues as to their content survive, however, in the records of a 1946 Royal Commission on Licensing led by Justice Smith. These indicate that Public Works Department officials had taken initial steps to arrange payment to the Māori owners as early as 1891.

That year, T W Lewis, head of the Native Department, wrote to enquire whether the Crown's land purchase officer, George Wilkinson, could 'without interference with his more important land purchase duties, pay the compensation.'<sup>182</sup> The wording of Lewis's request is telling. Even Native Department officials viewed the Government's land purchasing programme as of higher priority than ensuring Māori owners received the compensation they were due.

However, Smith's report suggested that this compensation 'seems to have remained unpaid because there were so many owners and the amounts were so small' that Wilkinson 'could not make satisfactory arrangements for payment.'<sup>183</sup> This was the last effort the Government made to pay compensation owed to the

179. Submission 3.4.121, p 51; doc A95(k) (Parker document bank), pp 20–27.

180. Submission 3.4.121, p 52.

181. Document A20, p 165.

182. 'King Country: Report by the Chairman of the Royal Commission on Licensing (the Hon. Mr Justice Smith) on the History of the Proclamations of the King-Country and on the question of a Sacred or Solemn Pact, Pledge, or Treaty between the Government and the Maori Tribes', AJHR, 1946, H-38, appendix C, p 374.

183. 'King Country', AJHR, 1946, H-38, appendix C, p 374.



owners of the blocks on the northern section of the railway through the Native Land Court.<sup>184</sup>

In relation to the blocks south of Te Kūiti, the Government's awareness of the detail of the commitments made during the 1880s and its ongoing obligation to compensate Māori owners for lands outside of the gifting appears to have faded over time.

During 1903, the resident engineer at Ōngarue and the district engineer in Auckland corresponded on the matter of the gifting. In the exchange, Resident Engineer JD Louch referred to a recent conversation in which Wilkinson had told him that Māori had not been compensated for the lands taken for the railway south of Te Kūiti.<sup>185</sup> Louch advised that the matter of compensation be dealt with immediately. However, his concern appears to have been motivated less out of concern for the Māori owners left out of pocket than fear that costs to the Government of paying the outstanding compensation would rise the longer payment was delayed. Wilkinson had further informed Louch that Māori had agreed to gift one chain for the railway track, but that any additional land was to be paid for.<sup>186</sup> The district engineer then referred the matter to the under secretary for Public Works.<sup>187</sup>

The Public Works Department tasked an official, H Thompson, with inquiring into the issue of compensation on its behalf. He reported on 19 February 1903 that 'it appears that a width of one chain was given free, any excess to be paid for'. Thompson further noted that '[t]his concession was made by a chief named Wahanui, but we have no evidence as to how far south Wahanui's influence extended'.<sup>188</sup> A file note, dated 20 August 1903, indicated that Thompson was asked to identify which lands had already been compensated and whether applications to the court had been made for the remaining lands. It advised that for any lands that had not been compensated, 'application should be made to the Court as usual'.<sup>189</sup> However, a further file note by the same official, dated 26 May 1905, simply noted: 'It has since been decided not to refer matters to [the] Native Land Court'.<sup>190</sup>

The likely cause of the Government's apparent change in policy between 1903 and 1905 lies in advice the Public Works Department sought from Solicitor General Fred Fitchett in November 1903. That month, the department wrote to the Solicitor General to ask whether the Government was liable to compensate Māori for land acquired for railway construction.<sup>191</sup> A copy of this advice has not been located as part of the research for this inquiry. However, it appears that the Solicitor General's advice that the Government was not liable to pay compensation for lands acquired for the railway stemmed from the application of the 5 per cent

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184. Document A20, p156.

185. Document A20, p157; doc A20(a), p215.

186. Document A20, p157; doc A20(a), p215.

187. Document A20, p157; doc A20(a), p216.

188. Document A20(a), p217.

189. Document A20(a), p217.

190. Document A20(a), p217.

191. Document A20, p158.

rule. As noted earlier in section 9.4.2.1, this rule permitted governments to take up to 5 per cent of a block for roads or railways without notice or compensation to Māori owners, within a 5 to 10 year period of the block being awarded title by the Native Land Court.<sup>192</sup>

From 1903, the Public Works Department consistently maintained it was not liable to compensate Māori for lands taken during the railway's construction. Te Rohe Pōtae Māori submitted two applications for compensation for railway takings in 1911 and 1923. We have no further information on these applications beyond the fact that the department stated in each case that it was not liable to pay compensation.<sup>193</sup> This suggests that the Public Works Department's policy remained unchanged into the 1920s.

We have no evidence that the Government subsequently sought to compensate Māori owners of land taken for construction of the railway through our inquiry district at any time in the twentieth century. As such, as far as we can tell, it remains unclear whether any of the owners of the blocks in the table ever received the compensation that was originally awarded to them.

#### 9.4.5 Labour contracts

Te Rohe Pōtae leaders consented to the NIMTR's construction expecting that Māori would receive mutual benefits from the economic prosperity the railway would bring. These included benefits directly associated with the railway's construction, including the opportunity for local Māori to earn income from working on the railway. As noted in section 9.3.3, the awarding of contracts to Māori had been a feature of the agreements between rangatira and Crown representatives during the Te Ōhākī Tapu negotiations. Ballance had told rangatira at Kihikihi in 1885 that the Government would let a portion of the line in small contracts 'so that the Natives themselves may contract and make the line.'<sup>194</sup>

The policy of reserving construction contracts for local Māori originated prior to the Kihikihi hui. In December 1884, George Wilkinson recommended to the head of the Native Department that 'certain portions of the work' on the Pūniu section of the line be given to Māori. Māori were 'very good' at bush clearing and earthworks, he advised, and would 'be glad to take work of that sort, either by day labour, or in small contracts.'<sup>195</sup> This policy of letting contracts to Māori, Wilkinson wrote, would be 'well and politic' for the Government to pursue as it would

192. Document A20, p 158; doc A96(g), pp 8–9; submission 3.4.121, pp 109–110.

193. 'King Country', AJHR, 1946, H-38, appendix C, p 379.

194. 'Notes of a Meeting [at Kihikihi]', AJHR, 1885, G-1, p 24. Ballance made similar promises to Whanganui Māori at Rānana in January 1885, when he stated that 'my colleague, the Minister for Public Works, upon my recommendation, is desirous of affording the Native people an opportunity of taking small contracts on the railway; and it is proposed, therefore, that along the middle portion of the railway near Manganui-a-te-ao the survey be made, and small contracts given in such a way that the Native people may tender for them': 'Notes of a Meeting between the Hon. Mr Ballance and the Whanganui Natives at Ranana on the 7th January 1885', AJHR, 1885, G1, p 4.

195. Document A20, p 99; doc A20(a), pp 53–54.

provide Māori with cash income and deter them from 'taking money advances' for their land, while making the 'formation of the line popular with them.'<sup>196</sup>

At the turning of the sod ceremony in April 1885, Premier Stout affirmed the Government's intention to set aside a portion of the line to be constructed by Māori labour:

Here, on this section, we intend to ask the Maoris to make it, and they will get the same money for doing it that Europeans get. . . . When this section is made it will be known as the Maori section, and I hope it will be better than that which the Europeans make.<sup>197</sup>

Public Works Department reports from the early stages of the railway's construction confirm that Te Rohe Pōtae Māori received contracts to work on both the Pūniu and Te Kūiti sections of the line. The department's annual report for 1885 noted that a six-mile length of the northern section of the line south of the Pūniu River had been reserved 'to be performed by the Maori population resident in the district' and that the 'whole of this work has been taken up in small contracts' and was 'well in hand.'<sup>198</sup> At the same time, 50 Māori workers were working on a contract to build a bridge and support road over the Pūniu River. The report further noted that 'the Natives are pressing the department to let them have contracts for further works' and the Minister hoped to 'comply with their wishes.'<sup>199</sup>

By March 1886, £9,519 8s 4d had been paid out from the NIMTR loan on 'Native and petty contracts', with £2,080 15s still to be paid.<sup>200</sup> The department's annual report for that year stated that 'in cases where contracts have been let to Natives, they have done a great deal of work very satisfactorily and at moderate prices; and, whenever they have demanded excessive prices, the contracts have been advertised and let by public tender.'<sup>201</sup> During 1887, it was reported that 120 Māori were contracted on earthworks for the Te Kūiti section of the line, while other Māori were employed in building service roads for the railway.<sup>202</sup> By March 1887, a bridge over the Pūniu River and a road from the Pūniu south to Kawa Station were complete, with the Public Works Department reporting that the 'earthwork and fencing on these roads were done by Natives.'<sup>203</sup>

Despite favourable reports on the work of Māori contractors constructing the Pūniu and Te Kūiti sections of the line, Edward Richardson, Minister for Public Works from September 1884 to October 1887, was forced to defend his policy of

196. Document A20, p 99; doc A20(a), pp 53–54.

197. 'North Island Main Trunk Railway', AJHR, 1885, D-6, p 4.

198. 'Public Works Statement', AJHR, 1885, D-1, p 4.

199. 'Public Works Statement', AJHR, 1885, D-1, p 4.

200. Document A20, p 99.

201. 'Public Works Statement', AJHR, 1886, D-1, p 4.

202. 'Public Works Statement', AJHR, 1887, D-1, pp 33–34.

203. 'Public Works Statement', AJHR, 1887, D-1, p 34.

reserving certain works for Māori in Parliament.<sup>204</sup> Questioned in the House on whether the sections of the railway being built by Māori had first been offered to Europeans by public tender, Richardson responded:

Six miles of earthworks on this railway were reserved for competition amongst the Maoris only; and it would be satisfactory to the House to know that the price for which this work had been let to the Maoris was a very fair one compared with the price paid to Europeans, and that the work was being carried on so far in a very satisfactory manner.<sup>205</sup>

The following year, in June 1886, opposition MPs proposed a motion that contracts on the line be opened to Europeans as well as Māori.<sup>206</sup> In reply, Richardson stated that ‘a certain number of small piecework contracts’ had been let to Māori within the King Country as ‘a matter of policy’.<sup>207</sup> His rationale for this policy was a pragmatic one: if Māori were offered contracts on the line, they were less likely to oppose the railway and the Government’s efforts to acquire land for it:

The Government thought it was of extreme importance to get these men at work, as they were in most cases interested in the land, and it tended to do away with any opposition which might be raised to the works being carried out by Europeans. . . . The letting of these works was a matter of policy, as it facilitated the carrying of the line through what was called the King Country, and it induced the Maoris not to throw obstacles in the way of the acquisition of the land required.<sup>208</sup>

He made no mention of his colleague Ballance’s promises to Te Rohe Pōtae Māori regarding work contracts at Kihikihi just a year earlier.

In October 1887, a new Minister of Public Works, Edwin Mitchelson, replaced Richardson following the Stout–Vogel Government’s defeat in the 1887 general election.<sup>209</sup> With the change in Minister, the Government’s policy of specifically reserving contracts for Māori on the railway seems to have come to an end.<sup>210</sup>

The lack of an official policy to contract Māori labour from the late 1880s did not mean that Māori were no longer employed in constructing the line after this time. Official reports from the 1890s suggest that some of the Māori workers previously employed on the NIMTR had gained new employment constructing connecting roads. For instance, Wilkinson reported in June 1890 that entire Māori

204. Richardson was also briefly Minister of Public Works between 16 and 28 August 1884: Noonan, *By Design*, appendix VIII.

205. ‘North Island Main Trunk Railway’, 1 September 1885, NZPD, vol 53, p 405.

206. ‘Contracts for Works out of Loan’, 9 June 1886, NZPD, vol 54, pp 354–355.

207. ‘Contracts for Works out of Loan’, 9 June 1886, NZPD, vol 54, p 354.

208. ‘Contracts for Works out of Loan’, 9 June 1886, NZPD, vol 54, pp 354–355.

209. Mitchelson was also his predecessor as Public Works Minister between November 1883 and August 1884: Noonan, *By Design*, appendix VIII.

210. Document A20, p 101.

whānau had been employed on building a road from the Waitomo Caves to the Hangatiki Station.

The formation was let by contract in small sections to different parties of natives, who, from the experience they gained whilst working on the railway-line during its formation in this district, are now very good road-makers. The aptitude and liking they have for this kind of work is almost surprising. . . . They take their contract sections at a lump sum previously fixed by the engineer in charge of works, and then go and camp alongside of their work with their wives and families, the women doing the cooking, washing, and getting firewood, whilst the men work early and late at their contract. Road-formation, or “mahī-rori” as the Natives call it, is a kind of labour that they prefer to all others.<sup>211</sup>

The shift in government policy away from specifically reserving construction contracts for Māori coincided with the introduction of a new system for organising labour on large public works projects. Introduced by Richard Seddon, Minister for Public Works from January 1891 to March 1896, the ‘cooperative system’ was designed to cut out private contractors from government construction projects.<sup>212</sup> Instead, Public Works Department engineers would oversee the completion of public works projects by work gangs employed directly by the department. The new system eliminated many of the ‘petty contracts’ that Māori had previously tendered for. No evidence was received in this inquiry on how many Māori may have gained employment working on the new construction gangs under the Department of Public Works. However, historian Neill Atkinson described the new cooperative system as ‘a limited form of unemployment relief’ designed to relieve the many European settlers struggling from the effects of the long economic recession.<sup>213</sup> Likewise, historian Peter Gibbons’s research suggested that the work gangs were mostly made up of recent immigrants and unemployed European settlers.<sup>214</sup>

Given that the cooperative system seems to have been, at least in part, targeted at resolving the issue of unemployment among European settlers and recent immigrants, it seems reasonable to conclude that fewer Te Rohe Pōtae Māori were employed in the construction of the southern sections of the NIMTR through the inquiry district than had been employed further north.

#### 9.4.6 Resource use and payment

The vast quantities of natural resources such as timber and stone required for railway construction presented a further opportunity for Te Rohe Pōtae Māori to benefit from the railway’s construction through their lands.<sup>215</sup>

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211. GT Wilkinson, ‘Reports from Officers in Native Districts’, AJHR, 1890, G-2, p 3.

212. Document A20, p 101.

213. Atkinson, *Trainland*, pp 51–52.

214. Document A20, pp 101–102.

215. Specific claims encapsulated by this section include Wai 1455, Wai 1447, and Wai 1327.

As discussed in section 9.3.3, the Government's requirement for natural resources for use in railway construction had been the subject of specific agreements by Ballance at the Kihikihi hui of February 1885. In response to concerns raised by Te Rohe Pōtae Māori at the hui that they be paid for any trees felled during the railway's construction, including for sleepers, Ballance reassured those present that they would be compensated for any bush damaged, as well as the value of timber cut down.<sup>216</sup> Use of stone for ballast and other railway construction purposes was not specifically mentioned during the 1880s negotiations. However, the Tribunal notes that the Crown has a clear Treaty duty to compensate Māori landowners fully for losses stemming from public works takings, and this extends to the exploitation of natural resources on Māori land.

Railway construction used vast quantities of timber. Atkinson described the early Railways and Public Works Departments as 'voracious consumers' of timber resources. Wood was used for sleepers, stations, sheds and workshops, housing, signal and telegraph poles, and firewood.<sup>217</sup> By 1885, Wilkinson reported that a considerable quantity of timber was being used by railway contractors.<sup>218</sup> This timber was sourced both locally and from outside of the inquiry district. The first timber mill in the inquiry district had been established in 1886 between Ōtorohanga and Hangatiki by Messrs Graham, Dunneen, and Mainwaring. Shortly afterwards, it was purchased by JW Ellis, an English immigrant and Kāwhia storeowner.<sup>219</sup> Around this time, the company purchased cutting rights over 1,100 acres of kahikatea forest near Ōtorohanga. Ellis and Burnand Ltd, the company Ellis formed with his later business partner, JH Burnand, would go on to become one of the largest timber companies in the country.<sup>220</sup>

Initially, most of the wood used for railway sleepers in the construction of the NIMTR was sourced from outside the inquiry district and in many cases outside the country.<sup>221</sup> During the first few decades of railway construction in New Zealand, it was standard practice to import foreign hardwood timbers, such as Australian jarrah, from overseas for use as railway sleepers.<sup>222</sup> Following experiments with local timbers, such as tōtara, pūriri and kauri, the use of native timbers for sleepers appears to have increased from the 1890s.<sup>223</sup> However, it was not until 1898 that sleepers were first taken from within the inquiry district on any significant scale.<sup>224</sup>

216. 'Notes of a Meeting [at Kihikihi]', AJHR, 1885, G-1, pp 22–23.

217. Atkinson, *Trainland*, pp 64–65.

218. Document A20, p 103.

219. 'Obituary. Mr JW Ellis', *New Zealand Herald*, 7 August 1918, p 6.

220. Michael Roche, *History of New Zealand Forestry*, (Wellington: New Zealand Forestry Corporation Limited in association with GP Books, 1990), p 116.

221. Document A20, p 103.

222. 'Importation of Sleepers and Foreign Timbers (correspondence with Railway Commissioners relating to the)', AJHR, 1891, D-16, pp 1–2.

223. 'Importation of Sleepers and Foreign Timbers', AJHR, 1891, D-16, pp 1–2.

224. Document A20, p 108.

Stone was used in railway construction primarily for ballast, the gravel packed under the railway lines and around the sleepers. Despite Ballance's assurances to Te Rohe Pōtae Māori that the Government would take only the land required for the railway track and stations, several of the initial land takings for the NIMTR through the inquiry district were for gravel pits. For instance, the takings from the Ouruwhero and Otorohanga blocks both included land for gravel pits.<sup>225</sup> Unlike the wood used for sleepers, most of the ballast used for the construction of the railway in the inquiry district appears to have been derived from local sources within the district.<sup>226</sup>

The Kawhia Native Committee played a prominent role in negotiating the purchase of timber and stone resources from Māori landowners during the early phases of railway construction from the mid-1880s. Between October and December 1885, for instance, Wilkinson reported that the committee's work had included fixing prices for different grades of timber, and that a considerable quantity of timber was being used by railway and other contractors.<sup>227</sup> In November 1885, the *Waikato Times* reported that the railway contractors were paying Māori royalties of one shilling per cubic yard to take gravel from the Pūniu River (a charge the *Times* regarded as exorbitant).<sup>228</sup> In March 1886, John Ormsby wrote to contractor JJO'Brien advising him of the charges for timber outside the railway line required for the railway. The prices were for whole trees: £3 for tōtara, and £1 10s for certain other timbers, including matai, rimu, and kahikatea.<sup>229</sup> Ormsby advised O'Brien that the committee had appointed Te Hurinui of Waimiha to assess the timber taken and collect the royalties for the Māori owners.<sup>230</sup>

In March 1888, Ormsby reached agreement with J and A Anderson, who held the contract for the Waiteti section of the line, over the extraction of gravel from the Mangaokewa River.<sup>231</sup> Ormsby wrote to the contract manager, on behalf of the owners, advising their agreement to the payment of a royalty of twopence per cubic yard for the taking of 15,000 to 18,000 cubic yards of gravel. It is not clear whether Ormsby was acting on behalf of the Kawhia Native Committee in doing so.<sup>232</sup>

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225. Document A96, pp 6–7; doc A20, p 151. Note that the boundary of the Te Kumi block appears to have been adjusted to exclude a gravel pit that was no longer in use: doc A96, pp 8–9.

226. Document A20, p 103.

227. Wilkinson 'Reports from Officers in Native Districts', AJHR, 1886, G-1, p 4.

228. Document A20, p 104.

229. Document A20, p 105; doc A20(a), p 428.

230. Document A20, p 105; doc A20(a), p 428.

231. Document A20, p 107.

232. Document A20, p 107; doc A20(a), p 249. The copy of Ormsby's letter in Cleaver and Sarich's document bank is unclear, but it appears to end with Ormsby's name, possibly followed by the letters 'CKNC'. This could be a summarised form of 'Chairman Kawhia Native Committee', but we cannot be certain. Given that the committee met for the final time in early 1887, it is not clear on what authority Ormsby would have been acting at this time. There is evidence showing that Ormsby continued to sign his name as chairman of the committee until 1889 in other contexts: doc A71 (Robinson and Christoffel), p 108.

As well as setting prices, Ormsby also, at times, acted as arbiter in disputes between contractors and local Māori. This was seen in 1887, after contractor Isaac Coates reached an agreement with a Māori woman for the extraction of sand, gravel, and ballast from a site on the Waipā River. Coates and the *Waikato Times* gave two different accounts of the woman's identity and how much she was paid, with Coates claiming he paid £40 to a woman named Parehaka and the *Times* stating that the woman, Ngaonewhero, received £15 for the gravel.<sup>233</sup> After other Māori arrived at the site and demanded that work be stopped, as the woman paid for the gravel had no rights in the land, Ormsby intervened. Ormsby and other Māori leaders including Wahanui and Taonui, later met with Coates, Wilkinson, and a police constable to resolve the dispute, eventually agreeing that the contractor had dealt with the wrong individual and setting a price of threepence per cubic yard to be paid to the land's rightful owners.<sup>234</sup>

In other cases, Te Rohe Pōtae Māori resorted to more direct methods of enforcing payment for their resources. While constructing a service road to access the Poro-o-tarao tunnel over the summer of 1885–86, Māori were reported to have tied up the boat of the contractor O'Brien, refusing to untie it until he paid for firewood used by his contractors.<sup>235</sup>

As railway construction progressed in the southern part of the inquiry district from the late nineteenth century, European sawmillers sought to negotiate purchasing rights from the Māori owners of blocks near the railway. In 1898, for instance, Ellis and Burnand reached agreement with the Māori owners of the Rangitoto–Tuhua 36 (Te Tiroa) block to purchase cutting rights over forest in the Mangapehi region.<sup>236</sup> By August 1900, Wilkinson reported that Europeans were negotiating with Māori to purchase tōtara in parts of the Rangitoto–Tuhua block.<sup>237</sup>

Public Works Department reports from the late 1890s and early 1900s confirm that some Māori received contracts to supply sleepers for railway sections south of Mokau Station. Between July 1898 and December 1902, for instance, individual Māori received contracts to supply sleepers and provided some 4,875 for use on the Poro-o-tarao and Ōngarue sections of the line.<sup>238</sup> However, the small number of contracts awarded to Māori was insignificant in comparison to the share of large European-owned sawmilling companies in the timber trade. For instance, between 1900 and 1904, Ellis and Burnand alone supplied 38,000 sleepers for the Mangapehi and Ōngarue sections of the line.<sup>239</sup>

By contrast, only one Māori-owned sawmill is known to have been established along the railway in the inquiry district. The *Auckland Weekly News* reported in 1900 that Māori at Ōngarue had recently established a steam sawmill near

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233. Document A20, p 106 n

234. Document A20, p 106.

235. Fletcher, *Single Track*, p 136.

236. Document A20, p 197.

237. Document A20, p 197.

238. Document A20, p 108.

239. Document A20, pp 108–109.



Ōngarue Station. However, this venture proved short-lived. Several years later, the mill had been leased and then sold to European mill operators.<sup>240</sup> While the reasons behind the Ōngarue mill's sale are unknown, Cleaver and Sarich noted, the significant capital and financial risk involved in establishing a sawmill are a likely explanation for the lack of Māori-owned sawmills.<sup>241</sup>

While few Māori owned sawmills, some Te Rohe Pōtae Māori profited from sleeper contracts through the royalty payments for timber cut from their land. The figures of the payments Māori received for such royalties are unknown, but in Cleaver and Sarich's assessment 'they may not have been insignificant'.<sup>242</sup> The last known supply of sleepers from within the inquiry district was in 1904.<sup>243</sup> By this time, the line had been completed within the boundary of the inquiry district, and it appears that timber for the construction of the final section of the NIMTR was sourced from forests further south.<sup>244</sup>

In relation to stone resources, the practice of individually negotiating contracts for taking stone from Māori owners appears to have come to an end with the introduction of the cooperative system. Whereas Ormsby had been able to negotiate royalty payments directly with the private contractors who held the contract for each section, after taking direct control of construction in the early 1890s, the Department of Public Works appears to have opted to take land for quarries outright rather than face the ongoing expense of royalty payments to Māori owners.<sup>245</sup> This was the case in relation to the 1895 taking of 24 acres from the Pukenui 2 and Te Kuiti blocks for the Mangaokewa gravel pit.

The Mangaokewa River and associated takings, which took place under successive public works takings from 1895 to 1912 are discussed at greater length in the Public Works chapter, which will be released in a future part of this report. As mentioned before, during 1888, Ormsby negotiated a payment of twopence per cubic yard for the taking of approximately 15,000 to 18,000 cubic yards of gravel from the Mangaokewa River as ballast for the Waiteti section of the railway.<sup>246</sup> The following year, the resident engineer reported that 'good quality' shingle was being extracted from the Mangaokewa River. He went on to recommend that the Public Works Department take 'immediate steps' to 'obtain the right to take ballast from this place' as the next ballast reserve was 100 miles north at Te Awamutu.<sup>247</sup>

In 1895, the Government compulsorily acquired around 24 acres from the Te Kuiti and Pukenui 2 blocks for the Mangaokewa gravel pit.<sup>248</sup> As noted previously in section 9.4.4, the Māori landowners subsequently agreed to a land exchange with other interests that the Crown had acquired in the two blocks. The Tribunal

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240. Document A20, pp 109, 199.

241. Document A20, p 199.

242. Document A20, p 109.

243. Document A20, p 109.

244. Document A20, p 109.

245. Document A20, p 111.

246. Document A20, p 107.

247. Document A20(a), pp 196–197.

248. Document A20, p 150.

received no evidence that the Government consulted with the Māori owners prior to acquiring their land under public works legislation. It also notes that the provisions for railway takings of this time did not require taking authorities to either notify or consult with owners prior to taking their land.

In some cases, the Government appears to have extracted resources for railway construction from Māori land without any attempt whatsoever to compensate the Māori owners. In October 1901 Ormsby led a deputation to the Minister of Railways, Sir Joseph Ward, in Wellington to draw the Minister's attention to a range of railway-related matters, including the non-payment of royalties for stone sourced from Te Rohe Pōtae Māori land at two sites: Waimiha and Maramataha. Ormsby informed the Minister that Māori had previously received threepence per cubic yard for material taken for railway ballast. However, the Public Works Department, upon inquiring into the deputation's claims, could find no evidence of such royalties ever being paid to Māori, either by private contractors or the department.<sup>249</sup>

The Public Works Department acquired the two sites under the Public Works Act in 1903.<sup>250</sup> The following year, the department and the Māori landowners, represented by a member of the Māori land council, settled on a price of £50 for the two quarries, including 'any royalties due to date'.<sup>251</sup> By this time, both quarries had been well worked, with 'all of the pumice sand' in the Waimiha quarry having been used, while some rock remained in the Maramataha quarry.<sup>252</sup> The award was confirmed by the court in 1904.<sup>253</sup>

While the Government eventually compensated the owners of these two quarries for their losses, there is no evidence that the 1901 deputation and the complaints of Māori owners led the Crown to review its various policies over years on payment for gravel extracted from Māori land.

#### **9.4.7 Damage to the environment and wāhi tapu**

The construction of the NIMTR permanently transformed the landscape of the inquiry district. As construction of the line progressed southwards, surrounding lands were significantly modified. Forest cover was cut, streams diverted, and cuttings carved into hillsides. As outlined in claimant evidence in this section, the railway's construction directly impacted sites of significance to Māori, including urupā.

Te Rohe Pōtae Māori had raised concerns over the potential environmental impacts of the railway before construction began. In March 1884, Tanu, who lived at Te Kumi, wrote to Wilkinson with concerns regarding bush at Maungawhero, Mangipo, and Poporo, which he feared could be destroyed by fire if the railway ran

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249. Document A20, p 110.

250. Document A20, p 110.

251. Document A20, p 110; doc A20(a), p 82.

252. Document A20, p 110; doc A20(a), pp 81–99.

253. Document A20, p 110, doc A20(a), pp 81–99.

through the land.<sup>254</sup> Asked for comment, Native Minister Bryce responded that the railway's route had not yet been settled.<sup>255</sup>

The environmental risk posed by the railway was raised again by Māori in February 1885 at Kihikihi. At that hui, Hopa Te Rangianini expressed concern at the railway's potential impact on waterways and forests, vital sources of tuna and berries for Māori. According to the official record of the meeting, Te Rangianini stated that

He owned a swamp, over which the railway would pass, and he obtained eels, which were his principal food in summer. He said he had heard that in England railways were taken over viaducts, and he asked that this might be done in this case, instead of filling up the swamp.<sup>256</sup>

Ballance responded by stating that the Government would build bridges and culverts, that 'watercourses should not be interfered with' and that '[n]o injury whatever will be done to Native land.'<sup>257</sup> Aporo Taratutu also raised the potential environmental impact of the railway at the Kihikihi hui, where he asked that forest areas be preserved from destruction. He mentioned the area of forest between Mangawhare and Te Kumi, which he valued as a source of kahikatea berries.<sup>258</sup>

Similarly, Te Rohe Pōtae Māori also appear to have raised concerns at the damage to urupā or wāhi tapu that could result from railway construction. In an undated letter, probably written around the start of construction, the Public Works Department advised King Tāwhiao, Rewi Maniapoto, Te Ngakau, Wahanui, Taonui, and Hopa Te Rangianini that it would contact them immediately if human remains or ornaments were found during construction.<sup>259</sup> In Cleaver and Sarich's view, this letter, which appears to be responding to an earlier item of correspondence, was likely prompted by a request from rangatira.<sup>260</sup>

The Public Works Department's plans setting out the initial takings for the railway's construction show that the line cut through multiple areas of wetland and significant tracts of forest. South of the Pūniu River, on the Ouruwhero and adjoining Puketarata blocks, the line runs through Te Kawa Swamp, then the inquiry district's most extensive wetland and a significant source of tuna for Te Rohe Pōtae Māori.<sup>261</sup> The railway's construction through the swamp in 1886 involved major earthworks, including building a three-quarter mile embankment and the shifting of 125,000 cubic yards (near to 96,000 cubic metres) of spoil.<sup>262</sup>

254. Document A20, p 112.

255. Document A20, p 112.

256. 'Notes of Native Meetings', AJHR, 1885, G-1, p 23.

257. 'Notes of Native Meetings', AJHR, 1885, G-1, p 24.

258. Document A20, p 113.

259. Document A20, p 114.

260. Document A20, p 114.

261. Subject of a specific claim for Wai 846.

262. Dick Craig, *Land of the Maniapoto* (Te Kūiti, King Country Chronicle, 1951), p 50.

To the south of Te Kawa, the railway crosses the Mangaokewa River, which was diverted for the line's construction.<sup>263</sup> On the adjoining Otorohanga and Orahiri blocks, the railway crosses a significant area of swampland and bridges the Waipā River.<sup>264</sup> On the Pukeroa–Hangatiki block, the line runs near to the Mangapu and Mangarapa Rivers as well as through a number of tracts of kahikatea bush, fern, and scrub land.<sup>265</sup> On the Hauturu and Te Kumi blocks, the line passes through swamp and kahikatea and mānuka forest.<sup>266</sup> Its construction involved substantial environmental modifications to bridge the Mangaokewa River and Waiteti Gorge, the latter of which was heavily forested and contained a series of limestone cliffs, including burial caves.<sup>267</sup>

Towards the southern boundary of the inquiry district, on the large Rangitoto–Tuhua block, the railway line crosses and runs next to several major rivers, including the Mōkau and Mangapehi Rivers, the Ohinemoa and Waimiha Streams, and the Ōngarue River before it reaches Taumarunui.<sup>268</sup> In the course of its passage through the Rangitoto–Tuhua block, it also runs through significant areas of raupō swamp, mānuka scrub, and forest land.<sup>269</sup> As noted previously in this chapter, the construction of the southern sections of the track was likely to have involved a significant volume of earthworks due to the hilly nature of the country.

Cleaver and Sarich identified a few instances where officials proved willing to adapt their plans when local Māori raised concerns about potential environmental damage caused by railway construction. In October 1886, the *Waikato Times* reported that the course of the railway near Ōtorohanga had been altered to avoid damage to 'an extensive bush of kahikatea and rimu.'<sup>270</sup> To the north, government documents show that officials were aware of Te Kawa Swamp's significance to Māori as a source of tuna as early as January 1885. That month, government surveyor John Rochfort notified the Public Works Department of the potential for works to damage eel weirs in the swamp and suggested the weirs be relocated.<sup>271</sup> Later that month, Rochfort met with Wilkinson and local Māori, who agreed that additional drains would be built to protect the supply of tuna.<sup>272</sup> The culverts later placed in the railway embankment may have resulted from this discussion.<sup>273</sup>

However, with these few exceptions, the Government appears to have proceeded with the NIMTR's construction with little consideration of the line's impact

263. Document A140(a)(i), plans 1D–1L.

264. Document A140(a)(i), plan 1O.

265. Document A140(a)(i), plans 3D–3F.

266. Document A140(a)(i), plans 3G–3J.

267. Document A140(a)(i), plans 3K–4C. We discuss the takings from the Mangaokewa River and Waiteti Gorge in relation to specific claims in our discussion of public works in a future chapter of this report.

268. Document A140(a)(i), plans 4F–8Z: see also Fletcher, *Single Track*, p 135.

269. Document A140(a)(i), plans 4F–8Z.

270. 'A Trip to Otorohanga', *Waikato Times*, 26 October 1886, p 3.

271. Document A20, p 112.

272. Document A20, p 112.

273. Document A20, p 113.

on Te Rohe Pōtae Māori and their significant sites. One significant reason for this conclusion is that the protests of Te Rohe Pōtae Māori were not heard.

Harry Kereopa, a kaumātua of Te Ihingārangi hapū, gave extensive evidence on the impact of railway construction on wāhi tapu in the Waimiha Valley.<sup>274</sup> At Whenuatupu, an area once renowned for its whare wānanga known as Miringa Te Kākara, the Poro-o-tarao tunnel cuts directly through the Tihikārearea hill.<sup>275</sup> According to Mr Kereopa, his tūpuna ‘had been promised that [the railway] would go around Tihikārearea.’<sup>276</sup> Tihikārearea, a kāinga and wāhi tapu, is of great significance to Rereahu and Te Ihingārangi for its associations with the tūpuna Rereahu and Rangianewa, who had made a home there, and Haea, and Hineaupounamu, who had lived there as children.<sup>277</sup> It is named after the kārearea or native falcon, a great guardian hawk that is said to have lived on the maunga.<sup>278</sup> Tihikārearea was also home to 23 sacred healing trees. While most were used for rongōā to treat ailments such as tuberculosis, polio, and influenza, seven of them were used for embalming bodies.<sup>279</sup> The healing trees at Tihikārearea are believed to have been discovered by the ancestor Te Ihingārangi, who was said to be so tapu that everywhere he stepped also became tapu.<sup>280</sup>

Local hapū were only alerted to the Government’s plans to construct the railway directly through Tihikārearea when construction workers arrived to begin work on the tunnel, around 1886. According to Mr Kereopa, local Māori confronted the construction workers and told them they could not put the track through Whenuatupu:

[t]he people brought up Te Ohaki Tapu and the warning about waahi tapu but their cries and protests fell on deaf ears.<sup>281</sup>

Two tapu pou erected by tohunga across the railway’s path failed to prevent the tunnel’s construction.<sup>282</sup> The sacred grove of trees on Tihikārearea was felled before tohunga could remove the tapu from them.<sup>283</sup>

In the claimants’ view, the destruction of these trees not only caused many people to die from illnesses that traditional Māori medicine could have cured, but can be directly attributed to a wider loss of mana experienced by the tohunga of the Waimiha Valley, a region once renowned as a ‘sanctuary’ and ‘spiritual haven’

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274. Transcript 4.1.11, appendix B, pp 374–375 (Rangi Harry Kereopa, hearing week 5, Te Ihingārangi Marae, 7 May 2013); doc H4 (Kereopa); doc L14(a) (Kereopa).

275. Subject of specific claims for Wai 762 and Wai 1309.

276. Document H4, p 8.

277. Document A110 (Douglas), p 322.

278. According to local kaumātua, the current name of this maunga, Tihikōreoreo, is incorrect. The correct name for the mountain is Tihikārearea, after the guardian hawk: doc A110, p 322.

279. Document H4, p 7.

280. Transcript 4.1.11, appendix B, p 360 (Rangi Harry Kereopa, hearing week 5, Te Ihingārangi Marae, 7 May 2013).

281. Document H4, p 8.

282. Document H4, p 8.

283. Document H4, p 8.

ideal for tohunga.<sup>284</sup> Local Māori also consider the woodchips from these trees, which were left at the bottom of the hill before being chopped up for railway sleepers, to be a cause of death and sickness in the area.<sup>285</sup> Today, the claimants attribute the large number of car accidents that have taken place in this area to the remaining tapu that could not be removed.<sup>286</sup>

In addition, the railway's construction was responsible for polluting a puna wai tapu at Potakataka in the Waimiha Valley.<sup>287</sup> As Mr Kereopa told us, at the time of the railway's construction, the tohunga of the valley were living at the puna, a sacred pool sourced from an underground stream valued for its purity and healing properties.<sup>288</sup> However, with the coming of the railway and farms to the district, the water became paru or muddied, forcing the tohunga to climb into the hills to access the pure water there.<sup>289</sup>

Railway construction also caused considerable damage to a number of pā and urupā. Immediately after entering the inquiry district, the railway cuts directly through the ancient pā of Haereawatea or Noho Awatea.<sup>290</sup> As Shane Te Ruki told us at a Ngā Kōrero Tuku Iho hearing, this pā was built by Ngāti Maniapoto chief Peehi Tūkōrehu and his siblings, Ngā Tapa and Mangatoatoa.<sup>291</sup> It was from his stronghold at Haereawatea that in the 1820s Tūkōrehu launched many military expeditions as well as repelling attacks from Ngāti Toa and Ngāti Raukawa.<sup>292</sup>

Further south, as discussed in section 9.4.3, the Te Kumi block owners withdrew their earlier request for compensation after learning that the railway takings in question included a former urupā.<sup>293</sup> Claimant Tom Roa spoke of the damage caused by the railway's construction in the Ōtorohanga area. This included 'the desecration of wāhi tapu' concerning 'an urupā on the northern boundary abutting on the Waikowhitiwhiti block' and the lair of the taniwha Waiwaia (later destroyed by the Otorohanga Flood Protection Scheme of the 1970s, which is discussed further in a later volume of this report).<sup>294</sup> Claimant Miria Te Kanawa-Tauriki explained that the construction of the railway through the Waikowhitiwhiti block divided Te Marae o Hine, a place of refuge and where violence was forbidden

284. Submission 3.4.170(a), p 236.

285. Document L14(c) (Kereopa).

286. Document H4, p 8.

287. Transcript 4.1.11, appendix B, p 359 (Rangi Harry Kereopa, hearing week 5, Te Ihingārangi Marae, 7 May 2013); doc H4, pp 6–8; doc L14 (Kereopa), p 16.

288. Document L14, pp 15–16; doc A110, p 323.

289. Document L14, pp 15–16; doc A110, p 323.

290. Document A110, p 344; doc A20, p 115; transcript 4.1.1, p 60 (Shane Te Ruki, Ngā Kōrero Tuku Iho hui, Te Kotahitanga Marae, 1 March 2010); subject of a specific claim for Wai 2014.

291. Transcript 4.1.1, p 60 (Shane Te Ruki, Ngā Kōrero Tuku Iho hui, Te Kotahitanga Marae, 1 March 2010); see also transcript 4.1.10, p 334 (Harold Maniapoto, hearing week 4, Mangakotukutuku Campus, 9 April 2013).

292. Document A110, p 227.

293. Document A96, p 18.

294. Document O17 (Roa), p 2.

that is elaborated on in chapter 2, from a significant urupā.<sup>295</sup> Further, part of the railway line was laid on top of the urupā. These actions caused Ms Te Kanawa-Tauariki's tūpuna and whānau to relocate to Tarewaanga Marae. At Te Kūiti Pā, Te Tokanganui-ā-noho Marae has also suffered damage over the years from the construction of the railway so close to the marae, as vibrations and noise pollution have weakened the pās foundations, disrupted the way in which Ngāti Rōrā practise tikanga on the pae, and contributed to cracking in carvings.<sup>296</sup>

Between the Mōkau headwaters and Ōngarue, the railway crosses through the Waimiha Valley. Known as He Wahi Tohunga, the Waimiha Valley is the home of many sites of significance to Te Rohe Pōtae iwi and hapū.<sup>297</sup> As we heard from claimants in this area, the construction of the NIMTR caused irreparable damage to many wāhi tapu. Mr Kereopa gave evidence that the railway cut through a Te Ihingārangi urupā near Waimiha, forcing his people to relocate their kōiwi to a new site.<sup>298</sup> Later, Te Ihingārangi were forced to move their kōiwi again, this time to make way for a road.<sup>299</sup>

Ngāti Urunumia and Ngāti Raerae claimants gave evidence of the displacement of tūpāpaku by the railway line.<sup>300</sup> Hoane Titari John Wi told of the destruction of Ngariha, a small pumice hill at Te Kawakawa, just outside the Ōngarue township.<sup>301</sup> The hill, which was the site of a marae and urupā, was cut in two by the construction of the NIMTR in 1901, forcing people to relocate their kōiwi to the Catholic churchyard.<sup>302</sup> To add to the grievances of local hapū, railway workers also removed pumice from Ngariha for ballast.<sup>303</sup> Decades later, the local hapū were again forced to move their tūpāpaku when the other part of the hill was demolished during the construction of the Ōngarue-Waimiha Road in the 1930s.<sup>304</sup> Other Ngāti Urunumia claimants described the forced relocation of Te Kōura Putaroa Marae to the opposite side of the Ōngarue River, which included the removal and reburial of their tūpāpaku.<sup>305</sup> Ngawai Tane spoke of the way that from that point, Ngāti Urunumia and Ngāti Pahere people had to travel to the

295. Document 06 (Tauariki), p 4; subject of a specific claim for Wai 472, Wai 847, Wai 986, Wai 993, Wai 1015, Wai 1016, Wai 1054, Wai 1058, Wai 1095, Wai 1115, Wai 1437, Wai 1586, Wai 1608, Wai 1612, Wai 1965, Wai 2120, and Wai 2335.

296. Document 845 (Turner-Nankivell), p 8; doc s18 (Jacobs), p 1; subject of specific claims for Wai 556, Wai 616, Wai 1377, and Wai 1820.

297. Document A110, p 322.

298. Document H4, pp 9–10.

299. Document H4, pp 9–10.

300. Submission 3.4.199, pp 54–55; transcript 4.1.11, appendix B, p 238 (Hoane Titari John Wi, hearing week 5, Te Ihingārangi Marae, 6 May 2013); transcript 4.1.15, pp 906–909 (Eliza Rata, hearing week 10, Maniaroa Marae, 3 March 2014); doc Q30 (Rata), pp 6–7; doc Q9 (Tane), pp 9–11; subject of specific claims for Wai 928 and Wai 1455.

301. Document L22 (Wi), p 9.

302. Document L22, p 9.

303. Transcript 4.1.11, appendix B, p 238 (Hoane Titari John Wi, hearing week 5, Te Ihingārangi Marae, 6 May 2013).

304. Document Q30(b) (Rata), pp 6–7.

305. Submission 3.4.199, p 55; doc Q9, pp 7–10; subject of specific claims for Wai 1255, Wai 1309, and Wai 1455.

marae by waka across the river. Years later, the construction of State Highway 4 through their land cut off the marae from the urupā.<sup>306</sup>

#### 9.4.8 Fencing of the NIMTR

The understanding that the Government would fence both sides of the track through the inquiry district had been an explicit part of the railway agreements of 1885. In his telegram to Ballance of 27 February 1885 agreeing to the railway's construction, Ormsby advised that Te Rohe Pōtae Māori consented to the railway on the conditions that the line 'be paid for and be one chain wide & fenced at once on both sides'.<sup>307</sup> When, the following day, Wilkinson informed Ballance that Te Rohe Pōtae Māori had consented to the railway being built through their lands, he noted the condition that the line should be fenced on both sides 'as a protection for their cattle etc'.<sup>308</sup>

In terms of the northern sections of the line, the Crown kept to its agreement to fence both sides of the line as far south as Mokau Station. It appears that the Government planned to fence the track even before Te Rohe Pōtae Māori had agreed to the railway's construction. For instance, on 25 February 1885, two days before Ormsby's telegram confirming Te Rohe Pōtae Māori consent to the railway, the head engineer of the Public Works Department informed the Minister of Public Works that he intended to fence both sides of the line.<sup>309</sup> Early contracts for the construction of the line also specified that the line be fenced.<sup>310</sup>

However, by the time construction resumed south of Mokau Station, around 1892, the Crown appears to have lost sight of its earlier commitment. Thus, the Mōkau section of the line (opened for traffic in 1896) and the Ohinemoa and Taumarunui sections (opened in 1901 and 1903, respectively) were not fenced until 1909, a year after the official opening of the NIMTR to traffic.<sup>311</sup> During this period, the Government fielded numerous complaints from both Māori and European settlers at the lack of fencing on the line. In April 1900, Taonui Kaha and 31 others wrote to Native Minister James Carroll to ask for the line to be fenced between Mokau Station and Poro-o-tarao.<sup>312</sup> They explained that Māori had been losing stock since the train started running, and that 'as we have but little stock the loss is a very serious one to us'.<sup>313</sup> In concluding their petition, they reminded the Government of Ballance's agreement to fence the line. They wrote:

When the railway line was being formed in our district commencing at the Puniu River an arrangement was made between Ngati Maniapoto and the Hon. Mr Ballance the Minister for Native Affairs at that time to the effect that both sides of the line

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306. Document Q9, p 11.

307. Document A20, p 115; doc A20(a), pp 41–42.

308. Document A20, pp 115–116; doc A20(a), p 40.

309. Document A20, p 116.

310. Document A20, p 116.

311. Document A20, pp 117–122.

312. Document A20, p 117.

313. Document A20, p 117; doc A20(a), p 208.



running through the Rohe Potae of the Ngati Maniapoto and commencing at Puniu were to be entirely fenced.<sup>314</sup>

Asked to investigate, local Public Works officials confirmed that animals had been killed.<sup>315</sup> However, the Public Works Department took no immediate action, informing the petitioners that it would consider fencing the line ‘when further progress was made with extending the railway southwards’.<sup>316</sup>

The following year, in October 1901, Ormsby led a deputation to the Minister of Railways, Sir Joseph Ward, on a number of matters, including the fencing of the NIMTR.<sup>317</sup> Ormsby requested that the line be fenced as was the case with the Crown’s previous undertakings to Te Rohe Pōtae Māori. However, upon being asked to look into Ormsby’s claim, the Public Works Department could not find documentation of any previous agreement to fence the line.<sup>318</sup> The head of the Public Works Department subsequently advised Ormsby that no written evidence of such an agreement existed and that he doubted whether previous governments would have committed to pay for fencing.<sup>319</sup> The Public Works Department’s stance remained unchanged in 1906, when it advised the head of the Railways Department that it could find no evidence of an agreement to fence the line in its records.<sup>320</sup>

Meanwhile, Māori with land adjoining the line continued to appeal to government officials and Ministers that the line be fenced. In September 1905, Wehi Te Ringitanga wrote to Wilkinson of heavy losses Māori at Mangapehi had suffered due to trains hitting stock: ‘I have been four years living at Mangapehi, and not a month has lapsed but month by month the train strikes some stock belonging to us Maoris.’<sup>321</sup> Edward Emery, a direct descendant of Wehi Te Ringitanga, gave evidence at the 2014 hearings in Taumarunui. Emery told us that his koroua, whose pig farm was the biggest in the rohe with numbers in the thousands, suffered numerous losses from stock being killed on the line, as well as from thieves operating along the line.<sup>322</sup>

An October 1905 letter, by Makere Te Uruweherua and 21 others, detailed stock losses between Taumarunui and Taringamotu Stations: ‘Fifteen horses have been killed, eight cows, and five pigs; these are what have actually been seen by us; the bulk of our live stock are found in the Ongarue river, and in the Whanganui river.’<sup>323</sup> The Railway Department responded that it had no obligation to fence

314. Document A20(a), p 208.

315. Document A20, p 117; doc A20(a), p 209.

316. Document A20, p 117.

317. Document A20, p 117.

318. Document A20, p 118.

319. Document A20, p 118.

320. Document A20, pp 118–119.

321. Document A20, pp 120–121; doc A20(a), p 226.

322. Transcript 4.1.17, pp 1483–1486 (Edward Emery, hearing week 11, Wharauoa Marae, 31 March 2014); subject of a specific claim for Wai 1704.

323. Document A20, p 121.

the line and that owners were responsible for keeping their animals off the line. On 28 February 1906, Native Minister Carroll advised the Acting Minister of Railways that Member of Parliament WT Jennings had met deputations of Māori at Mangapehi, Ōngarue, and Taringamotu, all of whom complained about stock losses suffered by both Māori and Europeans. One hapū claimed to have lost £260 worth of stock in a few years.<sup>324</sup>

Europeans settlers also complained at the lack of fencing. In a letter to the acting Minister of Railways, Alex Bell (senior) asked that the line be fenced between Taringamotu and Taumarunui. He outlined the losses suffered by his own family, and by local Māori, due to the killing of stock by the railway.<sup>325</sup> 'Last week two valuable bullocks were killed, a few weeks ago two horses were caught on the bridge and cut to pieces, over sixty animals have been killed or maimed within the last eighteen months.'<sup>326</sup> In September 1906, a petition in the name of MH Laird and others called for the line to be fenced because of the large number of animals being killed by trains. The petitioners identified themselves as 'settlers both European and Natives, residing between Puketutu and Taumarunui.'<sup>327</sup>

Instead of compensating owners for stock losses, the Railways Department threatened legal proceedings against individuals whose animals were found wandering on the line. For instance, Ngahiwi Te Wakatoroa, who had previously written to Ward to ask that a fence be erected between Mokau Station and Horangapai, received a letter from a Railways official notifying him that he would be sent a court summons due to cattle 'trespassing' on the line. It is unclear whether this summons was ever sent.<sup>328</sup> Two years later, proceedings to prosecute two Europeans for trespass of stock were withdrawn after Ormsby intervened, again reminding Native Minister James Carroll of the Government's earlier promise to fence the line. He explained his own interest in the case on the grounds that it was 'highly important to Ngati Maniapoto because, if it is upheld, and enforced, the Native owners of the land adjoining the railway would greatly suffer.'<sup>329</sup> The Railways Department later agreed to halt proceedings.<sup>330</sup>

The Railways Department began to push for the fencing of the line from 1904, but took no action, believing that the responsibility to fence the line lay with the Department of Public Works. It was not until 1907 that Cabinet finally approved funding of £9,020 out of the Department of Public Works budget for the erection of fences along the line between Mōkau Station and Taumarunui. The work, which was carried out by the Railways Department, was completed in 1909.<sup>331</sup> The Tribunal received no evidence that either department sought to compensate

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324. Document A20, p 121.

325. Document A20, p 121.

326. Document A20, pp 121–122.

327. Document A20, p 122.

328. Document A20, p 119.

329. Document A20, p 119.

330. Document A20, p 119.

331. Document A20, p 122.

property owners for the significant stock losses which occurred during the period between 1903 and 1909 when the line was opened, but unfenced.

### 9.5 TREATY ANALYSIS AND FINDINGS

On 6 November 1908, 23 years after the 1885 ceremony to mark the turning of the first sod of the NIMTR through the inquiry district, Prime Minister Sir Joseph Ward drove the railway's last spike into the ground at the Manganuioteao Viaduct north of Ōhākune, mid-way between Auckland and Wellington. Te Rohe Pōtae rangatira had played a central role in the 1885 ceremony, but by the time of the 1908 last spike ceremony, Te Rohe Pōtae Māori were conspicuously absent from the celebrations.<sup>332</sup>

Speaking at the railway's opening, the former Minister for Public Works, W Hall-Jones, praised the engineering feats overcome in the line's construction and its future contribution to 'developing a great extent of country'.<sup>333</sup> It was fitting, he went on, that the Prime Minister was present to drive the last spike, as it had been then-Premier Robert Stout who had 'turned the first sod' on the railway back in 1885.<sup>334</sup> Prime Minister Joseph Ward spoke in praise of the 'important part that the railway was destined to play in opening up the interior of the country', and expressed his thankfulness that 'the native troubles of years past' no longer formed 'a bar to the development of the island'.<sup>335</sup>

By 1908, the official narrative of the NIMTR's history had become a celebration of the district's European development and 'native troubles' overcome. Neither the gifting of Māori land for the railway, nor the agreements that underpinned Te Rohe Pōtae Māori consent to the NIMTR, gained any recognition in this account.

In our view, the conspicuous absence of Māori from the opening ceremony for the NIMTR symbolised the wider marginalisation of Te Rohe Pōtae Māori within their ancestral lands over the decades of the railway's construction. It also reflected the slow process of forgetting, whereby the Government's awareness of its commitments to Te Rohe Pōtae Māori gradually faded from Crown consciousness. A further symbol of this erasure of the railway's Māori history lay in the issue of the line's naming. Wahanui's request that the line be named 'Turongo' had been agreed to by Stout at the April 1885 sod-turning ceremony. The Crown is, at the time of writing, yet to fulfil this promise.

As seen in section 9.3.3, following years of negotiations with the Crown, Te Rohe Pōtae Māori agreed in 1885 to the construction of the railway through

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332. Newspaper reports of the event make no mention of any Māori being present at the driving of the spike, nor at celebratory banquets held in Wellington and Auckland. Neither were any Māori names included in the lists of 'invited' guests on board the special trains which travelled from Wellington and Auckland to the opening ceremony at Manganuioteao: 'Linking the Cities', *New Zealand Herald*, 6 November 1908, p 5; 'Auckland to Wellington, Opening of the Main Trunk Line', *Star*, 6 November 1908, p 1; 'Opening at Last', *Evening Post*, 5 November 1908, p 8.

333. 'Wellington-Auckland Railway', *Auckland Star*, 6 November 1908, p 5.

334. 'Wellington-Auckland Railway', *Auckland Star*, 6 November 1908, p 5.

335. 'The Main Trunk', *New Zealand Herald*, 7 November 1908, p 8.

their territory. They did so based on Te Ōhākī Tapu, which in chapter 8 we found amounted to a demand on the part of Te Rohe Pōtae Māori that the Crown should give practical effect to the Treaty.

In addition, over the period from 1885 to 1887 the Crown made a series of specific agreements concerning the railway's construction and operation. These included the understandings that section of the track within the inquiry district would be named Tūrongo, that the Government would take only the minimum area required for the railway's construction, that Māori landowners would be fully compensated for any lands they did not wish to gift for the railway, that the Government would reserve labour contracts for Māori to construct the railway, and that damage to the environment and taonga would be minimised. Further, Te Rohe Pōtae Māori agreed to the railway's construction on the condition that the line would be fully fenced on both sides.

Many of these agreements aligned with the Government's existing duties under the Treaty of Waitangi. These included the duty to notify and fully consult with Māori landowners prior to acquiring their land for public works projects, to limit public works acquisitions to essential public works only, to explore alternative options to permanent alienation wherever feasible, to avoid damage to significant Māori sites, and to compensate Māori landowners in a fair and timely manner for any land taken.

In the sections that follow, we analyse the extent to which the Crown abided by, or departed from, its agreements arising from the Te Ōhākī Tapu negotiations, as well as its wider Treaty obligations, in relation to the railway's initial construction through the inquiry district up until 1903, with some issues like compensation and fencing taking us through to 1909.

### **9.5.1 The legislative framework**

After giving their consent to the railway's construction through the inquiry district, rangatira subsequently offered to gift certain lands required for the railway corridor and stations (discussed further in section 9.5.3). However, regardless of whether the land for the railway was gifted, the Crown would formally acquire title over the land using public works legislation.

The Government began the first formal steps to acquire land for the railway with the passage of the Railways Authorization Act 1884, a necessary step to authorise the taking of the land under the Public Works Act 1882. However, at Kihikihi the following February, Ballance made only passing mention of the Government's plans to use public works legislation to transfer the lands required for the railway into its ownership. Two years later, in 1887, when he agreed to the offer by rangatira to gift certain lands for the railway, Ballance made no reference to the legal mechanism by which the Crown intended to acquire title over the gifted lands.

We have seen no evidence to suggest that the Crown at any point acted unlawfully or contrary to its own legislation in acquiring lands for the initial construction of the NIMTR. However, the Government acting within its own laws does not take account of the fact that the Crown's legislative regime was itself in breach of the Treaty. As discussed in section 9.2.1, successive Tribunals have found

fundamental aspects of nineteenth- and twentieth-century public works legislation to be in breach of the Treaty. These include the ability to compulsorily acquire land without the consent of Māori landowners, which cuts across the guarantee of te tino rangatiratanga over their lands, while the lack of provisions to notify or consult Māori landowners prior to taking their lands for public works contravened the principle of partnership.

As we have seen, even the minimal protections for Māori landowners faced with public works takings were absent from the legislative provisions for railway takings under public works legislation. These provided authorities with sweeping powers to enter, begin construction upon, and formally acquire land for railways without, at any stage, informing landowners.

The powers afforded to the Crown under the railway provisions of public works legislation ran directly contrary to Māori understandings of the Te Ōhāki Tapu negotiations which, as we saw in chapter 8, were founded on the declaration by Te Rohe Pōtae Māori in 1883 that the Crown should give practical effect to the Treaty.

During the wide-ranging discussions culminating in Te Rohe Pōtae Māori giving their agreement to the railway's construction through their territory, little mention was made of the precise legal mechanisms by which the Government intended to transfer land for the railways into its ownership.

We do not have the evidence to determine the extent to which Te Rohe Pōtae Māori rangatira knew of the Government's intention to formally acquire land for the railway under public works legislation. It may be that tribal leaders assumed that the specific agreements they reached with the Crown concerning the railway's construction would override the minimum protections of the public works legislation. They also might have reasonably expected that their offer to gift part of the land for the railway would exempt such lands from acquisition under the Public Works Act. Public works notices of intention to take land were put in the *Gazette* and the Māori equivalent *Kahiti*, as well as on the notice board at local post offices. Therefore, rangatira would only know of the Government's intention to take land under public works legislation if they looked at any of these things.

What is clear is that Te Rohe Pōtae Māori were not presented with sufficient information on the full implications of the Crown's chosen legal mechanism for transferring lands for the railway into its ownership. They cannot be said to have given their full and informed consent to the application of public works legislation to their lands. This lack of Māori consent, as we will see, would grow increasingly significant over time as the Crown's awareness of its specific agreements concerning the railway began to fade.

Accordingly, we find that the Crown failed to gain Te Rohe Pōtae Māori consent to the application of public works legislation to transfer lands for the railway into its ownership. This was a breach of the principle of partnership, the guarantee of tino rangatiratanga, and a failure of the Crown's duty of active protection.

### **9.5.2 Land takings for the initial construction of the NIMTR**

The Crown's lack of effective authority over the area behind the aukati meant that it had little choice but to consult with Te Rohe Pōtae rangatira over the NIMTR's

construction. After extended negotiations, tribal leaders agreed to a preliminary railway survey in March 1883, then gave their consent to the railway's construction in 1885. The broader conditions attached to that consent are set out fully in chapter 8.

However, in relation to the railway's construction, Te Rohe Pōtae Māori agreed to the building of the NIMTR through their territory based on Ballance's assurances – given at Kihikihi in February 1885 – that the land needed for the railway would be one chain in width (except for cuttings where two chains might be required), as well as five acres for stations and up to 10 acres for stations serving larger settlements.<sup>336</sup> Later the same year, Wahanui and Ormsby offered to gift certain lands for the railway, on the condition that the gifting not exceed one chain in width for the track and three acres for stations. The gifting was a highly symbolic statement of mana, though the demand of rangatira that any additional land taken was to be paid for can be seen as an acknowledgement that such takings might be necessary.

Te Rohe Pōtae Māori gave their general consent to the NIMTR's construction through the territory at a time when detailed surveys of the railway's planned route were not available. It was clear that these high-level negotiations between the Crown and rangatira needed to be followed up by local consultation with hapū and iwi along the line, once more details of the lands required were known. This point is not in dispute between the parties in this inquiry, with the Crown acknowledging that it had made a commitment to discuss with Te Rohe Pōtae Māori what land it intended to take for the railway corridor and its operations.<sup>337</sup>

During the first phase of construction, from around 1886 to 1889, government representatives appear to have recognised this need for local consultation with Māori landowners on the ground. Throughout this period, direct negotiations between government representatives and Māori owners of the lands adjoining the Pūniu, Te Kūiti, and Waiteti sections of the railway also revealed the sharply differing stances of landowners towards the gifting itself. While some owners offered to gift more than the one chain maximum specified by Te Rohe Pōtae leadership, others informed officials they did not wish to abide by the gifting at all.

In the case of the Waiteti section (encompassing the Pukenui 2, Te Kuiti, and northern Rangitoto–Tuhua 68 blocks), for instance, Taonui's offer to gift one chain of railway was not taken up by the Crown. While compensation agreements for the Pukenui 2 and Te Kuiti blocks were subsequently confirmed between the Crown and Māori landowners, no such individual agreement was ever reached with the owners of the Rangitoto–Tuhua 68 block. The Crown appears to have made no effort to settle upon compensation arrangements with the owners of any of the blocks south of the Rangitoto–Tuhua 68 block.

Planning for the railway was underway before Te Rohe Pōtae Māori had even consented to its construction through their territory, highlighting the Crown's lack of consultation with Te Rohe Pōtae Māori. Despite Ballance's assurances that one chain in width, or up to two chains for cuttings, would be required for the railway

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336. Document A20, p71.

337. Submission 3.4.293, pp1–2.

corridor, two months after the Kihikihi hui the governor issued a proclamation authorising the Government to take an average of three chains in width for the central section of the NIMTR.

As seen in section 9.4.2.2, the eventual takings for the railway track through the inquiry district would average closer to 1.7 chains in width. Although this is more than the one-chain width Ballance had said would generally be required for the line in 1885 at the Kihikihi hui, it still falls within his description outlining that up to two chains might be needed for cuttings. Because we do not have evidence of the exact length of line that would have required cuttings of up to two chains, we cannot say whether the Crown then exceeded its agreement to keep to one chain for much of the track.

The Crown points out that, at the time of Ballance's 1885 statements, a detailed survey of the railway was not available and that the Government could not give exact figures on the 'actual amount of land that would be needed' as this was dependent on geography.<sup>338</sup> In relation to the geographical features of the inquiry district, the original Public Works Department plans show that the land taken for the track was especially wide in the southern part of the inquiry district.<sup>339</sup> This variation in the width of track taken is likely to be explained, at least in part, by the more difficult terrain in the southern regions of the inquiry district.

From the Waiteti section south, the railway enters rugged and hilly terrain, where more railway cuttings were required to keep the tracks within the necessary gradient and protect the line from slips. Additional takings are likely to have been required where the track ran adjacent to rivers, as it did both between Ōtorohanga and the Mangaokewa Gorge, and south of the Poro-o-tarao tunnel.<sup>340</sup> Though as mentioned before, we do not have sufficient evidence to say whether the land the Crown acquired for the railway's initial construction exceeded what could then have reasonably been expected for the railway's future operational needs.

However, in relation to stations, estimates are available for the area of 10 of the 16 known stations in the inquiry district. Of these, all but one exceeded the five acres that Ballance had told Māori would be needed for small stations. At least four exceeded the 10-acre minimum Ballance had specified for large stations.

We consider that Te Rohe Pōtae Māori could expect that, if the Crown needed to depart from its original agreements concerning the railway's construction, it would come back and consult Te Rohe Pōtae Māori for their views. Such consultation was necessary at the level of the general agreements between the Crown and Te Rohe Pōtae Māori rangatira concerning the railway's construction. It was also necessary at the local level with hapū and iwi concerning the particular land to be taken for the railway.

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338. Submission 3.4.293, p 11.

339. Document A20(e), pp 1–2.

340. Transcript 4.1.7, pp 290–293 (Philip Cleaver, hearing week 1, Te Tokanganui-ā-noho Marae, 8 November 2012). For a map of the river system between Te Awamutu and Waimiha, see Fletcher, *Single Track*, p 135.

At the general level, the Crown failed to consult with Te Rohe Pōtae Māori rangatira before proclaiming that the Government could take an average of three chains in width for the central section of the NIMTR. This exceeded the one-chain width Ballance had told Te Rohe Pōtae Māori would likely be needed for the railway's construction, with the exception of two chains for cuttings. We consider that, in the circumstances, the Crown needed to consult further with Te Rohe Pōtae Māori rangatira before proclaiming the three-chain average, which went well beyond what it had originally agreed to at Kihikihi in 1885.

At the local level, the parties in this inquiry agreed that the Crown needed to consult with the hapū and iwi who owned the land proposed to be taken along the railway's route. In the case of the blocks between the Pūniu River and the southern boundary of the Pukenui 2 block, government representatives did carry out a handful of local negotiations with Māori owners. The route of the track was adjusted to take into account some Te Rohe Pōtae Māori concerns over environmental damage (see section 9.4.7). However, it is clear that in most cases this did not happen. From the Mōkau section south to the boundary of the inquiry district, the Crown did not engage in such local hui with Māori landowners of the remaining blocks. As a result, we find that it is highly unlikely that the owners of the blocks south of Mokau Station were ever aware of the details of their lands to be taken for the railway until after construction had started. Thus, they had no opportunity to consent or object to the location of the takings.

We find that the April 1885 proclamation provided for more land to be taken than rangatira had agreed to, and the Crown did not consult them about this. In the event, the amount of land taken for the railway track was broadly within the one to two chain range Ballance had specified at the February 1885 Kihikihi hui. However, the Crown did take more land for at least four stations than rangatira had consented to. Accordingly, we find that the Crown breached the principle of partnership, the guarantee of tino rangatiratanga, and failed to perform its duty of active protection.

### 9.5.3 Gifting of land

The question of why rangatira chose to gift the lands for the railway, and the broader significance of the gifting, has been the subject of some debate in this inquiry. The claimants argued that rangatira regarded the gifting of the railway as a tuku, which in tikanga terms carried a corresponding obligation for the Crown to reciprocate.<sup>341</sup> The customary nature of tuku and tuku whenua is discussed in chapter 2.

In the claimants' view the Crown, then and now, 'misunderstood the nature of the tuku of the land for the railway'.<sup>342</sup> In particular, it 'failed to understand that there were reciprocal obligations arising from the gift'.<sup>343</sup> They argued, further, that the original gifting by rangatira should be understood in terms of the 'traditional

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341. Submission 3.4.121, p 13.

342. Submission 3.4.121, p 14.

343. Submission 3.4.121, p 14.



gifting’ practice of *tuku* and that the Crown obtained no legal title over the land as a result of the gifting.<sup>344</sup> This claim was dismissed by the Crown, which submitted that it ‘acquired the railway line legally’ and that the claimants’ contention that the railway was a *tuku* appears to be an afterthought and is not supported by the claimant evidence presented in the course of the inquiry.<sup>345</sup>

As with the practice of naming the railway after an esteemed ancestor, ‘Turongo’, the offer of *rangatira* to gift certain lands for the railway may be understood, first and foremost, as an expression of continuing Te Rohe Pōtae *mana whakahaere* over their tribal territories. Wahanui’s considerable *mana* was reflected in the subsequent agreement by many *hapū* and *iwi* along the line to abide by the original terms of the gifting, with a number of landowners choosing to gift more land than required.

This reciprocal nature of *tuku* is reflected in Wahanui’s statements before the Maori Affairs Committee in 1885, when he described the gifting of the railway as an expression of ‘my love to the undertaking’. However, at the same time, he underscored his expectation of reciprocity: ‘I want to know what return the Maoris are to get. We show our love to Europeans; what return will they make for our giving our land for the railway and the railway stations?’<sup>346</sup>

As with the early land purchases of the 1850s discussed in chapter 11, Te Rohe Pōtae Māori were aware by the 1880s of the vast difference between the Crown’s view of land transactions and the customary practice of *tuku whenua*. We do not accept the claimants’ contention that the Crown did not gain legal title over land gifted for the railway although, as we will explore further in future chapters, we consider that the Crown has a residual duty to return such lands once they are no longer required for the purpose they were gifted.

However, we share the claimants’ view that the railway’s gifting may be regarded as a *tuku*, in its broadest sense. That is, it may be seen as a confirmation of their determination to create an ongoing relationship, from which both parties would receive mutual benefits.

#### 9.5.4 Compensation

We now turn to the matter of compensation. Specifically, we consider whether Te Rohe Pōtae Māori were fairly compensated for lands taken for the NIMTR’s construction through the inquiry district. On this point, we acknowledge the Crown’s concession that it did not pay compensation to some Rangitoto–Tuhua owners for lands taken from them for the railway, and that this failure breached ‘the Treaty and its principles.’<sup>347</sup> However, as previously noted, this concession is of limited use as the Crown failed to specify which Rangitoto–Tuhua blocks it applied to.

As we saw in section 9.4.3, between 1886 and 1888, government representatives negotiated separate compensation settlements with the Māori owners of blocks

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344. Submission 3.4.121, p 43.

345. Submission 3.4.293, p 42.

346. ‘Native Affairs Committee’, AJHR, 1885, 1-2B, p 8.

347. Submission 3.4.293, p 2.

along the northern sections of the line. In December 1890, the Native Land Court made formal orders of compensation concerning most of these agreements. Two further agreements – concerning lands taken from the Te Kuiti and Pukenui 2 blocks – were formalised by the court in 1899.

There is no significant dispute between the parties in this inquiry as to whether the compensation settlements awarded for the blocks were fair, at least in comparison to the prices that would be paid under the Crown's purchasing monopoly the following decade. However, around £37 of the approximately £120 the court ordered to be paid appears to have remained unpaid. Further, the Government reached no individual compensation settlements with the owners of any of the blocks south of the Pukenui 2 boundary (including the Rangitoto–Tuhua 68 blocks and the remaining Rangitoto–Tuhua blocks affected by the initial takings for the railway).

In relation to the blocks for which compensation was awarded, officials justified their failure to pay on the basis that the small areas of land and multiple owners involved made it too difficult to determine the correct recipients. Yet, as we saw in chapter 8, in the 1880s Te Rohe Pōtae Māori had explicitly asked for powers to administer title over their own lands, without the interference of the Native Land Court. Had this been granted, and the Kawhia Native Committee empowered to settle land title on behalf of local hapū, there would have been no issue in awarding and distributing compensation to its rightful recipients. Consequently, in not empowering the Kawhia Native Committee and rangatira, the Crown itself assumed full responsibility for ensuring payment of compensation to the right people.

Further, as explored in chapter 11, the Government's denial of compensation to the owners of railway lands took place in a period when the Government was expending considerable resources in determining individual land interests, in pursuit of its programme of Crown purchasing. This shows that if the Crown had the opportunity, capability, and capacity to determine individual land interests, it certainly had the same means to pay compensation, but lacked the motivation to do so. Thus, Te Rohe Pōtae Māori landowners were doubly disadvantaged: by the Crown's failure to empower their own institutions with powers to settle land title, and by its overwhelming push to purchase Māori lands to the exclusion of all other considerations.

The Crown's later decision not to compensate Te Rohe Pōtae Māori owners for railway lands taken in the southern portions of the inquiry district appears to have stemmed from a 1903 legal opinion from the Solicitor General's office that the Government was not liable for compensation due to the application of the 5 per cent rule. The 5 per cent rule applied both to Māori-owned land and to land blocks purchased by settlers. However, the Central North Island Tribunal found the rule to be discriminatory against Māori and in breach of article 3 of the Treaty and the principle of equity. This was because it applied to Māori land for a longer period

than it did to other landowners (10 to 15 years as opposed to five) and because far more Māori land came under the 5 per cent provisions than did non-Māori land.<sup>348</sup>

When Te Rohe Pōtae Māori agreed to gift part of the land for the railway, they did so on the understanding that the Government would fully compensate them for any lands acquired for the railway outside of this gifting. However, 30 years after the initial takings, few Māori owners whose lands were taken for the railway had received the compensation promised by the Crown. In the north of the inquiry district, Māori were denied compensation for their lands both by the Crown's failure to put in place institutions by which Te Rohe Pōtae Māori could administer their own lands, as well as by the Crown's overwhelming prioritisation of its land purchasing programme. In the railway's southern sections, the Crown made no effort whatsoever to compensate Māori owners for lands acquired from them for the railway, a consequence of its application of the 5 per cent rule.

Accordingly, we agree with the Central North Island Tribunal's finding that the 5 per cent rule was discriminatory against Māori and the principle of equity. We also find that in failing to pay compensation to Māori owners whose lands were taken for the railway, the Crown breached the principle of equity and failed to perform its duty of active protection.

### 9.5.5 Labour contracts

We found in chapter 8 that Te Ōhāki Tapu was founded on a declaration in 1883 that the Crown should have implemented Treaty rights to ensure that Te Rohe Pōtae Māori were equally able to benefit from the advantages that the railway would bring to their district. Had the Crown acted in this manner, its actions would have neatly aligned with the Treaty principle of mutual benefit, which includes the right of Māori to new technologies. As the *Radio Spectrum Management and Development Final Report* of 1999 put it, 'Maori expected, and the Crown was obliged to ensure, that they and the colonists would gain mutual benefits from colonisation and contact with the rest of the world, including the benefits of new technologies.'<sup>349</sup>

As seen earlier in this chapter, at the Kihikihi hui of February 1885 Ballance agreed that Māori would be reserved labour contracts over certain portions of the line.<sup>350</sup> Ballance's commitment was affirmed by Stout at the turning of the sod ceremony several months later.<sup>351</sup>

We accept that the Crown had an obligation, arising from borht the Te Ōhāki Tapu negotiations and the Treaty, to ensure that Te Rohe Pōtae Māori were equally

348. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 852–853.

349. Waitangi Tribunal, *The Radio Spectrum Management and Development Final Report* (Wellington: GP Publications, 1999), p 52; see also Waitangi Tribunal, *Muriwhenua Fishing Report* (Wellington: GP Publications, 1988), pp 193–195; Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims*, 3 vols (Wellington: Legislation Direct, 2008), vol 1, pp 4–5; Waitangi Tribunal, *Tauranga Moana*, vol 1, p 23.

350. 'Notes of a Meeting [at Kihikihi]', AJHR, 1885, G-1, p 24.

351. 'The North Island Main Trunk Railway', AJHR, 1885, D-6, p 4.

able to access benefits the railway brought to the inquiry district, and that these included offering Māori employment on the railway.

However, we do not accept the argument of claimant counsel that the statements of Ballance and Stout in 1885 amounted to a general promise to employ wholly or predominantly Māori labour to construct the entire length of the line through the inquiry district, as it is clear from their context that they applied only to the Pūniu and Te Kūiti sections of the line.<sup>352</sup>

As we saw in section 9.4.6, the Government did fulfil its promise to award Te Rohe Pōtae Māori contracts to construct the Pūniu and Te Kūiti sections of the line. The early 1890s saw a wider shift in Crown policy from contracting construction of the line out to private contractors to the employment of Public Works Department work gangs directly supervised by the department.

While existing secondary studies of the railway workforce suggest that the public works schemes of the 1890s were primarily aimed at providing employment for unemployed settlers and new immigrants, we do not have enough district-specific evidence to say conclusively how many Te Rohe Pōtae Māori were employed on such schemes.

What we can say is that after 1887, no specific government policy was in place to ensure that Te Rohe Pōtae Māori communities were equally as able as European settlers and new immigrants to benefit from employment on the NIMTR's construction. In our view, this reflects the wider disregard with which the Crown treated the agreements it reached with Te Rohe Pōtae leaders during the 1880s railway negotiations in later stages of the railway's construction.

### 9.5.6 Resource use and payment

Ballance told Te Rohe Pōtae Māori in 1885 that the Government would require only land for track and railway stations. As Cleaver and Sarich noted, the Crown does not appear to have raised the prospect of land takings for other purposes, such as quarries, prior to gaining Te Rohe Pōtae consent to the railway's construction.<sup>353</sup> Despite this, the Crown's initial takings for the NIMTR through the inquiry district included several takings for gravel pits.

During the mid- to late -1880s, the Kawhia Native Committee and, at times, John Ormsby reached agreements with private contractors for the payment of royalties to Māori property owners for stone extracted from their land. From the 1890s, however, the Government's preference seems to have been to acquire land for gravel pits outright under the Public Works Act, rather than face the ongoing expense of royalties. This was seen in the 1895 taking from the Mangaokewa gravel pit. Despite a pre-existing arrangement with the Māori owners to extract gravel from the site, the Public Works Department opted to alienate permanently 24 acres for the gravel pit. We have no evidence that the Crown consulted with the Māori landowners before proceeding with a compulsory taking.

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352. Submission 3.4.121, pp 10, 87–88.

353. Document A20, p 151.

The Crown has a Treaty obligation to exhaust all alternatives to permanent alienation before compulsorily acquiring Māori land. During the 1880s, the Kawhia Native Committee and Ormsby's negotiations with private contractors on behalf of Māori landowners make clear that Māori owners were willing to give their consent to resource extraction from their land, if they were paid royalties.

There is no reason that the Government could not have continued these arrangements once it assumed direct control of railway construction from the early 1890s. However, in the case of takings for gravel extraction, the government departments concerned appear to have opted for permanent alienation simply to avoid liability for ongoing royalty payments. In doing so, the Crown placed money and expediency before the rights of Māori owners to retain ownership of their tribal lands.

Accordingly, we find that the lack of consultation with Māori landowners about the local details of the land taken for quarries, including the possibility of royalty payments, was a breach of the principle of partnership and a failure of the Crown's duty of active protection.

### **9.5.7 Damage to the environment and wāhi tapu**

It is not unexpected that some modification to the environment may have needed to occur during the construction of such a major public work as the NIMTR. However, as outlined in section 9.2.2, the Government had a Treaty duty to ensure that – in acquiring Māori land for a public work and during construction – damage to any sites of significance to Māori was avoided. Additionally, Ballance had assured Te Rohe Pōtae Māori at Kihikihi in February 1885 that the railway would not interfere with waterways and would do '[n]o injury whatever' to Māori land.

The Crown argued that the Government's ability to avoid damage to wāhi tapu is dependent on its 'knowledge' of a site's significance to Māori.<sup>354</sup> We find that the Crown could have only obtained such knowledge through early consultation with Māori landowners along the proposed railway. In a few cases in the northern part of the inquiry district, the Crown did undertake such consultation with positive remedial action and results. Otherwise, detailed local consultation, if it occurred at all, typically took place after construction had already been completed and the land formally acquired under public works legislation.

Accordingly, we find that the Crown failed to ensure that sites of significance to Te Rohe Pōtae Māori were avoided. This was a breach of the principle of partnership and a failure of the Crown's duty of active protection.

### **9.5.8 Fencing of the NIMTR**

A further specific agreement made by Ballance in 1885 concerned the fencing of the NIMTR. As seen in section 9.3.3, the understanding that the Government would fence the track through the inquiry district was an explicit part of Te Rohe Pōtae Māori consent to the railway and has not been contested among the parties to this inquiry. The Crown acknowledges that the fencing of the line 'formed part

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354. Submission 3.4.293, p121.

of the agreement with Te Rohe Pōtae Māori about the railway.<sup>355</sup> What is at issue is whether the Crown's delay in fencing the section of line between Mokau Station and Taumarunui was reasonable in the circumstances of the time.

As seen in section 9.4.8, despite mounting complaints from both Māori and settlers at stock losses resulting from animals wandering on the line, the Crown did not fence the line until 1909, six years after the line was officially opened for rail traffic within the inquiry district. On this matter, the Crown denied that its delays in fencing the line amount to a breach of Treaty principles. Instead, the Crown argued that its delay in fulfilling its 1885 commitment to fence the line was justified due to the Government's need to 'balance a number of practical considerations', including the light traffic on the line and the significant cost involved.<sup>356</sup>

In our view, however, the Crown's failure to fence the line was less due to 'practical considerations' such as cost, than the ongoing dispute between Public Works and Railways officials over who was responsible for fencing the line, and the denial of the government departments in question that such an agreement existed in the first place. The 1905 estimate of £8,989 for the fencing of the line between Mokau Station and Taumarunui, while not insignificant, is negligible in comparison to the overall sum of £2,500,000 the Crown was willing to invest in the NIMTR's construction.

Accordingly, we find that the Crown's delay in fencing the line demonstrated a lack of good faith and breached the principle of partnership.

### 9.5.9 Conclusion

Part of the Crown's failure to keep to the agreements it had made concerning the railway in the 1880s lay in the Government's own declining knowledge of the detail of what had been agreed to. This lack of awareness, even among senior government officials, of the details of the gifting or specific Crown agreements entered into during the 1880s negotiations concerning railway construction, can be seen as early as 1891. That year, then-head of the Native Affairs Department, T W Lewis, was said to have advised that the Public Works Department should not compensate King Country Māori for lands taken for the railway as 'the land was in the first place given by the Natives'.<sup>357</sup>

This diminishing knowledge of the Crown's prior commitments to Te Rohe Pōtae Māori over the 1890s and 1900s is attributable, in part, to the deaths or declining influence of many of the key players in the 1880s negotiations. On the Crown side, John Ballance had died in 1893, while Stout's political influence waned from the early 1890s. Of Te Rohe Pōtae rangatira who had played a prominent part in the Te Ōhākī Tapu negotiations, Taonui Hikaka and Rewi Maniapoto died in 1892 and 1894, respectively. Wahanui passed away in 1897. Of those alive during the negotiations, only John Ormsby survived long enough to hold the Crown to its obligations into the twentieth century. However, descendants of those Te Rohe

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355. Submission 3.4.293, p 28.

356. Submission 3.4.293, pp 29–30.

357. Lewis to Native Minister, 15 April 1891, AJHR, 1946, H-38, appendix C, p 374.

Pōtae Māori who were active during the period have continued to keep the issues that arose from the railway negotiations alive up to the present day.

As the awareness of officials of the Crown's earlier agreements to Te Rohe Pōtae concerning the railway began to fade, the Government increasingly fell back upon the provisions of Public Works Acts – legislation that was not only in breach of fundamental Treaty principles, but had been applied to Te Rohe Pōtae Māori lands without their full and informed consent.

Nevertheless, the Crown's knowledge of, and ability to abide by, its agreements to Te Rohe Pōtae Māori concerning the NIMTR's construction through their lands should not have been left to rely largely upon the recall of the individuals who had been personally involved in the negotiations. The information that would have been available to Crown officials, such as the parliamentary record and Native Land Court records, does not seem to have been enough to ensure that the Crown gave due regard to Māori interests, particularly after 1900.

The Crown failed to make crucial details of what was agreed concerning the railway from 1885 to 1887 available to the public, and failed to ensure that details of the Crown's agreements were transmitted to the government departments directly charged with carrying out the railway's construction and operation. This speaks to the lack of care and good faith in which the Crown entered into the railway negotiations in the 1880s. In our view, the Crown's subsequent amnesia concerning its agreements further compounds the breaches of partnership and its accompanying duty of good faith identified in chapter 8.

## 9.6 PREJUDICE

We find that the Crown's breaches in respect of the railway's construction prejudiced Te Rohe Pōtae Māori in the following ways.

While Te Rohe Pōtae Māori consented to the railway's construction through their territory, they were not adequately consulted about subsequent changes to public works legislation concerning land takings for the railway. This included the Crown's lack of consultation on the April 1885 proclamation of an average of three chains for the railway corridor. In addition, the Crown failed to consult Te Rohe Pōtae Māori concerning the local details of lands to be acquired for the railway. This resulted in the destruction of, or irreparable damage to, taonga and wāhi tapu.

Although the area of land lost for railway construction was not substantial, the land taken for at least four of the railway stations in the district exceeded the maximum acreage indicated by Ballance at the Kihikihi hui in 1885. Consequently, Te Rohe Pōtae Māori suffered some land loss for railway construction beyond that which they consented to be taken.

Te Rohe Pōtae Māori also suffered financial prejudice as a result of the Crown's Treaty breaches. The Crown's failure to pay compensation due to Māori landowners affected by land takings for the railway deprived the owners concerned of income at a key moment in the region's economic development. Meanwhile, the apparent shift in government policy away from negotiating royalty payments for use of stone resources on Māori land towards a preference for compulsorily

acquiring such lands under public works legislation likewise denied Māori a source of income. Finally, Māori landowners living along the stretches of railway also suffered loss of income from stock losses stemming from the Government's delay in fulfilling its promise to fence the line until six years after it had officially opened.

We note that the ongoing prejudice arising from the Crown's breaches in respect of the railway will be considered in future chapters of this report.

### 9.7 SUMMARY OF FINDINGS

Our key findings in this chapter have been:

- that the Crown failed to gain Te Rohe Pōtae Māori consent to the application of public works legislation to transfer lands for the railway into its ownership. This was a breach of the principle of partnership, the guarantee of tino rangatiratanga, and a failure of the Crown's duty of active protection.
- that the April 1885 proclamation provided for more land to be taken than rangatira had agreed to, and the Crown did not consult them about this. In the event, the amount of land taken for the railway track was broadly within the one to two chain range Ballance had specified at the February 1885 Kihikihi hui. However, the Crown did take more land for at least four stations than Te Rohe Pōtae Māori rangatira had consented to. These actions amounted to a breach of the principle of partnership, the guarantee of tino rangatiratanga, and a failure of the Crown's duty of active protection.
- that the gifting of the railway land can be regarded as a tuku in its broadest sense and as such was a confirmation by Te Rohe Pōtae Māori of their determination to create an ongoing relationship from which both parties would receive mutual benefits.
- that we agreed with the Central North Island Tribunal's finding that the 5 per cent rule was discriminatory against Māori and the principle of equity. We also found that in failing to pay compensation to Māori owners whose lands were taken for the railway, the Crown breached the principle of equity and failed to perform its duty of active protection.
- that the lack of consultation with Māori landowners about the local details of the land taken for quarries, including the possibility of royalty payments, was a breach of the principle of partnership and a failure of the Crown's duty of active protection.
- that the Crown failed to ensure that sites of significance to Te Rohe Pōtae Māori were avoided. This was a breach of the principle of partnership and a failure of the Crown's duty of active protection.
- that the Crown's delay in fencing the line demonstrated a lack of good faith and breached the principle of partnership.
- that, in general, the Crown's later neglect in adhering to several of the specific agreements it made concerning the railway's construction, and its failure to communicate the details of these agreements to the government departments



involved, is indicative of the Crown's wider disregard for the agreements reached with Te Rohe Pōtae leaders in the railway negotiations of the 1880s.



## CHAPTER 9 APPENDIX

### GIFTINGS AND LAND TAKINGS

**Table 9.3: Giftings, land takings for the NIMTR and agreed compensation in the Te Rohe Pōtae district between 1886 and 1903, from north to south**

This table is an expanded and more detailed version of that provided in chapter 9, section 9.4.3. Following the table is a description of the calculations for each block. Unless otherwise specified, the figures for acres taken for each block and subsequent totals are estimates derived from Brent Parker's document A140(a) table and corresponding Public Works Department survey plans. As the takings area survey plans do not exactly correspond with block boundaries, in most cases it is not possible to determine the exact acreage of takings from each block. Where survey plans included more than one block, the estimated taking area has been calculated from the block that the majority of the taking fell into.

The distances cited in chapter 9 and this appendix are those from Te Awamutu, 2 miles 10 chains north of the start of our inquiry district. Taking into account the inaccuracy in the original survey of the Rangitoto–Tuhua 68 block, which overestimated the length of the line through that block by 2 miles 30 chains, the overall distance of the NIMTR between the northern and southern boundaries of our inquiry district can be calculated at 70 miles 38.1 chains.

<b>Block</b>	<b>Year of taking</b>	<b>Length of track through block (miles and chains)</b>	<b>Estimated area of taking (acres)</b>	<b>Area gifted (acres)</b>
Pōkuru	1886	1 mile 70 chains	26.9	0
Kakepuku 10 and 12	1886	2 miles 3 chains	23.1	0
Ouruwhero – North and South	1886	2 miles 28 chains	34.1	26.1
Puketarata 2 and 11	1886	3 miles 67 chains	37.3	20.9
Otorohanga	1886	1 mile 59 chains	17.6	13.9
Waikowhitiwhiti, Orahiri and Tahaia blocks	1886, 1888	1 mile 64 chains	30.1	27.5
Pukeroa-Hangatiki	1888	4 miles 59 chains	45.7	45.7
Hauturu	1888	1 mile 58 chains	19.4	19.4
Te Kumi	1888	2 miles 70 chains	32.5	32.5
Te Kuiti	1888	42 chains	7	7
Te Kuiti	1895	n/a	5.5	0
Pukenui	1888	4 miles 70 chains	87	0

Area of taking not gifted (acres)	Compensation agreed	Notes
26.9	£60	Taking includes Mawhai Station. The Māori owners of this block requested that £58 19s 9d of their compensation for the block be put towards the payment of survey liens, with the outstanding balance paid to the owners. Despite an 1892 court order, both amounts remained unpaid in 1898, when the court issued another order that the compensation be paid.
23.1	£26	The court ordered in 1894 that the outstanding compensation for these blocks be put towards outstanding survey liens.
8	£10 10s	Taking includes Te Kawa Station. We have no evidence to suggest that the owners received the compensation for this block.
16.4	£8 for excess in Puketarata 2; £7 10s for the one chain and the excess in Puketarata 11.	Likely to include Kiokio Station. We have no evidence to suggest that the owners received the compensation for this block.
3.7	£5 (excess land), £3 (damage, gravel pit and removal of soil).	We have no evidence to suggest that the owners received the compensation for this block.
2.6	£3 10s for excess in Tahaia block. Store back-rent to be paid (Tahaia).	Taking includes Otorohanga Station (gifted). We have no evidence to suggest that the owners received the compensation for this block
0	Fence to be straightened.	Includes Hangatiki Station (gifted).
0	None.	All land gifted.
0	None. Fence to be straightened. Gifting included right to fell timber one chain on each side of the track.	Taking includes Te Kumi Station (gifted).
0		
5.5	Exchanged for land purchased by Crown in same block.	Additional taking for Mangaokewa ballast pit.
87	Exchanged for interests acquired by the Crown in the same block.	Taking includes Te Kuiti Station.

Block	Year of taking	Length of track through block (miles and chains)	Estimated area of taking (acres)	Area gifted (acres)
Pukenui 2	1895	n/a	18.9	0
Rangitoto–Tuhua 68 (north of Mōkau Station)	1888	4 miles 3 chains	77.5	0
Rangitoto–Tuhua 68 (south of Mōkau Station)	1899	11 miles 7 chains	200.4	0
Rangitoto–Tuhua 79	1899, 1902	3 miles	46.5	0
Rangitoto–Tuhua 78	1902	2 miles 40 chains	63.1	0
Rangitoto–Tuhua 77	1902	13 miles 25 chains	219.3	0
Rangitoto–Tuhua 77	1902	n/a	0.5	0
Rangitoto–Tuhua 56	1902	1 mile	14	0
Rangitoto–Tuhua 52	1902	1 mile 75 chains	26.8	0
Rangitoto–Tuhua 55	1902	4 miles 11 chains	54	0
Rangitoto–Tuhua 58	1902	1 mile 7.1 chains	0.1	0
Total		70 miles 38.1 chains	1087.3	193

Table 9.3: Giftings, land takings for the NIMTR and agreed compensation in the Te Rohe Pōtae district between 1886 and 1903, from north to south

Area of taking not gifted (acres)	Compensation agreed	Notes
18.9	Exchanged for interests acquired by the Crown in the same block.	Additional 1895 taking for Mangaokewa ballast pit.
77.5	No compensation awarded for this taking.	Taking includes part of Mokau Station.
200.4	No compensation awarded for this taking.	Taking includes part of Mokau Station, Kopaki Station, and Mangapehi Station.
46.5	No compensation awarded for this taking	Includes Poro-o-tarao Station. Probably includes part of Poro-o-tarao tunnel
63.1	No compensation awarded for this taking.	Taking includes Waimiha Station.
219.3	No compensation awarded for this taking.	Taking includes Ongarue Station.
0.5	No compensation awarded for this taking.	Additional 1902 taking for a reservoir near Ongarue Station.
14	No compensation awarded for this taking.	
26.8	No compensation awarded for this taking.	
54	No compensation awarded for this taking.	
0.1	No compensation awarded for this taking.	
894.3		

**9.8.1 Pökuru block, 1886**

A total of 26.9 acres was taken from the Pökuru block for the railway (including Mawhai Station). The NIMTR enters the Pökuru block at 2 miles 10 chains and exits at 4 miles. There are 80 chains in a mile. The total length of track through the block is 1 mile 70 chains. The owners did not wish to gift any land for the railway, and agreed to accept £60 in compensation for the taking of their land. In May 1892 the court ordered that £58 19s 9d of this compensation be paid to the surveyor-general for survey costs, and that George Wilkinson be authorised to pay the balance to two owners, Tikitini and Hori Keeti.<sup>1</sup>

**9.8.2 Kakepuku 10 and 12 blocks, 1886**

The total area taken from the Kakepuku blocks was 22.72 acres. Plan PWD 13652, however, shows that this figure equates to the taking for just the length of track from the four-mile point to the six-mile point. The minutes of the December 1890 Native Land Court sitting provide a more accurate figure for the land taken from the Kakepuku blocks: 23.1 acres. This discrepancy is explained by the fact that the survey plans for the Ouruwhero block contain a small area of the Kakepuku block. The NIMTR enters the Kakepuku blocks at 4 miles and exits at 6 miles 3 chains. The total length of track through the block was 2 miles 3 chains. None of the land in the Kakepuku blocks was gifted. At the Native Land Court, the owners accepted an offer of compensation of £26 for all of the area taken for the railway.<sup>2</sup>

**9.8.3 Ouruwhero North and South blocks, 1886**

The area taken from the Ouruwhero block was 34.48 acres. However, it is necessary to subtract from that figure the small area (0.38 acres) known to have been taken from the Kakepuku block. This would leave an estimated total taking area of 34.1 acres from the Ouruwhero block. The track enters the Ouruwhero block at 6 miles 3 chains and exits at 8 miles 31 chains. This gives a length of 2 miles 28 chains. The minutes from the 1890 Native Land Court hearing suggest that the owners agreed to gift the railway corridor plus excess from the block's southern boundary as far as a ballast pit on the block. The owners in the northern part of the block agreed to gift the rail corridor from the ballast pit to the northern boundary, but requested payment for the excess area on that length of line (which amounted to 8 acres). A one-chain gifting for the total length of the railway through the Ouruwhero block (therefore not including the land for Te Kawa Station) would equate to 18.8 acres. Adding to that the 8 acres of excess compensated in the northern portion (which must have included the land for Te Kawa Station – situated between the 7.25- and 7.5-mile points), we arrive at a total of 26.1 acres. This means that the total area gifted (comprising the one chain width plus 7.3 acres of excess gifted) is 26.1 acres.<sup>3</sup> We note that claimant counsel, citing a 1965 survey plan (see document A20(a), p

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1. Document A140(a); doc A96, pp 5–6; doc A140(a)(i), plans 1C, 1D.

2. Document A96, p 6; doc A96(a)(2), p 5; doc A140(a)(i), plans 1D–1G.

3. Document A140(a); doc A96, p 6.



384), suggested that the area of excess gifted in the southern part of the Ouruwhero block was 6.25 acres, but it is not clear from where this figure is derived.<sup>4</sup>

#### **9.8.4 Puketarata 2 and 11 blocks, 1886**

An estimated 37.3 acres was taken from the Puketarata blocks. Based on the estimates in document A140(a), adding the takings for the Puketarata 2 block (the portion of the block indicated by Parker as falling within the gifting) gives a total of 26.1 acres. Since the survey plan does not exactly correspond with block boundaries, this total also includes an area from the Ouruwhero block. This gives a total of 11.2 acres for the taking in the Puketarata 11 block. The railway enters the Puketarata block at 8 miles 31 chains and exits at 12 miles 18 chains. The total length of the railway through the block is 3 miles 67 chains. At the December 1890 hearing, the owners of Puketarata 2 agreed to gift the one-chain corridor, but requested compensation for the excess. Based on an estimated track length of 2 miles 49 chains through the Puketarata 2 block, this would equate to a gifting of 20.9 acres, leaving an excess of 5.2 acres. None of the land taken for the railway in the Puketarata 11 block was gifted.<sup>5</sup>

#### **9.8.5 Otorohanga block, 1886**

An estimated 17.6 acres was taken from this block for the railway. Note that the Crown, citing ML-Plan 3165/7/2, gives a figure of 15 acres for the railway takings from the Otorohanga block, but it is unclear where on the plan this 15 acres is derived from.<sup>6</sup> The NIMTR enters the Otorohanga block at 12 miles 18 chains and exits at 13 miles 77 chains. The total distance of track within the block is 1 mile 59 chains. At the December 1890 Native Land Court hearing, the owners of the block agreed to gift the railway corridor. They agreed to £5 in compensation for the excess (which included a gravel pit and unspecified damages). Later the court agreed to award a further £3 compensation to the owners for damage caused by removal of soil. Based on the distance of track through the block, a one-chain gifting would have equated to 13.9 acres, making the excess 3.7 acres.<sup>7</sup>

#### **9.8.6 Waikowhitiwhiti, Orahiri, and Tahaia blocks, 1886, 1888**

The estimated total area taken from these three blocks was 30.1 acres. The NIMTR enters the Waikowhitiwhiti block at 13 miles 77 chains, and exits the Tahaia block at 15 miles 61 chains. The length of the track through the Tahaia block was 34 chains. At the December 1890 Native Land Court hearing, the owners of the Waikowhitiwhiti and Orahiri blocks agreed to gift the land for the track and the excess without compensation. The owners of the Tahaia block agreed to gift the land for the track, but requested compensation for the excess. The area taken for

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4. Submission 3.4.121, p 45.

5. Document A140(a); doc A96, pp 6–7.

6. Submission 3.4.293, p 44.

7. Document A140(a); doc A96, p 7.

the Tahaia block was 6 acres.<sup>8</sup> A one-chain width would therefore involve 3.4 acres. Thus, an excess of 2.6 acres must have been taken as well.

### 9.8.7 Pukeroa–Hangatiki block, 1888

We received varying figures on the area of the taking from the Pukeroa–Hangatiki block. The title order for the block gives the area of the taking as 60 acres.<sup>9</sup> However, due to the overlap in survey plan boundaries between the Pukeroa–Hangatiki block and the Tahaia block to the north, we have relied on Parker’s estimate of 45.7 acres.<sup>10</sup> The NIMTR enters the Pukeroa–Hangatiki block at 15 miles 61 chains and exits at 20 miles 40 chains. The length of the track through the block is thus 4 miles 59 chains. At the December 1890 Native Land Court hearing, the owners of the Pukeroa–Hangatiki block agreed to gift all of the land for the railway.

### 9.8.8 Hauturu block, 1888

Citing the Hauturu East 1 title order (see document A92), the Crown cites the area taken from this block as 19 acres. We have relied on Parker’s figures in document A140(a), which estimate the area taken at 19.4 acres.<sup>11</sup> The NIMTR enters the Hauturu block at 20 miles 40 chains and exits the block at 22 miles 18 chains. The length of the track through this block is thus 1 mile 58 chains. At the December 1890 Native Land Court hearing, the owners agreed to gift all the land for the railway.

### 9.8.9 Te Kumi block, 1888

The Crown, citing the title order for the Te Kumi block gives the total area taken from this block as 21 acres, while Parker estimates the area of the taking at 30.4 acres.<sup>12</sup> Based on other known figures relating to the taking from this block, we consider Parker’s estimate more accurate. A one-chain gifting through the 2-mile 70-chain block would have, by itself, amounted to 23 acres. Adding to this figure the area of excess (stated to be 6.5 acres in the Native Land Court minutes) and the taking of 3 acres for Te Kumi Station gives a total of 32.5 acres. The NIMTR enters the Te Kumi block at 22 miles 18 chains and exits the block at 25 miles 8 chains, making the length of the track through the block 2 miles 70 chains. At the December 1890 hearing, the owners of the Te Kumi block agreed to gift the strip of land for the railway, 3 acres for railway stations and the right to fell the bush one chain wide on either side of the railway line. In regard to the excess, stated to be 6.5 acres, all owners, with the exception of Raurau and Ngapera, agreed to gift it. Raurau and Ngapera agreed to £8 10s in compensation for their share of the

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8. Submission 3.4.293, p 44; doc A92, Tahaia Title Order, SA-TO-Tahaia.

9. Submission 3.4.293; doc A92, Pukeroa Hangatiki Title Order, SA-TO-Pukeroa-Hangatiki-A

10. Document A140(a); doc A96, p8.

11. Document A140(a); doc A96, p8; doc A96(a)(2), p9.

12. Document A92, Te Kumi Title Order, SA-TO-Te Kumi.

excess, but both later withdrew their claims on condition that a fence along the railway line be straightened to exclude a disused gravel pit.

#### **9.8.10 Te Kuiti block, 1888, 1895**

In an 1899 hearing for the Te Kuiti block, George Wilkinson confirmed that the Māori owners of the Te Kuiti block had agreed to gift 7 acres taken from the block in 1888 for the railway, while requesting compensation for the 1895 taking of 5.5 acres for the Mangaokewa ballast pit. The railway enters the Te Kuiti block at 25 miles 8 chains and exits at 25 miles 50 chains. This makes the length of the track through the block 42 chains.<sup>13</sup>

#### **9.8.11 Pukenui block, 1888**

Parker, citing ML plan 6448A, said 87 acres were taken from the Pukenui block for the railway in 1888.<sup>14</sup> In Parker's table of railway takings (see document A140(a)), the plans showing takings for the Pukenui block are shown as overlapping in the north with the taking for the Te Kuiti block, and in the south with the taking for the Rangitoto–Tuhua 68 block. The taking from the Te Kuiti block (shown in PWD plan 13652, sheet 11) is known to have been seven acres (see section 9.7.10). As the survey plan covers a total of 15.9 acres, this suggests that the share of the plan that fell within the Pukenui block amounted to 8.9 acres. Adding this 8.9 acres to the total takings, which exclusively fall within the Pukenui block, gives a total of 71.55 acres. This suggests that, at the southern boundary of the block, the share of PWD plan 15579, sheet 5 corresponding to the Pukenui block was 15.45 acres, while the share within the Rangitoto–Tuhua 68 block was 11.15 acres. The NIMTR enters the Pukenui block at 25 miles 50 chains and exits at 30 miles 40 chains. The total length of the railway through the block was thus 4 miles 70 chains. At a December 1899 Native Land Court hearing to subdivide the Te Kuiti block, the Crown agreed to subtract 87 acres (as well as 18 acres 3 roods 31 perches it had acquired from the same block in 1895 for the Mangaokewa ballast pit) from the interests it had acquired in the block.<sup>15</sup>

#### **9.8.12 Pukenui 2 block, 1895**

See the aforementioned discussion on Pukenui block, 1888. Pukenui 2 block contained the 1895 taking for the Mangaokewa ballast pit (not included in the 87 acres already listed), exchanged in 1899 for interests that the Crown had already acquired in the same block.<sup>16</sup>

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13. Document A96(c), p 20; doc A140(a); doc A140(a)(i), p 28; doc A140(b), para 18.3; PWD Plan 13652, sheet 11 (doc A140(a)(i), plan 3K).

14. Document A140(b), para 25.

15. Document A20, p 156; doc A140(b), para 25.

16. Document A20, p 156; doc A140(b), para 25.

**9.8.13 Rangitoto–Tuhua 68 block (north of Mokau Station), 1888**

The takings within this part of the Rangitoto–Tuhua 68 block include all 65 acres 2 roods 33 perches within PWD plan 15579 sheets 6 to 9, plus 11.5 acres that fell within sheet 5. PWD plan 15967 shows an additional small taking of 2 roods 28 perches, making a total of 77 acres 3 roods 21 perches (77.88 acres) in all.<sup>17</sup> The NIMTR enters the Rangitoto–Tuhua 68 block at around 30 miles 40 chains from Te Awamutu Station. Mokau Station is located at approximately 34 miles 43 chains from Te Awamutu, so the distance between the block's northern border and this point is around 4 miles 3 chains.<sup>18</sup>

**9.8.14 Rangitoto–Tuhua 68 block (south of Mokau Station), 1899**

According to Parker, 200.4 acres was taken from Rangitoto–Tuhua 68 south of Mokau Station for the construction of the railway. Document A140(a) indicates that the NIMTR enters this part of the block at 34 miles 43 chains and exits at around 48 miles, thus giving a length of 13 miles 37 chains. However, subsequent research by Parker indicates that the original survey had been carried out before the exact site of the Poro-o-Tarao tunnel-mouth had been decided.<sup>19</sup> This meant that the approach to the tunnel was shown as 2 miles 30 chains longer than its actual length. Thus, rather than 13 miles 37 chains, the correct length of the NIMTR through this section of the block is 11 miles 7 chains, and the railway exits from the block at 45 miles 50 chains (not 48 miles).

**9.8.15 Rangitoto–Tuhua 79 block, 1899, 1902**

The total area taken from this block for the railway was 46.5 acres. According to document A140(a) the railway enters the Rangitoto–Tuhua 79 block at 48 miles and exits at 51 miles. However, adjusting for the survey inaccuracy noted in the previous reference, the actual entry point of the railway into the block is 45 miles 50 chains and the exit point is 48 miles 50 chains.

**9.8.16 Rangitoto–Tuhua 78 block, 1902**

From the Rangitoto–Tuhua 78 block, 63.1 acres was taken for the railway. The railway enters the block at 48 miles 50 chains from Te Awamutu. It exits the block at 51 miles 10 chains.<sup>20</sup>

**9.8.17 Rangitoto–Tuhua 77 block, 1902**

From the Rangitoto–Tuhua 77 block, 219.8 acres was taken for the railway. The NIMTR enters the block at 51 miles 10 chains. It exits the block at 64 miles 35 chains.<sup>21</sup>

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17. Document A140(a), p 3; doc 140(a)(i), p 38.

18. Document A96, p 20 n

19. Document A140(b), para 14.

20. Entry and exit points adjusted to account for survey inaccuracy noted in document A140(b), para 14.

21. Entry and exit points adjusted to account for survey inaccuracy noted in document A140(b), para 14.

**9.8.18 Rangitoto–Tuhua 56 block, 1902**

According to Parker, 14 acres was taken from the Rangitoto–Tuhua 56 block for the railway. The railway enters the block at 64 miles 35 chains. It exits the same block at 65 miles 35 chains.<sup>22</sup>

**9.8.19 Rangitoto–Tuhua 52 block, 1902**

According to Parker, 26.8 acres was taken from Rangitoto–Tuhua 52 for the railway. The NIMTR enters the block at 65 miles 35 chains from Te Awamutu. It exits the block at 67 miles 30 chains.<sup>23</sup>

**9.8.20 Rangitoto–Tuhua 55 block, 1902**

From the Rangitoto–Tuhua 55 block, 54 acres was taken for the railway. The railway enters the block at 67 miles 30 chains. It exits the block at 71 miles and 41 chains.<sup>24</sup>

**9.8.21 Rangitoto–Tuhua 58 block, 1902**

From the Rangitoto–Tuhua 58 block, 0.1 of an acre was taken for the railway. The railway enters the block at 71 miles 41 chains. It exits the block at the southern boundary of the inquiry district at 72 miles 48.1 chains.<sup>25</sup>

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22. Entry and exit points adjusted to account for survey inaccuracy noted in document A140(b), para 14.

23. Entry and exit points adjusted to account for survey inaccuracy noted in document A140(b), para 14.

24. Entry and exit points adjusted to account for survey inaccuracy noted in document A140(b), para 14.

25. Entry and exit points adjusted to account for survey inaccuracy noted in document A140(b), para 14.



## CHAPTER 10

### TE KOOTI WHENUA MĀORI / THE NATIVE LAND COURT, 1886–1907

Many of them would like their titles to remain as they were, as they received them from their ancestors; but they found it to be now impossible that things can remain in their old state. An investigation into the ownership and title of their lands must be made. They would like to investigate the title and settle it amongst themselves by the native committees, but found they had not the power to do so, and they were now asking themselves what they ought to do . . .

—John Ormsby, April 1886<sup>1</sup>

#### 10.1 INTRODUCTION

In late July 1886, the Native Land Court began its investigation into the 1.6 million-acre Aotea–Rohe Potae block. The court's hearing was the result of an application filed three months earlier by Wahanui, Kaahu, Taonui Hikaka, Hone Te One, Tūkōrehu, Hone Omipi, and 62 others on behalf of Ngāti Maniapoto, Ngāti Raukawa, Ngāti Tūwharetoa, Whanganui, and Ngāti Hikairo. In contrast to the years of negotiation that had preceded the introduction of the court into the district, once the application was received matters proceeded very quickly. By October 1886, the court had issued its judgment, awarding almost the whole block to the five claimant tribes.

In the years following, the court worked its way through the many applications to subdivide the block, first between its respective iwi, then its hapū, and to define the relative interests of the individual owners. In doing so, the court was converting land held collectively in customary title into land held in individual shares under a Crown-derived title.

As time passed, the exercise of the court's jurisdiction shifted. From the 1890s on, an increasing amount of the court's time was spent administering the blocks that had already passed through the court. This involved the processing of succession orders and the further partitioning of the original subdivisions. In addition, as its purchasing programme in the district gained pace, the Crown became a more active and visible presence in the court process as it sought to have the interests it had purchased defined and subdivided.

The main source of evidence relied on in this chapter is Drs Paul Husbands and James Mitchell's research report, 'The Native Land Court, Land Titles and

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1. 'Mr Ballance and the Natives', *Waikato Times*, 20 April 1886, p 4; doc A41 (Loveridge), p 193.

Crown Land Purchasing in the Rohe Potae District, 1866–1907.<sup>2</sup> The chapter also draws on claimant evidence, court minute books, other research reports relevant to the Native Land Court (including those by Paula Berghan, Leanne Boulton, Dr Terry Hearn, Dr Donald Loveridge, and Cathy Marr), and the extensive body of Waitangi Tribunal reports and scholarly works that have examined the court.<sup>3</sup>

### 10.1.1 The purpose of this chapter

The arrival of the court in Te Rohe Pōtae in 1886 was particularly significant because Māori had staunchly resisted its introduction into their rohe for many years. The court had long been a frequent topic of discussion between the Crown and Te Rohe Pōtae Māori. The Crown saw the introduction of the Native Land Court into Te Rohe Pōtae as critical to its goal of European settlement of the district. Te Rohe Pōtae Māori, however, were deeply sceptical that the court would allow them to retain their land and control the pace and extent of any settlement of the district, as they wished. They were familiar with the workings of the Native Land Court in other districts and with its negative effects. They were particularly critical of the social and financial costs associated with the court, and with the scale of land alienation that often followed title determination. Te Rohe Pōtae Māori, not wanting to experience these outcomes themselves, called several times for the power to themselves determine title to lands in the district. They also wanted titles to be awarded to hapū, rather than individuals.

However, when the court eventually sat in Te Rohe Pōtae in 1886, the core complaints and requests on which Māori from the district had petitioned the Crown had not been addressed. There were, nevertheless, some improvements in the court's process. The court was located in Ōtorohanga, a Māori township without the hotels and public houses found in European townships; lawyers and agents were – at first – barred from attending sittings; and the court was presided over by Judge William Gilbert Mair, a fluent te reo Māori speaker, although a former military leader for the Crown during the wars. These changes meant that some of the problems that had plagued court sittings elsewhere – typically involving the consumption of alcohol and the activities of greedy land-sharks and storekeepers – were mitigated in Te Rohe Pōtae. However, these changes, the claimants argued, did not reduce the impact of the court on Māori customary tenure. In their view, the native land legislation, the title it offered and the fact that a European judge was the final arbiter of the court process meant that they could no longer control their own lands in accordance with their tikanga.

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2. Document A79 (Husbands and Mitchell).

3. Berghan, 'Block Research Narratives' (document A60); Boulton, 'Land Alienation in the Rohe Potae Inquiry District, 1866–1908, An Overview' (document A67); Hearn, 'Māori Economic Development in Te Rohe Pōtae Inquiry District, c.1885 to c.2006' (document A146); Loveridge, 'The Crown and the Opening of the King Country' (document A41); Loveridge, "'In Accordance with the Will of Parliament": The Crown, the Four Tribes and the Aotea Block, 1885–1899' (document A68); Marr, 'Te Rohe Potae Political Engagement 1864–1886' (document A78).



The nature of the individualised titles, we were told, had long-lasting impacts on Te Rohe Pōtae Māori, their ownership and use of their land, and their exercise of mana whakahaere. The Native Land Court titles, they claimed, ‘seriously undermined the tribal structures’ of Te Rohe Pōtae Māori, facilitated the large-scale alienation of Māori land, and destroyed the ability of Māori to ‘develop, use, occupy and enjoy their lands according to tikanga.’<sup>4</sup> We turn now to examine whether such claims are well-founded.

### 10.1.2 How the chapter is structured

This chapter examines the operations and outcomes of the Native Land Court in Te Rohe Pōtae between 1886 and 1907. It begins by briefly examining the origins of the Native Land Court and the way in which the court had come to operate by 1886, as well as the form of title it awarded. The chapter then examines the court’s operations and impacts in two main periods. First, it considers how title to the initial Aotea–Rohe Potae block and its subdivisions was determined between 1886 and 1890, with a particular focus on the extent to which Te Rohe Pōtae Māori were able to control and influence the court’s operations. Secondly, it considers the effects that subsequent partition and succession had on Te Rohe Pōtae Māori land holdings after 1892. The chapter concludes by examining two further issues: the costs associated with the court process, and the extent to which Te Rohe Pōtae Māori protested the court, along with the redress that was available to them if they were dissatisfied with the court’s decisions.

## 10.2 ISSUES

### 10.2.1 What other Tribunals have said

The Tribunal has considered the establishment, operations, and impacts of the Native Land Court system in extensive detail in several inquiries. Other Tribunal panels have found that some form of new title system was needed, both to allow Māori to engage in the colonial economy and to avoid a repeat of the Waitara purchase. The Pouakani Tribunal, for instance, considered that ‘there had to be a fair system of establishing ownership when a sale was contemplated.’<sup>5</sup> According to the Turanga Tribunal, ‘precise boundaries and certainty of ownership’ were needed for this purpose.<sup>6</sup> In the view of the Hauraki Tribunal, customary tenure also had to evolve to ‘meet both Maori and settler needs’, including ‘the requirements of mining, commercial agriculture and other land uses, including its sale, lease, or development’. That Tribunal emphasised, however, that there were a number of options open to the Crown to achieve that purpose, not all of which required

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4. Submission 3.4.107(a), pp 39–40.

5. Waitangi Tribunal, *The Pouakani Report 1993* (Wellington: Brooker’s Ltd, 1993), p 308.

6. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 2, p 439.

‘full-scale tenure conversion and abrogation of the customary base.’<sup>7</sup> The Tauranga Moana Raupatu Tribunal similarly characterised the Crown’s ‘radical modification of Maori land tenure’ as ‘not an inevitable result of European mindsets but a sustained and deliberate policy choice on the part of the Government.’<sup>8</sup>

Whatever the nature and design of a system to establish ownership, however, Māori input and consent was required before any change to customary tenure was implemented. Successive Tribunals have found that the establishment of the Native Land Court did not meet this standard. Nor were Māori consulted in any meaningful way regarding the detail of the legislation that created and empowered the court. The Hauraki Tribunal, for example, considered that the changes introduced by the first of the two Native Land Acts that initiated this system of land law, the Native Land Act 1862, ‘warranted explicit, prior consultation with Maori.’<sup>9</sup> Instead, only limited, general consultation occurred. As such, the Crown did not have a mandate to establish the court.<sup>10</sup>

The Taranaki Tribunal found that the Native Land Court usurped the ability of Māori to determine land ownership themselves by presuming ‘to decide for Maori that which Maori should and could have decided for themselves.’<sup>11</sup> This was contrary to the article 2 guarantee that Māori title, and Māori control over it, would be respected. The Turanga Tribunal emphasised that ‘the Crown’s right to make laws for the regulation of Maori title could not be used to defeat that title or Maori control over it.’<sup>12</sup> Having usurped the right of Māori to determine title to their land, the court established by the Crown was also an inappropriate forum to determine customary ownership. The Europeans who were given control of resolving disputes between Māori ‘were outsiders looking in.’<sup>13</sup> But determining customary rights, according to the Central North Island Tribunal, ‘required a deep knowledge of history, whakapapa and relationships among the various kin groups with rights to land and resources in a district.’<sup>14</sup> Tribunals have also been critical of the costs incurred from participation in the Native Land Court process, particularly those arising from survey.<sup>15</sup>

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7. Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 2, p777.

8. Waitangi Tribunal, *Te Raupata o Tauranga Moana: Report on the Tauranga Confiscation Claims* (Wellington: Legislation Direct, 2004), p304.

9. Waitangi Tribunal, *The Hauraki Report*, vol 2, p710.

10. Waitangi Tribunal, *The Hauraki Report*, vol 2, p710.

11. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996), p282.

12. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p534.

13. Waitangi Tribunal, *Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands* (Wellington: Legislation Direct, 2001), p146.

14. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 2, p537.

15. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p519; Waitangi Tribunal, *Te Urewera*, 8 vols (Wellington: Legislation Direct, 2017), vol 3, pp1270–1272.

Other Tribunals have found that the titles awarded by the court were inappropriate and deficient in many respects. The Turanga Tribunal found that the Native Land Court replaced communal rights in Māori land with ‘a kind of virtual individual title’, under which individuals held tradeable shares in communal land but had no allotment of their own.<sup>16</sup> These individual tradeable shares had no precedent in tikanga Māori. In Māori communities, rights were held communally and were managed by rangatira on the community’s behalf in accordance with tikanga. But under this new form of title, individuals could sell or lease their shares without the consent (or even knowledge) of rangatira or the community as a whole.<sup>17</sup>

The Turanga Tribunal found that, under the Native Land Court regime, title was individualised only for the purpose of sale or lease. For every other purpose, the land remained ‘merely customary land outside English law and commerce’. Under this form of title, it was much easier to sell or lease land than to retain and use it. In effect, therefore, Māori communities were effectively excluded from joining the colonial economy by any means other than selling or leasing.<sup>18</sup> Further, this form of title was introduced despite the opposition of most Māori, who wanted a form of title that reflected communal rights in land.<sup>19</sup> The Turanga Tribunal found that the Crown’s ‘selective individualisation’ of land titles was a clear breach of the article 2 guarantee of tino rangatiratanga. It excluded hapū from sale and lease decisions, failed to provide legal support for chiefly leadership, and in these ways ‘confiscated rights formerly vested in tikanga Maori’.<sup>20</sup>

The Hauraki, Central North Island, and National Park Tribunals drew similar conclusions. In *The Hauraki Report*, the Tribunal found that the hybrid form of title imposed on Māori divided communities, and was ‘utterly destructive of efforts to develop the land, pauperising, socially damaging and psychologically dispiriting’.<sup>21</sup> Similarly, the Central North Island Tribunal found that the individualised titles created by the court ‘were in fundamental violation of Treaty guarantees, deprived communities and leaders of their collective rights and their tino rangatiratanga, and created structural pressures for alienation of interests in land’.<sup>22</sup> For the National Park Tribunal, many of the prejudicial effects of native land title were caused by the ‘fundamental breach found in all native land legislation – namely, the constricting requirement that ownership interests be recorded as tenancies in common’. Each named owner had their own interest that they ‘could sell . . . independent of the others’. In so doing, they could undermine the desire of communities to retain and use their land.<sup>23</sup>

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16. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p 441.

17. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, pp 441, 443.

18. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, pp 443–444, 446.

19. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, pp 443–444, 446.

20. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p 446.

21. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 785.

22. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 537.

23. Waitangi Tribunal, *Te Kāhui Maunga: The National Park District Inquiry Report*, 3 vols (Wellington: Legislation Direct, 2013), vol 1, p 271.

**10.2.2 Crown concessions**

The Crown made three concessions relating to the Native Land Court. First, the Crown conceded ‘that its failure to include in the native land laws prior to 1894 a form of title that enabled Te Rohe Pōtae Māori communities to control their land and resources collectively breached the Treaty of Waitangi and its principles.’<sup>24</sup>

Secondly, the Crown accepted ‘that the individualisation of Maori land tenure provided for by the native land laws made the lands of Te Rohe Pōtae iwi and hapū more susceptible to fragmentation, alienation and partition, and that this contributed to the undermining of tribal structures in Te Rohe Pōtae’. The Crown conceded ‘that its failure to protect these tribal structures was a breach of the Treaty of Waitangi and its principles.’<sup>25</sup>

Finally, the Crown conceded ‘that in a number of instances, for example in some subdivisions within the Rangitoto–Tuhua block, the iwi and hapū of Te Rohe Pōtae had to give up unreasonably large amounts of land to pay for survey costs, and that the Crown’s failure to protect the affected iwi and hapū of Te Rohe Pōtae from this burden breached the Treaty of Waitangi and its principles.’<sup>26</sup>

The Crown also acknowledged, but did not concede, ‘that where costs associated with the determination of land titles, in particular survey costs, were an excessive and disproportionate burden on Māori land owners, and where land was alienated to cover these excessive costs, there is a real issue of whether there was a failure on the part of the Crown to design a fair titling regime, and a failure on the part of the Crown to protect Māori interests in land they wished to retain.’<sup>27</sup>

Crown counsel also pointed to the concessions concerning Crown purchasing as being relevant to Native Land Court issues.<sup>28</sup> One particularly relevant concession from those submissions is that although the Crown was ‘planning to provide for Māori District Committees to have a greater role in Native Land Court processes and to provide a mechanism for a measure of self-government’, it ‘failed to consult or re-engage with Rohe Pōtae Māori when it did not fulfil these representations, and thereby breached the Treaty of Waitangi and its principles by not acting in good faith and by failing to respect their rangatiratanga.’<sup>29</sup> The Crown’s other concessions on purchasing are dealt with in detail in chapter 11.

**10.2.3 Claimant and Crown arguments**

Over 130 claims in this inquiry contain grievances related to the Native Land Court.<sup>30</sup> The issues set out in these claims include that the court was forced on Te

24. Submission 3.4.305, p 9.

25. Submission 3.4.305, p 9.

26. Submission 3.4.305, p 9.

27. Statement 1.3.1, pp 83–84.

28. Submission 3.4.305, pp 9–10; submission 3.4.307, pp 1, 25–26.

29. Submission 3.4.307, p 25.

30. These include: Wai 440 (submission 3.4.198); Wai 472, Wai 847, Wai 986, Wai 993, Wai 1015, Wai 1016, Wai 1054, Wai 1058, Wai 1095, Wai 1115, Wai 1437, Wai 1586, Wai 1608, Wai 1612, Wai 1965, Wai 2120, Wai 2335 (submission 3.4.140); Wai 551, Wai 948 (submission 3.4.250); Wai 846 (submission 3.4.251); Wai 1099, Wai 1100, Wai 1132, Wai 1133, Wai 1136, Wai 1138, Wai 1139, Wai 1798 (sub-

Rohe Pōtae Māori, despite their repeated requests to determine title themselves. The claims alleged that the adversarial court process was inappropriate and unfair, and failed to properly or adequately recognise customary interests. Claimants also raised grievances related to the costs of the court process, and particularly the land that was alienated to pay for survey charges. Claimants alleged that Te Rohe Pōtae Māori suffered severe prejudice as a result of the court's operations and the individualisation of land interests, including the fragmentation and alienation of their land, and the undermining of tribal society.<sup>31</sup>

Claimant counsel in this inquiry, citing the Hauraki Tribunal, acknowledged that a new form of land title was necessary to allow Māori to engage with the commercial economy.<sup>32</sup> But they also submitted that the form of title introduced by the Crown under the Native Land Act 1862 and subsequent Māori land laws was intended to make land 'easily alienated by the Crown and private purchasers', to '[u]ndermine customary Māori authority', and to '[p]romote colonisation and settlement'.<sup>33</sup>

The Crown's view was that a new form of title was necessary 'to facilitate Māori involvement in the new colonial economy'.<sup>34</sup> There existed, counsel argued, an 'economic need for defined tracts of land and a simple, uncluttered bundle of rights, as opposed to the complex configuration of rights based on resource use such as

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mission 3.4.189); Wai 972 (submission 3.4.134); Wai 1469, Wai 2291 (submission 3.4.228); Wai 1482 (submission 3.4.154); Wai 1593 (submission 3.4.230); Wai 1523 (submission 3.4.157); Wai 1599 (submission 3.4.153); Wai 1944 (submission 3.4.233); Wai 2014 (submission 3.4.208); Wai 2274 (submission 3.4.125); Wai 2313; Wai 2314; Wai 556, Wai 616, Wai 1377, Wai 1820 (submission 3.4.279); Wai 586, Wai 753, Wai 1396, Wai 1585, Wai 2020, Wai 2090 (submission 3.4.204); Wai 1386, Wai 1762; Wai 1361 (claim 1.2.5); Wai 1500 (submission 3.4.160); Wai 1598 (claim 1.1.146); Wai 1806 (claim 1.1.177); Wai 1824 (submission 3.4.181); Wai 2117 (submission 3.4.161); Wai 399, Wai 577 (submission 3.4.159); Wai 478 (submission 3.4.155); Wai 729 (submission 3.4.240); Wai 762 (submission 3.4.170); Wai 836 (submission 3.4.131); Wai 928 (submission 3.4.175); Wai 1255 (submission 3.4.199); Wai 1309 (submission 3.4.220); Wai 1455 (submission 3.4.156); Wai 1640 (submission 3.4.191); Wai 48, Wai 81, Wai 146 (submission 3.4.211); Wai 366, Wai 1064 (submission 3.4.205); Wai 555, Wai 1224 (submission 3.4.163); Wai 575 (submission 3.4.281); Wai 845 (submission 3.4.166); Wai 987 (submission 3.4.167); Wai 1059, Wai 50 (submission 3.4.221); Wai 1073 (submission 3.4.207); Wai 1147, Wai 1203 (submission 3.4.151); Wai 1196 (submission 3.4.239); Wai 1230 (submission 3.4.168); Wai 1299 (submission 3.4.234); Wai 1447 (submission 3.4.187); Wai 1594 (submission 3.4.164); Wai 1738 (submission 3.4.206); Wai 1803 (submission 3.4.149); Wai 483 (submission 3.4.135); Wai 535 (submission 3.4.243); Wai 691, Wai 788, Wai 2349 (submission 3.4.246); Wai 868 (submission 3.4.247); Wai 1962 (submission 3.4.172); Wai 656 (submission 3.4.241); Wai 870 (submission 3.4.202); Wai 1112, Wai 1113, Wai 1439, Wai 2351, Wai 2353 (submission 3.4.226); Wai 1448, Wai 1495, Wai 1501, Wai 1502, Wai 1592, Wai 1804, Wai 1899, Wai 1900, Wai 2126, Wai 2135, Wai 2137, Wai 2183, Wai 2208 (submission 3.4.237); Wai 1450 (submission 3.4.90); Wai 1498 (submission 3.4.193); Wai 1499 (submission 3.4.171); Wai 1588, Wai 1589, Wai 1590, Wai 1591 (submission 3.4.143); Wai 1611 (submission 3.4.152); Wai 1898 (submission 3.4.200); Wai 1974 (submission 3.4.192); Wai 1975 (submission 3.4.201); Wai 1978 (submission 3.4.232); Wai 1995 (submission 3.4.144); Wai 1993 (submission 3.4.235); Wai 2084 (submission 3.4.174); Wai 2087 (submission 3.4.218); Wai 2352 (submission 3.4.219); Wai 125 (submission 3.4.210); Wai 537 (submission 3.4.179); Wai 1327 (submission 3.4.249); Wai 2273 (submission 3.4.141); Wai 2345 (submission 3.4.139).

31. Document A79, pp 3–5.

32. Submission 3.4.107, pp 25–26; Waitangi Tribunal, *The Hauraki Report*, vol 2, p 777.

33. Submission 3.4.107, p 26.

34. Submission 3.4.305, pp 30–31.

food-gathering sites that may have characterised earlier times.<sup>35</sup> Crown counsel submitted that, as well as opening ‘up Māori land to direct settler purchase or lease’, it also intended that native land title would ‘encourage and facilitate assimilation by enabling Māori to deal as they saw fit with their land and resources by giving them the same rights as Europeans.’<sup>36</sup>

The claimants argued that the Crown’s native land legislation ‘*fundamentally transformed*’ the traditional processes and practices of Te Rohe Pōtae Māori (emphasis in original).<sup>37</sup> In their view, ‘[t]he Native Land Court was a totally inappropriate vehicle to determine Māori customary rights and interests.’<sup>38</sup> Although the Crown had made some changes to the court process in response to Te Rohe Pōtae Māori concerns, those changes did not address their fundamental concerns, nor did they provide for ‘the core demand for tribal control over the process of title determination.’<sup>39</sup>

The Crown contended that the changes it made to the Native Land Court in Te Rohe Pōtae were designed to ensure that the court ‘was not beset with the problems that had affected earlier sittings . . . in other districts.’<sup>40</sup> Those changes included the court’s location at Ōtorohanga, a Māori kāinga that was inside the liquor prohibition area and reasonably accessible to Māori. As a result, ‘the problems associated with storekeepers and drunkenness either did not exist or were very limited.’<sup>41</sup> The banning of lawyers and European agents from the court, as well as the appointment of ‘a suitably skilled and experienced judge, assessor and interpreter . . . [also] helped in material ways to address problems associated with the Court’s processes.’<sup>42</sup> The Crown submitted that the changes it made to the court both ‘met the particular requests of Rohe Pōtae leaders and led to an effective title determination process over the following decade.’<sup>43</sup>

The claimants identified several aspects of the court’s process that they said were prejudicial to Te Rohe Pōtae Māori, including the location, timing, notification, and length of hearings, and the court’s treatment of absentees.<sup>44</sup> In the claimants’ view, the adversarial nature of the court process itself was also damaging, particularly to relationships between Te Rohe Pōtae Māori whānau, hapū, and iwi.<sup>45</sup>

Crown counsel accepted that there was ‘considerable variation in the amount of notice given’ for court sittings, and that hearings were sometimes delayed. The Crown cautioned, however, that there was insufficient evidence of how Māori responded in those situations. As such, ‘it is difficult to assess what prejudice, if

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35. Submission 3.4.305, p 36.

36. Submission 3.4.305, p 3.

37. Submission 3.4.107, p 60.

38. Submission 3.4.107, p 68.

39. Submission 3.4.107, pp 28, 32.

40. Submission 3.4.305, p 58.

41. Submission 3.4.305, p 57.

42. Submission 3.4.305, p 58.

43. Submission 3.4.305, p 7.

44. Submission 3.4.107, pp 86–91.

45. Submission 3.4.107, pp 67, 76.

any, Rohe Pōtae Māori suffered as a result.<sup>46</sup> The Crown also accepted that the court ‘had a significant presence in the inquiry district’, but argued that the effect of that presence on Te Rohe Pōtae Māori was ‘difficult to quantify.’<sup>47</sup> Crown counsel also accepted that the safeguards provided for non-participants ‘fell short of being a complete remedy to the complex problem.’<sup>48</sup> The Crown did not directly respond to the claimant’s submission that the court’s adversarial nature damaged relationships between Māori, but argued that ‘there may have . . . been occasions where the adversarial nature of [court] proceedings ensured a more complete picture was presented.’<sup>49</sup>

The claimants further argued that, by participating in the court process, Te Rohe Pōtae Māori incurred ‘onerous’ costs. These included direct costs, such as survey charges and court fees, as well as indirect costs, such as lost productive time and inter-Māori and hapū disputes arising from court hearings.<sup>50</sup> The Crown accepted the Native Land Court process continued to result in costs to Māori. However, counsel questioned ‘the overall scale of the costs, the extent to which they were reasonable, and their overall impact and effect.’<sup>51</sup>

Claimant counsel also submitted that, where Māori were aggrieved by court decisions, the remedies provided, both before and after the creation of the Native Appellate Court in 1894, were not suitable.<sup>52</sup> The Crown did not accept ‘that justice was not done, or seen to be done’, before 1894 or that ‘the rehearings and appeals processes as they applied in the Rohe Pōtae district were inadequate.’<sup>53</sup>

In the claimants’ view, the titles issued by the Native Land Court ‘seriously undermined the tribal structures of Te Rohe Pōtae Māori whanau, hapū and iwi.’<sup>54</sup> They failed to recognise shared customary resources and imposed boundary lines that did not reflect tikanga.<sup>55</sup> The claimants further submitted that: ‘The individualisation of titles destroyed the ability of Te Rohe Pōtae Māori whanau, hapū and iwi to develop, occupy and enjoy their lands according to tikanga.’<sup>56</sup>

As set out in section 10.2.2, the Crown conceded that individualisation and its related processes contributed to the undermining of tribal structures in Te Rohe Pōtae, in breach of Treaty principles. Nonetheless, it also submitted that the tenure reform undertaken by the Native Land Court ‘was meant to facilitate Māori involvement in the new colonial economy’ and was, despite the ‘many issues’ that arose as a result, consistent with the Treaty.<sup>57</sup> We note further that the Crown, in apparent contradiction of its concession, does not consider individualisation,

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46. Submission 3.4.305, pp 52–53.

47. Submission 3.4.305, p 55.

48. Submission 3.4.305, p 68.

49. Submission 3.4.305, p 35.

50. Submission 3.4.107, pp 44–45.

51. Submission 3.4.305, p 86.

52. Submission 3.4.107, pp 109–115.

53. Submission 3.4.305, pp 97–99.

54. Submission 3.4.107, p 99.

55. Submission 3.4.107, p 66.

56. Submission 3.4.107, p 60.

57. Submission 3.4.305, pp 30–31.

fragmentation, alienation, or partition to themselves be contrary to Treaty principles, even though those processes could ‘lead to tribal structures being undermined’.<sup>58</sup> The Crown recognised that the new native land title did not recognise shared resource rights, but argued that ‘customary tenure did not offer the degree of security and certainty that was required for land transactions in the new economy’.<sup>59</sup>

The claimants submitted that ‘the titles issued by the Native Land Court in Te Rohe Pōtae made it very easy for Māori owners to sell their portions but extremely difficult for them to develop their land and turn it to profitable use’.<sup>60</sup> Claimant counsel pointed to other detrimental impacts arising from the titles issued by the court: the fractionation of interests that occurred due to the imposition of European succession rules,<sup>61</sup> the related process of partition and fragmentation of land into smaller parcels,<sup>62</sup> and the creation of uneconomic or inaccessible land blocks.<sup>63</sup> The claimants also submitted that the Crown acted in bad faith by ignoring restrictions on alienation placed on titles to Te Rohe Pōtae Māori land.<sup>64</sup>

The Crown accepted that many of the intended benefits of native land titles were ‘constrained or undermined in a number of ways’, particularly by Crown pre-emption.<sup>65</sup> Crown counsel cautioned, however, that while native land titles facilitated alienation, they did not cause it: ‘the fact that the Court determined title to a parcel of land did not lead inevitably to the alienation of that land’.<sup>66</sup> The Crown further accepted that, over time, Native Land Court titles had other detrimental impacts including fragmentation and the creation of uneconomic and landlocked blocks.<sup>67</sup> It also accepted that it steadily reduced restrictions on alienation, though submitted that in doing so, it was seeking ‘to treat Māori on the same basis as non-Māori’.<sup>68</sup>

#### 10.2.4 Issues for discussion

Despite the Crown’s concessions in this inquiry, the parties continue to disagree about some fundamental issues regarding the processes, operations, costs, and impacts of the Native Land Court and its form of title in Te Rohe Pōtae.

Having reviewed the Tribunal Statement of Issues for this inquiry<sup>69</sup> and briefly summarised the parties’ arguments, we identify the remaining issues for discussion as:

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58. Transcript 4.1.24(a), pp 112–113 (Crown counsel, hearing week 17, James Cook Hotel Grand Chancellor, Wellington, 11 February 2015).

59. Submission 3.4.305, p 38.

60. Submission 3.4.107, p 41.

61. Submission 3.4.107, p 71.

62. Submission 3.4.107, p 73.

63. Submission 3.4.107, pp 104–105.

64. Submission 3.4.107, p 92.

65. Submission 3.4.305, p 77.

66. Submission 3.4.305, p 82.

67. Submission 3.4.305, pp 79–82.

68. Submission 3.4.305, pp 69–70.

69. Statement 1.4.3.



- How did the Native Land Court operate under the native land legislation and what form of title was issued by 1886?
- How was title to the initial parent blocks and definition of relative interests determined?
- What was the effect of subsequent partition and succession on Te Rohe Pōtae Māori landowners?
- What were the costs associated with the court process?
- To what extent did Te Rohe Pōtae Māori protest the court and what redress was available?

The court in Te Rohe Pōtae was ultimately very active, creating 269 parent blocks, followed by a multitude of subsequent partitions. Dealing with the crucial resource of land, it was a feature of life for all Māori. As a result, there are a large number of claims that either directly or indirectly address the operations and impacts of the Native Land Court on Te Rohe Pōtae Māori. Where possible, we cite examples and case studies to illustrate how the court operated and any prejudice that might have been caused to Te Rohe Pōtae Māori. We respond to particular claims and assess the extent of any prejudice suffered in the take a takiwā chapters of our report.

Several claims alleged that the Native Land Court made decisions that were in breach of Treaty principles. However, under section 6 of the Treaty of Waitangi Act 1975, the Tribunal only has the power to consider claims concerning any policy or practice, or any act done or omitted, *by or on behalf of* the Crown. Other Tribunals, such as the Rekohu and Te Urewera Tribunals, have found that ‘the Native Land Court was not “the Crown”, nor was it an agent of the Crown.’<sup>70</sup> As the Te Tau Ihu Tribunal noted, the Waitangi Tribunal is not an appellate court, and the decisions of the Native Land Court ‘stand unless altered by a duly empowered court or by legislative action.’<sup>71</sup>

Other Tribunals have found, however, that the question for the Tribunal is whether a decision of the Native Land Court ‘was inconsistent with Treaty principles and, if it was, whether the Crown should have intervened.’<sup>72</sup> As counsel for the parties did not submit that we should take a different approach, we consider that the approach of previous Tribunals is also appropriate for this inquiry.

### 10.3 HOW DID THE NATIVE LAND COURT OPERATE AND WHAT FORM OF TITLE WAS ISSUED BY 1886?

As detailed in chapter 8, Te Rohe Pōtae Māori had long opposed the introduction of the Native Land Court into their core lands. They had sought an alternative process which would allow them to determine iwi and hapū land titles among themselves, in a manner consistent with their tino rangatiratanga and mana

70. Waitangi Tribunal, *Te Urewera*, vol 3, p1092; Waitangi Tribunal, *Rekohu*, p33.

71. Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims*, 3 vols (Wellington: Legislation Direct, 2008), vol 2, p780.

72. Waitangi Tribunal, *Rekohu*, p33; Waitangi Tribunal, *Te Urewera*, vol 3, pp1092–1093.

whakahaere. They had also sought a form of title that would recognise hapū as the principal rights holders in Māori land.

Their opposition to the court reflected their long engagement with the Kingitanga, and their observation of the effects of the court in surrounding districts. Te Rohe Pōtae Māori were by no means alone in opposing the court. Māori across the North Island had formed similar views through their exposure to the court, first under the operation of the Native Lands Act 1865, then under the Native Land Act 1873.

Their overarching concern about the court had been one of authority – that is, they believed it was their right to determine land titles among themselves. In chapter 8 we found that the Crown had failed to provide for that right and had thereby breached the article 2 guarantee of tino rangatiratanga.

But Te Rohe Pōtae Māori also had numerous, more specific concerns about the court – including the fairness of its processes and the form of title it awarded. They raised many of these concerns during the 1883–86 negotiations with the Crown. When they finally turned to the court in 1886 for title to their lands, this was not an endorsement – as explained in chapter 8, they had simply been left with no other option.

As noted in section 10.2.3, claimants acknowledged that some improvements were made to court processes as a result of these negotiations, but argued that those improvements did not adequately address Te Rohe Pōtae leaders' concerns.

This section therefore considers how the court operated – both in terms of its processes and the form of title it awarded. In order to arrive at a full understanding of this issue, we will first briefly survey why the Crown established the court, and how it operated from the time of its establishment through to 1886, when Te Rohe Pōtae lands were placed before it.

### **10.3.1 The origins of the Native Land Court and early Māori views**

The Native Land Court was the result of a long debate concerning the issue of Māori land.

The ways in which rights in land were held differed sharply between the English fee simple system and Māori custom, and these differences were at the heart of the debate over Māori land. An English fee simple title confers a right of ownership and an exclusive right of use. Under the English system, land is a commodity that can be bought or sold, and transferred to another by will. These titles can be possessed by individuals.

By contrast, under tikanga, Māori held land communally, usually at a whānau or hapū level. As discussed in chapter 2, while rangatira played a role in allocating land or resources, this was a management function rather than an expression of sole ownership.<sup>73</sup> Rather than ownership, the determining factor in land rights and interests for Māori was ancestral connection. As such, communal rights to occupy

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73. ET Durie, *Custom Law* (Wellington: Victoria University of Wellington Treaty of Waitangi Research Unit, 2013), pp 84–89.

land were not necessarily equal or exclusive and were often closely intertwined between groups. Boundaries between the rohe of different groups could therefore be fluid, as Ngatoko Kupe of Ngāti Taiwa (a hapū of Ngāti Maniapoto) told the Native Land Court in 1888: 'According to Maori custom after a rohe is laid down, people may cross the rohe and occupy the other side providing they do not do so in an aggressive spirit, that would not effect [sic] the validation of the rohe laid down.'<sup>74</sup>

As well as occupation rights, groups could also exercise other kinds of right by virtue of their ancestral connections, including rights to seasonal occupation, rights to use resources, and rights to safe passage.<sup>75</sup> Rights to land were not static and could change or be extinguished, either from lack of use or as the result of migration or conquest. Rights could also be transferred through 'gifting', though typically only for limited periods, and '[a]bsolute land alienation was generally inconceivable.'<sup>76</sup>

In the two decades following the signing of the Treaty in 1840, these differing relationships to and understandings of land had led to numerous misunderstandings between the Crown and Māori around the country. In the absence of any regular process for determining ownership of Māori land, the Crown's attempts to purchase Māori land were beset with problems. It frequently failed to ensure that it was negotiating with the rightful owners, or to adequately explain the nature of the transactions to Māori.<sup>77</sup> These failures had their most serious consequences at Waitara, where the Crown attempted to purchase the block from a small group of sellers who were acting without the sanction of the wider community of owners. When Wiremu Kīngi and his people refused to recognise the Crown's purchase, war broke out.<sup>78</sup>

In the wake of this experience, the Crown began to consider creating a new court to determine ownership to Māori land, partly in order to avoid a repeat of that conflict. In particular, the Crown was aiming to assimilate customary title with a secure form of Crown-granted title that would be tradeable and usable in the new colonial economy. Proposals to this effect were discussed with Māori attending the Kohimarama conference in 1860 and received cautious, but limited, support. As the Turanga Tribunal put it, 'Maori at this stage were interested in the possibility of a titles tribunal, but hardly committed one way or the other. The devil, as they say, would be in the details, and there were no details available.'<sup>79</sup> However, there was no further consultation with Māori prior to the passage of the first statute, the Native Lands Act 1862.

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74. *Otorohanga* (1888) 4 Otorohanga MB, p 185; doc A110 (Barrett), p 224.

75. Durie, 'Custom Law', pp 61–63, 84–85; Waitangi Tribunal, *The Pouakani Report* 1993, pp 13–14.

76. Durie, 'Custom Law', pp 76–81.

77. For example, see Waitangi Tribunal, *The Wairarapa ki Tararua Report*, 3 vols (Wellington: Legislation Direct, 2010), vol 1, pp 185–186.

78. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p 409.

79. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, pp 409–411.

The Native Land Court envisaged by the 1862 Act and its associated rules was quite different to the court that came later. However, as Richard Boast argued, the Act did introduce

the basic conceptual structure which underpinned the [native land] system, based on the three planks of waiver of Crown pre-emption, conversion of customary titles to English tenures, and the creation of a new judicial body to control the process – the Native Land Court.<sup>80</sup>

The court was to be comprised of two Māori members and a European president. Its task was to ascertain and define the ownership of native lands according to Māori custom, then to issue a certificate of title. The Act established a two-step process. If the court found that land was owned communally, the title would reflect that fact in the first instance. Communities were given the option of subsequently subdividing their land into individual holdings, but it was not compulsory.<sup>81</sup> The court sat in Kaipara in 1864 and in 1865, under new rules, in Hauraki. In both cases, however, it appears that the two-stage process was not applied – declarations of ownership were made in the names of a select group of rangatira, apparently to facilitate sale of the blocks.<sup>82</sup>

This early incarnation of the Native Land Court, however, was short-lived. In late 1864, a proclamation established a single nationwide court and relegated the Māori judges to the role of native assessors.<sup>83</sup> These changes were formalised in 1865 by a new Native Lands Act, which created an ‘English style adversarial court.’<sup>84</sup> Most significantly, the 1865 Act repealed the two-stage process of the 1862 Act and instead introduced the 10-owner rule. This rule provided that blocks smaller than 5,000 acres could have a maximum of 10 named owners, who theoretically represented a larger group of other owners.<sup>85</sup> In practice, because the law did not expressly recognise the 10 owners as holding land in trust for unnamed owners, the court refused to recognise the named owners as trustees. Those owners not on the title were dispossessed of their customary interests in the land.<sup>86</sup> For blocks over 5,000 acres, a tribal title was still possible, but rarely used before provision for it was abolished in 1867.<sup>87</sup>

Previous Tribunals have identified two main purposes behind the Crown’s introduction of the Native Lands Acts of 1862 and 1865. First, the Crown wanted to create a secure form of title, usable in the colonial economy. Secondly, the

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80. Richard Boast, *The Native Land Court 1862–1887: A Historical Study, Cases and Commentary* (Wellington: Thomson Reuters, 2013), p 50.

81. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p 412.

82. Waitangi Tribunal, *The Hauraki Report*, vol 2, pp 682–683.

83. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 684.

84. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p 414.

85. Waitangi Tribunal, *The Hauraki Report*, vol 2, pp 684–685.

86. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p 400.

87. Waitangi Tribunal, *The Hauraki Report*, vol 2, pp 698–699.

Crown wanted to facilitate the large-scale alienation of Māori land to satisfy settler demand.<sup>88</sup>

These were not the Crown's only motivations. The Hauraki Tribunal noted that there was a so-called 'civilising mission' aspect to the native land regime. The preamble to the 1862 Act, for instance, stated that its purpose was to 'promote the peaceful settlement of the colony and the advancement and civilization of the Natives'. The Crown in this inquiry also submitted that it had 'sought to encourage and facilitate assimilation by enabling Māori to deal as they saw fit with their land and resources by giving them the same rights as Europeans'.<sup>89</sup> We find this submission an interesting acknowledgment of the attitude the Crown adopted to its Treaty partner in the 1860s.

The Hauraki Tribunal found, however, that the 'civilising mission' was only a secondary motivation. The Crown's primary motivation was to ease and encourage the alienation of Māori-owned land.<sup>90</sup> In addition, at least some settlers and politicians hoped that the native land laws would, in the words of Henry Sewell, bring Māori lands 'within the reach of colonisation' and lead also to 'the detribalisation of the Maoris'.<sup>91</sup> In the wake of the conflict at Waitara in 1860, for instance, William Richmond, the Minister for Native Affairs, had called for the eradication of 'the beastly communism of the Pah' by allowing Māori to partition their common property.<sup>92</sup> The Turanga Tribunal found that by 1873 the Crown was aware – or at least indifferent to the possibility – that its 'new Native land system would lead to widespread Maori landlessness and through this the destruction of Maori communities'.<sup>93</sup>

Māori protests about the court began from an early stage in its operations. Māori witnesses to Colonel Haultain's 1871 inquiry into the native land laws, for instance, favoured more tribal control over the title determination process.<sup>94</sup> Te Wheoro told Haultain that he had 'been opposed to the Court from the very commencement' and bemoaned the Crown's failure to consult before passing the original 1862 legislation.<sup>95</sup>

Major reform of the court occurred again in 1873. Despite the growing Māori calls for a greater role in title determination, the Crown did not fundamentally alter the jurisdiction of the court. Indeed, the 1873 Act formed the basis of subsequent native land legislation for the remainder of the nineteenth century,

88. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 778; Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p 531.

89. Submission 3.4.305, p 3.

90. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 778.

91. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 669.

92. 'Native Offenders Bill', *Nelson Examiner and New Zealand Chronicle*, 15 August 1860, pp 2–3; Keith Sinclair, 'Christopher William Richmond', in *The Dictionary of New Zealand Biography*, ed William Hosking Oliver and Claudia Orange (Wellington: Allen & Unwin/Department of Internal Affairs, 1990), vol 1, pp 364–365.

93. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p 532.

94. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 715.

95. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p 414.

### Henry Sewell on the Objects of the Native Lands Act 1862

In 1870, Henry Sewell, former premier and Minister of Justice, explained:

The object of the Native Lands Act was two-fold: to bring the great bulk of the lands in the Northern Island which belonged to the Maoris, and which before the passing of that Act, were extra commercium – except through the means of the old land purchase system, which had entirely broken down – within the reach of colonisation. The other great object was the detribalisation of the Maoris – to destroy, if it were possible, the principle of communism which runs through the whole of their institutions, upon which their social system was based, and which stood as a barrier in the way at attempts to amalgamate the Maori race into our social and political system. It was hoped by the individualization of titles to the land, giving them the same individual ownership which we ourselves possessed, they would lose their communistic character, and that their social status would become assimilated to our own.<sup>1</sup>

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1. Sewell, 29 August 1870, NZPD, vol 9, p361; Waitangi Tribunal, *The Hauraki Report*, vol 2, p669.

including the 1880 Act under which the Aotea–Rohe Potae block was heard in 1886 (see section 10.3.3).<sup>96</sup> Under the 1873 Act, certificates of title were replaced with memorials of ownership that required all owners to be named, abolishing the 10-owner regime.<sup>97</sup> Individual owners were given an undivided but alienable interest, though alienation was subject, at least initially, to some conditions.<sup>98</sup> Essentially, the 1873 Act created a hybrid form of title that was neither truly customary nor a Crown-granted freehold.<sup>99</sup> As discussed in section 10.2.1, previous Tribunals have found that the titles awarded under the 1873 Act made it very difficult for owners to do anything with their land other than sell it.<sup>100</sup>

### 10.3.2 Māori engagement with the court

As the only forum to secure title, the court was widely used by Māori. Nonetheless, it remained a controversial institution that was the subject of decades of Māori

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96. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p 417.

97. Native Land Act 1873, s 47.

98. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p 398.

99. Boast, *The Native Land Court 1862–1887*, p 99.

100. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, pp 443–444, 446; Waitangi Tribunal, *The Hauraki Report*, vol 2, p 785.

protest.<sup>101</sup> In the minds of many Māori, including those in Te Rohe Pōtae, the court was associated with land alienation.

The court's hearings also became notorious in many districts for the associated activities of greedy storekeepers and land-sharks, as well as social ill-effects for Māori such as drunkenness and poor health. In particular, the court at Cambridge was seen as a site of drunkenness and demoralisation.<sup>102</sup>

All the while, Māori continued to call for either a greater role in the court process or, as with the 'repudiation movement' of the 1870s, abolition of the court entirely. The repudiation movement, led by Hēnare Mātua, emerged in Hawke's Bay in response to Crown and private purchasing tactics in the area. The movement sought to reverse earlier purchases and recover land, or at least obtain a better price. It also called for the abolition of the court.<sup>103</sup>

The movement became influential across the country in the 1870s, including in districts neighbouring Te Rohe Pōtae such as Whanganui and Taupō.<sup>104</sup> Across the North Island, other Māori sought to avoid the court, forming their own rūnanga, komiti, and other bodies to determine title, discuss land matters, and control land communally. Their attempts, however, were thwarted, with the Crown either refusing to grant them legal recognition or actively undermining them.<sup>105</sup>

As discussed in chapter 8, Rewi Maniapoto sought to engage with the Crown in the late 1870s over his concerns about the court. As he saw it, the court granted land to people with lesser interests, allowing them to sell or lease without the knowledge of the rightful owners or rangatira, thereby threatening the eastern border of the aukati.<sup>106</sup> When the Crown failed to provide a meaningful response,<sup>107</sup> he sometimes engaged in court hearings in a defensive capacity, seeking to protect the aukati.<sup>108</sup>

Throughout their 1883–86 negotiations with the Crown, Te Rohe Pōtae leaders raised numerous concerns about the court's process. Their 1883 petition raised concerns about lawyers drawing out court processes to force Māori to sell, and about the social costs (including drunkenness) of court attendance.<sup>109</sup>

As well as asking that Māori be left to determine title among themselves, the petition asked for a form of title that reflected the communal rights of iwi and hapū. Iwi and hapū boundaries would be drawn, and subdivision would then stop,

101. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 717.

102. Document A79, p 136; Boast, *The Native Land Court 1862–1887*, pp 104–108.

103. Document A37 (Anderson), p 169; Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, p 198.

104. Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, p 198.

105. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 291–300; Waitangi Tribunal, *Te Urewera*, vol 2, pp 872–875; Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, pp 551–568.

106. Document A78 (Marr), pp 395–400.

107. Document A78, pp 399–401.

108. Document A79, p 52; doc A28 (Thomas), p 246.

109. Wahanui, Taonui, Rewi Maniapoto and 412 others, 'Petition of the Maniapoto, Raukawa, Tuwharetoa and Whanganui Tribes', 26 June 1883, AJHR, J-1, p 1.

although individuals would be named on the title and have their relative interests in the communal land defined.<sup>110</sup>

In subsequent negotiations with the Crown, hapū ownership and management of land remained the preferred position of Te Rohe Pōtae leaders. They also argued that judges were ignorant of te reo Māori, and of the relevant history and tikanga, which could result in title being awarded to the wrong people while the real rights holders missed out. And they expressed concern about the court's failure to protect the interests of groups who did not appear before it, and of the lack of adequate appeal processes.

In April 1886, when Te Rohe Pōtae Māori applied to the court for determination of title to their lands, they did so only because the risks of not applying had become too great. Their application was by no means an endorsement of the court, or of its processes or the form of title it represented. Rather, they applied in order to head off other claims that traversed their lands, and thereby keep Te Rohe Pōtae together as one block.

Even then, they applied only after seeking assurances from the Native Minister, John Ballance, that the judge would understand te reo Māori, and that court processes would be fair.<sup>111</sup> Ballance, in response, gave a number of assurances, including that judges would speak te reo.<sup>112</sup> But he took no steps to provide for title to rest with hapū communally, and nor did he honour the wish of Te Rohe Pōtae leaders that lawyers would never be allowed in the court.

In essence, Te Rohe Pōtae Māori were left to face the court in the hope that they could prevent it from operating in the way they had feared.

### 10.3.3 Native Land Court process and title by 1886

The Native Land Court's 1886 sitting in Te Rohe Pōtae was conducted under the Native Land Court Act 1880, as amended by other Acts from 1881, 1882, and 1883.<sup>113</sup> The legislation governing the court and its title was subsequently amended several times over the period covered by this chapter.

In exercising most of its powers, the Native Land Court was required to have both a judge and at least one native assessor sitting.<sup>114</sup> In general terms, the role of the assessor was to assist the judge in interpreting tikanga Māori. In addition, for most of the nineteenth century, the assessor's assent was required for a decision of the court to be valid.<sup>115</sup>

The court was further served by a small staff consisting of an interpreter, a clerk, and a registrar (though not always all three), as well as by the surveyors who conducted the surveying required for its work.<sup>116</sup> Before 1 October 1886, lawyers and

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110. Wahanui, Taonui, Rewi Maniapoto and 412 others, 'Petition of the Maniapoto, Raukawa, Tuwharetoa and Whanganui Tribes', 26 June 1883, AJHR, J-1, p 2.

111. Document A41, p 193.

112. Document A41, p 193.

113. Document A79, p 104.

114. This included, after 1894, the Native Appellate Court.

115. Native Land Court Act 1880, s 11.

116. Document A79, p 406.



agents were largely banned from appearing in court under section 4 of the Native Land Laws Amendment Act 1883.<sup>117</sup> Cases were, however, frequently conducted by Māori kaiwhakahaere (conductors) on behalf of the claimants.<sup>118</sup>

By 1886, any Māori could make an application to the court for it to determine title to an area of land. A survey was not required at this stage, but the application did need to describe the boundaries of the claimed block.<sup>119</sup> A full survey plan would need to be drawn up and exhibited before the court could issue a certificate of title.<sup>120</sup>

Under the Native Land Court Act 1880, the Māori claimants and counter-claimants had to prove that they owned the land ‘according to Native custom or usage.’<sup>121</sup> The court had by this stage developed a number of causes of action, referred to as *take*, to interpret native custom. These included *take raupatu* (rights derived from conquest), *take tupuna* (rights derived from ancestry), and *take whenua tuku* (rights derived from gifts or grants).<sup>122</sup> In practice, however, the court often refused to deal with the detail of occupation rights, ‘based on the thought that customary rights were . . . settled [as] at 1840 or that 1840 provided a starting point for determining Maori freehold title.’ Thus if a hapū or iwi were not in occupation at this point, the court did not look to the reasons why.<sup>123</sup>

In theory, this inability to deal with the intricate nature of customary rights could have been rectified by the Native Committees Act 1883. This was also an opportunity for the Crown to meet Māori demands for more control over their lands. As discussed in chapter 8 (see section 8.4.6.2), under that statute, native committees had the power to inquire into the ownership of blocks, to ascertain successors of deceased owners, and inquire into boundary disputes. But the legislation did not go far enough. The decisions resulting from these inquiries would not be binding, but were to be distributed ‘to the Chief Judge of the . . . [Native Land] Court for the information of the Court.’<sup>124</sup> While the court could choose to consider these decisions, it was not required to take them into account. Rather, it had discretion to decide what criteria or rules it would use to determine ownership of the land, using ‘such evidence as . . . [the court] shall think fit.’<sup>125</sup> The power remained firmly in the hands of the court to make the final decisions.

Thus, the only way that the parties could avoid the court having to determine matters was by reaching out-of-court arrangements. The 1880 Act empowered the court to give effect to ‘any arrangements voluntarily come to amongst the Natives

117. Native Land Laws Amendment Act 1883, s 4. The Native Land Court Act 1886, which came into effect on 1 October 1886, subsequently made it possible for lawyers and agents to appear in court with the assent of the presiding judge (s 65).

118. Document A79, p 15.

119. Native Land Court Act 1880, ss 16–17, as amended by section 17 of the Native Land Laws Amendment Act 1883.

120. Native Land Court Act 1880, ss 26–33.

121. Native Land Court Act 1880, s 24; doc A79, p 105.

122. Document A79, p 105.

123. Waitangi Tribunal, *Rekohu*, pp 131–132; doc A79, p 105.

124. Native Committees Act 1883, s 14.

125. Native Land Court Act 1880, s 23; doc A79, p 105.

themselves.’<sup>126</sup> As will be detailed in this chapter, such out-of-court arrangements were a common feature of the court’s operations in Te Rohe Pōtae.

Where it did have to determine ownership, the court first identified the group or groups who had rights in the land, and then the individual owners in whom those rights would be vested. In doing so, the court could divide the block as it saw fit and name the owners for each division.<sup>127</sup>

The form of title awarded by the court in 1886 was still largely based on the provisions of the Native Land Act 1873, which we have discussed (see section 10.3.1). That Act had abolished the 10-owner rule of the 1865 Act and instead granted memorials of ownership that were required to list every Māori with an interest in the land. As discussed in section 10.3.1, this was not true individualisation: interests under the 1873 Act were undivided and held in common, creating ‘a half-way house between customary or collective ownership and individual ownership.’<sup>128</sup> The Turanga Tribunal found that, effectively, the 1873 Act ‘individualised Maori title *only* for the purpose of alienation’, noting that ‘[f]or every other purpose, it was merely customary land outside English law and commerce.’<sup>129</sup> There was no provision for the collective management of land held under native land title and would not be until 1894 (see section 10.5.1.4).

A few aspects of Native Land Court title had changed by the time the court arrived in Te Rohe Pōtae in 1886. Under the Native Land Court Act 1880, memorials of ownership were renamed certificates of title.<sup>130</sup> This was not a fundamental change: individuals still had to be named on the title, and they, not the collective, were given ownership rights. More significant amendments in 1880 and 1882 allowed individuals to partition out their interests and therefore deal with those interests, removing any remaining trace of community control.<sup>131</sup>

### 10.3.4 Treaty analysis and findings

We agree with the claimants that the native land legislation needed to provide some form of authority for Māori control over their lands, and a form of modified title to protect Te Rohe Pōtae Māori lands whilst enabling them to engage with the colonial economy. As the Hauraki Tribunal put it, Māori land tenure ‘could not remain static, frozen in 1840 modes’. It had to evolve in response to demographic changes, population movements, and new economic opportunities.<sup>132</sup> Most importantly, as the Central North Island Tribunal found, ‘Maori and

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126. Native Land Court Act 1880, s 56.

127. Native Land Court Act 1880, s 34.

128. Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, p 271.

129. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p 443.

130. Boast, *The Native Land Court 1862–1887*, p 100; Waitangi Tribunal, *The Hauraki Report*, vol 2, p 753. The new certificates of titles continued to ‘have the same force and effect and may be dealt with as a memorial of ownership under the Native Land Act, 1873’ (Native Land Court Act 1880, s 70).

131. Native Land Court Act 1880, ss 43–44; Native Land Division Act 1882, s 12; Waitangi Tribunal, *The Hauraki Report*, vol 2, p 731.

132. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 777.

settlers required certainty in their dealings with each other over land, which in turn required some security of title.<sup>133</sup>

But as with other Tribunals, we consider that in this district the Native Land Court system and title provided to Māori by the Crown was not the solution, nor was tenure conversion necessary. Rather, some modification was all that was needed for those lands that Māori wished to use in the new economy. As the Hauraki Tribunal found, there were ‘many possible options for giving greater clarity and definition to land rights without full-scale tenure conversion and abrogation of the customary base’.<sup>134</sup>

Te Rohe Pōtae leaders, in their 1883 petition, seemed open to the possibility of a new system and form of title which would bring the required precision and therefore open up new opportunities, while still reflecting the reality that traditional land rights were held communally, in particular by hapū.

But, as was discussed in chapter 8, such an outcome was not compatible with what the Crown and settlers were seeking. We consider that, as in other districts, while the Crown had multiple motivations for converting Māori customary title into individual tradeable shares, its primary motivation was to facilitate the large-scale alienation of Te Rohe Pōtae Māori-owned land and its settlement by Europeans.<sup>135</sup> This motivation is evident in the explicit statements of Native Ministers at the time. John Bryce, for instance, told Parliament in 1883 that he considered it ‘highly desirable – indeed almost necessary’ to bring the ‘large tracts of unoccupied [Māori] land in the North Island’ into ‘profitable occupation’.<sup>136</sup> John Ballance, who had himself acknowledged the harm of individualised title, also came to see ‘the individualizing of all native titles’ as necessary for fulfilling his settlement agenda.<sup>137</sup>

Furthermore, by 1886 the effects of the native land laws were very clear, both to Te Rohe Pōtae Māori and the Crown. Māori in other districts had suffered from the effects of dramatic, rapid land alienation, and had seen the negative impact of court title and land loss on tribal cohesion and influence. Indeed, as discussed in chapters 7 and 8, the experiences of Māori in other districts with the court and its title had been a key factor in shaping Te Rohe Pōtae Māori views towards the court and their opposition to its operation in their rohe.

In their negotiations with the Crown, Te Rohe Pōtae Māori were adamant that they wanted to control the pace and extent of European settlement within their rohe.<sup>138</sup> As well as controlling the process of title determination themselves, they wanted titles to be awarded first on a tribal basis, then a hapū basis. Any individual

133. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 441.

134. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 777.

135. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 778; Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p 531.

136. Document A41, p 94.

137. ‘Mr Ballance and the Waikato Natives’, *New Zealand Herald*, 27 January 1885, p 5; doc A41, p 165.

138. For example, see ‘Notes on Native Meetings’, AJHR, 1885, G-1, pp 14–16.

interests would be contingent on the underlying title of the blocks sitting with hapū, creating a balance of community and individual interests.

It is significant that, while the Crown made some changes to the court's processes during the 1880s (at least partly in response to the concerns expressed by Te Rohe Pōtae Māori), it made no effort to put in place a form of title that reflected Te Rohe Pōtae leaders' demands. Indeed, as the Crown acknowledged in this inquiry, '[t]here is no evidence that the Crown considered any land tenure options for Te Rohe Pōtae Māori other than that which existed in the Native land legislation that applied at the time.'<sup>139</sup>

Instead, Te Rohe Pōtae Māori were left with no choice but to engage with a court that was charged with converting communally held customary title into individual interests. Te Rohe Pōtae leaders may have hoped to avoid the large-scale alienation that had occurred in other parts of the country following engagement with the court, but the form of title was against them.

The Crown's changes to the court process, while generally minor, did address some complaints from Te Rohe Pōtae Māori. From 1883, dealings were prohibited until 40 days after title was ascertained to discourage land speculation, the application process was simplified, and alienation restrictions made more difficult to remove. Lawyers and agents were also largely banned from court sittings from 1883, though a subsequent amendment which came into effect on 1 October 1886 allowed them to appear in court with the assent of the presiding judge.<sup>140</sup> The Crown also established the native committee regime, with the potential for committees to have some (albeit limited) input into the title determination process. The extent to which these changes were able to improve the court process and allow Te Rohe Pōtae Māori meaningful input into title determination will be considered in the next section.

Despite the procedural changes, the title that Te Rohe Pōtae Māori would receive from the court would be the same as Māori had received elsewhere: all owners would be listed on the certificate of title; all would possess interests in the land, which could be traded without the consent or even knowledge of rangatira and the community; and there would be no provision for tribal title or communal management. With this form of title, the interests of individual owners would remain vulnerable to purchasing agents, all without adequate tribal input or safeguards against alienation.

The Turanga, Hauraki, and Central North Island Tribunals have all found that the Crown breached the Treaty guarantee of tino rangatiratanga by imposing this form of title without the consent of the affected Māori communities and thereby undermining communal decision-making about land. This in turn diminished the roles of rangatira in decision-making processes and denied Māori opportunities to

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139. Submission 3.4.305, p 22.

140. Native Land Laws Amendment Act 1883, s 4; Native Land Court Act 1886, s 65.

join in the colonial economy by means other than the sale or lease of land.<sup>141</sup> We consider that these findings are also applicable to the claims before us.

#### 10.4 HOW WAS TITLE TO THE INITIAL PARENT BLOCKS AND THE DEFINITION OF RELATIVE INTERESTS DETERMINED?

When the Native Land Court commenced hearings to determine title in Te Rohe Pōtae, Māori were clearly hoping that the reforms made to the court over the previous years had improved its processes and operations, while also reducing its negative effects. However, as the previous section outlined, while the Crown made some minor changes to the court during the 1880s, it left some of their most significant concerns unaddressed. In particular, the extent of involvement the Kawhia Native Committee would have in the title determination process remained unknown, and the form of title awarded by the court remained unchanged.

Drs Husbands and Mitchell conclude that '[i]t is clear that Otorohanga in 1886 did indeed see the nineteenth-century Native Land Court at or near its best'.<sup>142</sup> They also pointed to the 'glowing' assessments of the court's operations by other historians, including Keith Sorrenson and Richard Boast.<sup>143</sup> But they also cast a cautious tone, noting that 'the Native Land Court was still the Native Land Court', and that despite its improvements, 'the sitting in Otorohanga nevertheless betrayed serious flaws'.<sup>144</sup>

As outlined in section 10.2.3, the claimants argued that the changes the Crown made to the court process did not address their fundamental concerns, nor provide for tribal control of the process as Te Rohe Pōtae Māori had sought.<sup>145</sup> By

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141. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p 446; Waitangi Tribunal, *The Hauraki Report*, vol 2, pp 784–785; Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 537.

142. Document A79, p 137.

143. Document A79, pp 135–136.

144. Document A79, p 139.

145. Submission 3.4.107, pp 28, 32. Several claims alleged that the court's processes for investigating and determining title were inadequate, including: Wai 440 (submission 3.4.198); Wai 472, Wai 847, Wai 986, Wai 993, Wai 1015, Wai 1016, Wai 1054, Wai 1058, Wai 1095, Wai 1115, Wai 1437, Wai 1586, Wai 1608, Wai 1612, Wai 1965, Wai 2120, Wai 2335 (submission 3.4.140); Wai 551, Wai 948 (submission 3.4.250); Wai 846 (submission 3.4.251); Wai 1469, Wai 2291 (submission 3.4.228); Wai 1482 (submission 3.4.154); Wai 1944 (submission 3.4.233); Wai 2014 (submission 3.4.208); Wai 2313; Wai 2314; Wai 586, Wai 753, Wai 1396, Wai 1585, Wai 2020, Wai 2090 (submission 3.4.204); Wai 1598 (claim 1.1.146); Wai 1824 (submission 3.4.181); Wai 2117 (submission 3.4.161); Wai 399, Wai 577 (submission 3.4.159); Wai 928 (submission 3.4.175); Wai 1255 (submission 3.4.199); Wai 1309 (submission 3.4.220); Wai 1455 (submission 3.4.156); Wai 1640 (submission 3.4.191); Wai 48, Wai 81, Wai 146 (submission 3.4.211); Wai 555, Wai 1224 (submission 3.4.163); Wai 845 (submission 3.4.166); Wai 987 (submission 3.4.167); Wai 1073 (submission 3.4.207); Wai 1230 (submission 3.4.168); Wai 1447 (submission 3.4.187); Wai 1594 (submission 3.4.164); Wai 535 (submission 3.4.243); Wai 691, Wai 788, Wai 2349 (submission 3.4.246); Wai 1962 (submission 3.4.172); Wai 1448, Wai 1495, Wai 1501, Wai 1502, Wai 1592, Wai 1804, Wai 1899, Wai 1900, Wai 2126, Wai 2135, Wai 2137, Wai 2183, Wai 2208 (submission 3.4.237); Wai 1327 (submission 3.4.249).

contrast, the Crown argued that its changes to the court in Te Rohe Pōtae 'led to an effective title determination process over the following decade'.<sup>146</sup>

This section considers whether the Crown's reforms of the Native Land Court allowed Te Rohe Pōtae Māori to play a significant role in the title determination process, as they had sought. It also considers the extent to which the Crown's actions might have influenced the court's process. The section largely focuses on the period between 1886 and 1890, when the court determined ownership of the entire Aotea–Rohe Potae block and then defined the parent blocks within it. The section concludes by considering the court's announcement in 1890 that it would begin defining the relative interests of owners of the land it was dealing with, and whether that decision was influenced by the Crown's commencement of purchasing in the district.

#### 10.4.1 Determining ownership of the Aotea–Rohe Potae block, 1886–87

The Native Land Court's initial hearing of the Aotea–Rohe Potae case opened at Ōtorohanga on 28 July 1886. The hearing was held in 'a large and commodious court house', purpose-built for the occasion by the Kawhia Native Committee.<sup>147</sup> The presiding judge was William Gilbert Mair, while the Māori assessor was Paratene Ngata of Ngāti Porou (father of Apirana Ngata).

Ōtorohanga was the preferred location of Te Rohe Pōtae Māori for the court sitting. As well as being the 'principal residence' of Taonui, it was also relatively isolated and therefore far from the public houses that might have otherwise caused trouble. But it was not the preferred location of all the court's participants. Both Waikato Māori and Judge Mair himself had favoured towns like Alexandra (Pirongia), Kihikihi, or Cambridge, where there was more accommodation. Some of the Waikato counter-claimants, who laid claim to the area around Kāwhia Harbour and the northern and eastern portions of the Aotea–Rohe Potae block, were particularly concerned about the court being held in the heart of Ngāti Maniapoto territory. Nonetheless, in line with the wishes of the Te Rohe Pōtae Māori applicants, the hearing proceeded at Ōtorohanga.<sup>148</sup>

Setting the tone for how the court would operate under his tenure, Judge Mair adjourned the court at the outset to encourage the parties to reach out-of-court arrangements concerning the inter-tribal boundaries within the block. Judge Mair told those attending that he was 'willing to afford the people . . . every facility to arrive at some arrangements' in order to 'shorten proceedings'. In the end, however, the parties were unable to reach agreement, and left the question of the boundaries for a later time.<sup>149</sup>

The hearing ran until 20 October. In the nearly three months that the court sat, it heard evidence both from the applicants – Wahanui, Kaahu, Taonui Hikaka, Hone Te One, Tūkōrehu, Hone Omipi, and 62 others, who applied on behalf of

146. Submission 3.4.305, p 7.

147. 'Native Land Court at Otorohanga', *Waikato Times*, 23 October 1886, p 2.

148. Document A79, pp 106–109.

149. *Maungatautari 4H* (1886) 1 Otorohanga MB, pp 36–38; doc A79, p 111.



Map 10.1: Aotea–Rohe Potae Block

Ngāti Maniapoto, Ngāti Raukawa, Ngāti Tūwharetoa, Whanganui, and Ngāti Hikairo – and eight Waikato counter-claimants.<sup>150</sup>

In this section, we examine the 1886 hearing of the Aotea–Rohe Potae block

150. There had originally been at least 13 counter-claimants. However, following out of court discussions, many were incorporated into the main claim and so withdrew their individual claims, see doc A79, pp 112–114.

in some detail. The Crown emphasised that the changes it had made to the court process for the 1886 sitting ‘went a considerable way to addressing Rohe Pōtae Māori concerns about the Court.’<sup>151</sup> The claimants, however, cautioned that the 1886 hearing should not be seen as representative of the court’s operation in Te Rohe Pōtae generally.<sup>152</sup> They did not deny that the 1886 sitting saw the court ‘at or near its best’, as observed by Drs Husbands and Mitchell, though they argued this was more a consequence of the efforts of Te Rohe Pōtae Māori than any changes initiated by the Crown.<sup>153</sup> The hearing was clearly a momentous event in the history of the district, and in the relationship between Te Rohe Pōtae Māori and the Crown. Significantly, the decision that the Native Land Court reached in 1886 had implications for the decisions that the court made as it subdivided the block over the following decades. The way that the court went about hearing evidence and reaching its decision in 1886 also influenced how the court operated in the district in the years to come.

#### 10.4.1.1 *The parties open their cases*

Wahanui and Tuao Ihimaera of Whanganui opened the case for the applicants on behalf of the northern and uncontested areas of the block respectively. On behalf of Hikairo, Maniapoto, Raukawa, Tūwharetoa, and Whanganui, Wahanui laid claim to the land within the 1883 Rohe Pōtae boundaries, including those areas that had already passed through the court. His claim was based on the take tupuna of Tūrongo (the same tupuna after whom the railway was named) and the 12 subsequent generations of permanent occupation.<sup>154</sup> He further claimed ‘through my kaha in holding the land’ and asserted that ‘all the five tribes have occupied [the land] continuously.’<sup>155</sup>

Several counter-claims were then ‘set up.’ Drs Husbands and Mitchell identified at least 13 counter-claims at this stage. Some of these claims were made by individuals from within the five tribes who based their claims on different ancestors or hapū. Following out-of-court discussions, five such counter-claims were ‘effectively incorporated’ into the applicants’ claim after they added a number of ancestors to the application.<sup>156</sup> The eight counter-claimants who remained and eventually gave evidence in the hearing were largely Waikato. Five laid claim to the northern and eastern portions of the block, an area broadly encompassing the area between ‘the Waikato River to the east and Puketarata and the Waipa River in the west, and the Puniu River and Tuhua ranges in the north and south.’ The counter-claimants to this area were:

- ▶ Te Tumuhuia of Ngāti Hourua and Ngāti Naho;
- ▶ Kaukiuta of Ngāti Wairere, Ngāti Pare, and several other hapū;

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151. Submission 3.4.305, p 21.

152. Submission 3.4.330, p 16.

153. Submission 3.4.330, p 17.

154. Document A79, p 112.

155. Document A79(a) [Husbands and Mitchell document bank], vol 6, p 2761.

156. Document A79, pp 112–114.



- ▶ Haimona Patara, who represented ‘Ngati Haua, Ngati Koroki and their subsections’;
- ▶ Keremeta Ahunuku of Waikato and the hapū Te Were Koruru, Ngāti Paretenaki, and Ngāti Koura; and
- ▶ Wiremu Te Whitu of Ngāti Hourua.

Two other counter-claimants laid claim to the land around Kāwhia Harbour: Wiremu Te Wheoro on behalf of ‘the people of Kawhia and Waikato generally’ and particularly Ngāti Mahuta and Ngāti Ngahia, and Harete Te Waharoa, representing Ngāti Hourua. Finally, Mihi Pepene claimed a small piece of land at Kaipihia and Mangauika through ‘ancestry, gift and continuous occupation’.<sup>157</sup>

The presence of so many counter-claims in the hearing was a significant setback for the hopes of Te Rohe Pōtae Māori about how the process to determine title to their lands would proceed. Rather than the orderly and civil process they had pressed for during their negotiations with the Crown, they were instead confronted with the possibility of a fiercely contested hearing and pitted against groups they had previously regarded as allies.

#### 10.4.1.2 *The parties present their evidence*

With their prima facie cases established, the applicants and counter-claimants then presented their substantive evidence, both taking 28 sitting days to do so. The counter-claimants presented their cases first, as was standard procedure. They were followed by the applicants, for whom five representatives from Ngāti Maniapoto and Hikairo gave evidence: Wahanui, Hauauru Poutama, Hone Kaora (John Cowell), Wetere Te Rerenga, and Te Oro Te Hoko.<sup>158</sup>

Wahanui, who had whakapapa connections to both Raukawa and Ngāti Maniapoto, apparently represented Raukawa.<sup>159</sup> His evidence was first delayed and then cut short by illness, though he did eventually return to be cross-examined before the close of the applicants’ case. As the rights of Whanganui and Tūwharetoa were uncontested, they did not appear to present evidence in support of their claims. As noted above, however, Tuao Ihimaera of Whanganui did appear at the beginning of the hearing alongside Wahanui to establish the applicants’ prima facie case, and members of Tūwharetoa attended the hearings.<sup>160</sup> The evidence presented by the counter-claimants and the applicants primarily focused on the areas they were contesting in the northern and eastern portions of the block and around Kāwhia. The inclusion of these areas within the 1883 petition had been the subject of some controversy (see chapter 8). As detailed in chapter 2, these areas had been the subject of intense conflict in the past, particularly in the first half of the nineteenth century. Much of the evidence therefore concerned the

157. Document A79, pp 115–116.

158. Document A79, pp 124–130.

159. Document A85 (Young and Belgrave), pp 274, 278. It appears that Hitiri Te Paerata also attended the hearings at some point, though he did not give evidence.

160. Document A79, p 130; doc A79(g) (Husbands and Mitchell, post-hearing evidence), p 22.

events of that period, and the differing interpretations of the counter-claimants and applicants of their outcomes and significance.

#### 10.4.1.2.1 THE CLAIMS TO THE BLOCK'S NORTHERN AND EASTERN PORTIONS

The Waikato counter-claims concerning the northern and eastern portions of the block were heard first, starting with Te Tumuhuia of Ngāti Hourua and Ngāti Naho. He claimed that, during the 1820s wars, his ancestors had defeated Ngāti Raukawa, Ngāti Whakaterere, and Ngāti Paiariki and had so conquered the eastern part of the block. Two witnesses then provided further detail: Te Aho-o-te-rangi on the conquest of the area, and Hone Rewiti (John Davis) on their boundaries and settlements on the land.<sup>161</sup>

The cases presented by the other counter-claimants to the east of the block largely followed a similar pattern, with slightly varying accounts of Waikato's conquest and occupation of the area. Keremeta Ahunuku's cross-claim was somewhat different: he claimed the same land as Kaukuita, but largely on the basis of gifting from Ngāti Raukawa and Ngāti Maniapoto rangatira.<sup>162</sup>

Hauauru Poutama of Ngāti Matakore and Ngāti Maniapoto appeared as a witness for the applicants to respond to the counter-claims concerning the northern and eastern portions of the block. His testimony illustrates some of the dynamics at play in the court process between the applicants and counter-claimants. Hauauru had previously been part of the Kīngitanga's boycott of the court. He attended the hearing, however, to defend his claim to 'Rangitoto, Purakia, Tuhua . . . Wharepuhunga, Huirimoana, Puketarata and Kakepuku'. His claim to the area was absolute:

We are the sole owners of this country from the earliest period, no outside tribes or hapus ever came to interfere with the rights to game, fish & such other things, nor was there any cause for any such attempts, as the ownership over the country was absolutely ours.

By contrast, he asserted that the Waikato counter-claimants 'had no right whatever' to the land. He rejected their accounts of the area's history, claiming that Ngāti Maniapoto hapū had played the key role in battles like Hurimoana, with Waikato hapū playing only a minor role. Waikato, he claimed, had not conquered the land but had needed aid and protection. They had, moreover, only occupied the area after the Waikato war, when 'all the country around here was filled with Waikatos who had retreated before the troops'. He further claimed that Raukawa had not been driven south by Waikato but had responded to Te Rauparaha's call for assistance.<sup>163</sup>

Hauauru was cross-examined by counter-claimants for six days. Drs Husbands and Mitchell characterise this cross-examination as being 'as acrimonious as it was

161. Document A79, pp 116–117.

162. Document A79, p 118.

163. Document A79, pp 125–126.

drawn out', with Hauauru 'displaying great rancour towards his questioners' and the court itself.<sup>164</sup> This was not uncommon. Indeed, despite some improvements to its processes in Ōtorohanga, important aspects of the court's process remained unchanged. By its very nature, the court process encouraged conflict. As a result, relations between the applicants and counter-claimants were – as was the case between Hauauru and the Waikato counter-claimants – frequently rancorous.<sup>165</sup>

#### 10.4.1.2.2 THE CLAIMS TO KĀWHIA

The counter-claims concerning Kāwhia were heard second, beginning with Harete Te Waharoa, who presented Mohi Te Rongomau of Ngāti Hourua and Ngāti Mahanga as a witness. Mohi claimed that several key Waikato hapū – 'Ngati Mahuta, Ngati Te Wehi, Ngati Temaingua, Ngati Patupo, Ngati Pou, Ngati Tipa, Ngati Hine and Ngati Hau' – had defeated Te Rauparaha and settled 'Kawhia, Aotea and Whaingaroa.'<sup>166</sup>

Te Wheoro, presenting on behalf of Waikato, took the largest portion – 10 days – of the counter-claimants' total time. He appeared despite Tāwhiao's opposition to the court and its hearing of the Aotea–Rohe Potae block. Because of Tāwhiao's position, he also 'stood alone', with the kaumatua 'to whom he had looked for support and evidence . . . kept from appearing'. But he participated nonetheless to protect the interests of his people. He gave a detailed account of how Waikato had conquered and occupied Kāwhia. In his account, Waikato had defeated Te Rauparaha and Ngāti Toa and Ngāti Koata at Whenuapo and Te Arawi in 1822, leaving 'none of the original people remaining'. Te Kanawa, Kiwi, Te Wherowhero, and Te Tuhi had then led the settlement of Kawhia, including placing European traders at Kawhia to encourage trade.<sup>167</sup> After Te Wheoro's evidence and cross-examination, Anaru Manuhira Tu Te Ao Te Uira of Ngāti Mahuta and Tuarea Takoke of Ngāti Kiriwai appeared as witnesses in support of his counter-claim, confirming his account of Waikato's conquest and settlement of Kāwhia.<sup>168</sup>

The inclusion of Kawhia within the Aotea–Rohe Potae boundaries – and of Waikato claims within that area – was controversial. On the third day of Te Wheoro's testimony, Whitiora arrived with a message from Tāwhiao calling upon the court to withdraw Kawhia from consideration. Whitiora referred to an 'arrangement' that Ballance and Tāwhiao had met in April 1886 to further discuss the possibility of a 'sitting of the Land Court' in Kāwhia. But Ballance was now, according to Whitiora, unwilling to intervene, and so Whitiora called on the court to consider the King's request. After objections from Ngāti Maniapoto and Hikairo, however, and with the parties unable to reach an agreement outside of court over the matter, Judge Mair decided to continue the hearing with Kawhia still included. He noted that it was unusual 'for the Court to take out any part

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164. Document A79, pp 125–126.

165. Document A79, p 141.

166. Document A79, p 118.

167. Document A79, p 120.

168. Document A79, p 123.

of a block without the assent of the claimants'. In this case, they wanted to continue hearing Kawhia. He pledged, however, that all the court's participants would receive 'a fair hearing' and 'that no one's mouth should be shut'.<sup>169</sup>

For the applicants, Hone Kaora (John Cowell) of Ngāti Hikairo gave evidence about their claim to the land from Kāwhia to the Waipā River. He asserted that 'Maniapoto and Ngāti Hikairo [had] an undisputed right to Kawhia from its old ancestor to the present time'. He characterised the hostilities in the region as 'a series of reprisals, amongst the people themselves', after which Waikato had returned home. There had been 'no conquest . . . effected on either side'. He moreover claimed that Ngāti Hikairo, Maniapoto, and Ngāti Apakura had repulsed the attempts of 'lower Waikato' to seize Kāwhia and the flax trade there.<sup>170</sup>

Wētere Te Rerenga, a Ngāti Maniapoto rangatira based at Mōkau, gave evidence about the applicants' claim to the south-western portion of the block. But he also spoke at length about the battles regarding Kāwhia, portraying Ngāti Maniapoto – rather than Ngāti Hikairo or Waikato – as the principal actor in Te Rauparaha's defeat. He acknowledged that Waikato had 'entered the country' to join the flax trade with Maniapoto and Hikairo, but claimed that they had left once they had acquired arms. As other applicant witnesses had emphasised, Wētere claimed that only Kiwi and his people had remained in Kāwhia, 'on sufferance' from the actual landowners. In a hint at the damage to inter-tribal relations caused by the court process, Wētere claimed that the Maniapoto, Hikairo, and Waikato alliance had 'only now been severed' by Te Wheoro's counter-claim: 'You have been the cause of this separation . . . no ill feeling would have arisen had you not appeared as claimants . . . we consider you have no grounds of claim and are merely intruding'.<sup>171</sup>

During his cross-examination, Wahanui also characterised Te Rauparaha's departure from Kāwhia as peaceful. He claimed that the transfer of the area from Te Rauparaha to Te Rangituatea had given Maniapoto 'increased mana over it'. He also asserted that Waikato had only arrived after 'the advent of the Pakehas', with the 'greater part' arriving after the Waikato war.<sup>172</sup> In his original evidence, given at the beginning of the applicants' case, Wahanui had stated that he had given 'shelter to those in need' (referring to Waikato), allowing them to 'take shelter in the strong arms of Wahanui'.<sup>173</sup>

#### 10.4.1.2.3 MIHI PEPENE'S CLAIM

The final counter-claimant to be heard was Mihi Pepene, concerning her claim to Mangauika, in the north of the area being investigated. She presented two witnesses. Her brother, Pita Tana, asserted that their family had occupied the land for four generations, and gave evidence of their urupā and pā sites. Aperahama Patene, the second witness and kaiwhakahaere for the case, gave evidence about

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169. Document A79, pp 121–123.

170. Document A79, pp 126–128.

171. Document A79, pp 128–129.

172. Document A79, pp 129–130.

173. Document A79, p 124.

Te Kanawa's gift of the land to Te Tuhi and his brothers, as well as hapū of Ngāti Pou and Ngāti Mahuta.<sup>174</sup>

Te Oro Te Hoko of Ngāti Ngāwaero, Ngāti Maniapoto, and Ngāti Matakore presented evidence for the applicants responding to Mihi Pepene's claim to Mangauika. After establishing his own claim to the land by ancestry and occupation, he asserted that Pepene's father, Henry Turner, had been 'placed' on the land rather than gifted it. As evidence of this, Te Oro pointed to various payments that Turner had made for the use of the land and its resources.<sup>175</sup>

#### 10.4.1.3 *The court's judgment*

After the close of the parties' cases on 13 October, Judge Mair delivered his 15-page judgment on 20 October 1886. His decision largely vindicated the applicants' case. While noting the 'very contradictory evidence' that had been presented, Judge Mair mostly preferred the evidence of the applicants.<sup>176</sup>

In the judgment, Mair first set out the three questions that the court had had to grapple with:

- ▶ First, had the lands of Ngāti Raukawa and Ngāti Whakaterere in the eastern part of the block fallen 'into the possession of Ngāti Haua and its hapū, or of any other Waikato tribe' either by conquest or gift?
- ▶ Secondly, had Waikato 'actually conquered' Te Rauparaha at Kāwhia and then entered 'into sole possession and occupancy'? Or, as the applicants maintained, had 'Te Rauparaha deliberately [abandoned] Kawhia during an interval of peace' and left the land to Ngāti Hikairo and Ngāti Maniapoto?
- ▶ Finally, regarding Mihi Pepene's claim to Kaipiha, 'Was there a bona fide gift of any part of the land, followed by permanent occupation?'

On the first question, Judge Mair acknowledged that the 'bulk of Ngāti Raukawa and Ngāti Whakaterere' had left the land for Kapiti. But he noted that 'some remained and kept the fire burning', while others were able to return 'and enjoy full possession without hindrance or interference'. As a result, 'there was no conquest of the land' by Waikato, who had 'never exercised mana over this land'. They had 'merely resided on it temporarily as refugees' and had earned no rights to it. He accordingly dismissed most of the counter-claims. Mair made an exception, however, for Te Tumuhua, who was 'entitled to some consideration' through 'his connection with Hauauru'. He was duly awarded 2,000 acres 'at or near' Korakonui.

On the second question, Judge Mair also agreed with the applicants that there had been no conquest at Kāwhia 'according to the strict meaning of the term'. Instead, 'Te Rauparaha and his people went away quietly at a time when there was no fighting', leaving Ngāti Maniapoto and Ngāti Hikairo established as 'the principal people' before the Waikato War. The court did, however, recognise that 'Kiwi's people' had rights in certain areas – Kāwhia, Te Taharoa, and Te Awaroa – on the basis of occupation.

174. Document A79, p 123.

175. Document A79, p 129.

176. Document A79, pp 130–131.

Finally, the court upheld Mihi Pepene's claim to Kaipiha. The court found that while the 'claims by ancestry are not made clear', she had 'an undoubted right' based on 'long and continuous occupation'. She and her co-claimants were awarded 2,000 acres.

For the most part, then, the applicants were successful. After the small awards to take account of the successful counter-claimants, the applicants were awarded 'all the balance of the Rohe Potae Block, with the islands of Karewa and Te Motu, excluding such portions as are held under Crown Grant, or have been purchased by the Crown.'<sup>177</sup>

#### 10.4.1.4 *Approving the lists of owners*

Following the court's judgment, its first piece of business was to approve the lists of owners. This process provided an early demonstration of how the views of Te Rohe Pōtae Māori continued to conflict with the law, and of the limited authority that they actually held in the court process. Consistent with their desire to maintain collective authority, the claimants 'showed a strong desire' to provide the court with a list of iwi and hapū associated with the block, rather than lists of individuals.<sup>178</sup>

Their preference appears to have been partly in response to the presence of native agents and Crown land purchasing officers, including George Wilkinson, during the hearing. As soon the judgment had been passed, these officials had begun canvassing owners about their willingness to sell, much to the consternation of Wahanui and the other tribal leaders.<sup>179</sup> As pointed out by Drs Husbands and Mitchell, Te Rohe Pōtae Māori had already witnessed 'in surrounding districts how difficult it was to manage a block with several dozen or several hundred owners, and how vulnerable such a block was to alienation.'<sup>180</sup> Submitting only the names of iwi and hapū, rather than individuals, was obviously an attempt to avoid such a fate, particularly given the size of the Rohe Pōtae block, and the likely number of individual owners.

However, despite the claimants' preference, Judge Mair insisted that they prepare lists of individual owners. His view prevailed, and the parties prepared their lists of individual owners.<sup>181</sup> According to Drs Husbands and Mitchell,

Startlingly little is known about how these lists were compiled. Lists were made and altered both through discussions among the parties outside of the Court or by order of the Court following more formal proceedings where lists were debated, names

177. Document A79, pp 132–133.

178. 'Mr Wilkinson's Report on the Judgment', *Waikato Times*, 26 October 1886, p 2.

179. Document A79, p 148.

180. Document A79, pp 147–148.

181. 'Mr Wilkinson's Report on the Judgment', *Waikato Times*, 26 October 1886, p 2; doc A79, p 147.

### Aotea–Rohe Potae Case: Hapū and Iwi Listed for Each Block

*Te Taharoa block:* Waikatos (Ngāti Kaiawhi, Ngāti Kahu, Ngāti Karere, Ngāti Amaru, hapū), Ngātitoa – Tūrongo Maniapoto

*Te Awaroa block:* Waikatos (Ngāti Kiriwai), Ngāti Te Kanawa – Tamainu, Maniapoto – Ngāti Hounuku, Ngāti Korokino, and Ngāti Te Kanawa (Maniapoto)

*Kawhia block:* Waikatos (Ngāti Ngahia), Ngāti Mahuta, Ngāti Tapatupo, Ngāti Hikairo, Ngāti Apakura

*Rohe Potae block:* Ngāti Maniapoto, Ngāti Pourahui, Ngāti Rora, Ngāti Whakaterere, Ngāti Makahori, Ngāti Uekaha, Ngāti Unu, Ngāti Te Kanawa, Ngāti Ngututu, Ngāti Pakorotangi, Ngāti Tahinga, Ngāti Tera, Ngāti Kinohaku, Ngāti Werawera (Kapiti), Ngāti Peehi, Ngāti Urumia, Ngāti Rereahu, Te Rereanga's List (including Ngāti Rungaterangi, Ngāti Kauwhakarewa, Ngāti Kaputuhi, Ngāti Hinewai, Ngāti Kahutotara, Ngāti Hekeitewa, Ngāti Kaikaramau, Ngāti Pakorotangi, Ngāti Mihi, Ngāti Tunae, Ngāti Tu, Ngāti Rakei, Ngāti Hineuru, Ngāti Hineuto, Ngāti Parahia, Ngāti Waiora, Ki Herangi hapus), Ngāti Raukawa (and their hapus), Ngāti Matakore, Ngāti Hikairo (and their hapus), Whanganui (and their hapus)

In addition, the Korakonui block was awarded to Tumuhua and his co-claimants, and the Kaipiha block to Mihi Pepene and her co-claimants.<sup>1</sup>

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1. 2 Ōtorohanga MB 85–161.

objected to and names inserted. The court records reveal little about how the initial lists of owners were prepared and there is little in the minutes to indicate exactly how lists were then modified or names struck out or added in court.<sup>182</sup>

After five sitting days to consider the submitted lists, the court eventually accepted 4,369 names for the Aotea–Rohe Potae case, including at least 3,234 names for what became the Rohe Potae block. At the insistence of the claimants, the lists of individual names were organised by hapū and iwi.<sup>183</sup> At Wahanui's request, 'all the orders' made at the sitting were declared inalienable with 'restrictions against sales, mortgages etc.'<sup>184</sup> The work of confirming ownership lists continued through to 1887, though the court was initially delayed by a Ngāti Maniapoto and Ngāti Raukawa boycott (see section 10.7.1).

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182. Document A79, p 148.

183. Document A79, p 151.

184. Document A79, p 152.

### 10.4.2 Deciding on next steps

With the ownership lists confirmed, the court's next task was to begin subdividing the block. The normal approach to subdivisions was to deal with applications as they arose. However, Te Rohe Pōtae Māori had long envisaged a more controlled, staged approach to the determination of title to their lands. After the boundary of their rohe had been fixed, they first wanted the boundaries between iwi to be determined, then the hapū and individual subdivisions.

As outlined above, in the wake of the 1886 hearing Ngāti Maniapoto were reportedly reluctant to proceed any further, as they were worried that subdividing the block would lead to its alienation.<sup>185</sup> Continuing to prefer that title be granted on a hapū basis, they had also initially resisted naming individual owners to the Aotea–Rohe Potae block, and only relented after Judge Mair insisted that they do so.

By January 1887, they had also apparently accepted that the Rohe Potae block would indeed be subdivided. John Ormsby told Native Minister Ballance that they expected the court would resume later that year by subdividing the block, 'first amongst the tribes and then amongst the hapus'.<sup>186</sup> A year later, in April 1888, Ormsby went further, telling Native Minister Edwin Mitchelson and other members of parliament and officials that Te Rohe Pōtae Māori now wanted individual titles. Ormsby's views were not shared by other leaders at the same meeting. Herekiekeie, for instance, made a new call for hapū title and control over land.<sup>187</sup> Indeed, Ormsby himself expressed notable reluctance in calling for individualisation, which he seemed to view as now being inevitable. He noted that 'however much the natives round here were satisfied with the hapu titles, if the majority outside desired it, it would be better to bow to their wishes and have them individualised'.<sup>188</sup> Ormsby's comments about individualisation were also part of his broader argument that the native land laws needed to 'bear lightly on all', and particularly that the Crown should not have an exclusive purchasing right.<sup>189</sup>

There are several explanations for why Te Rohe Pōtae Māori appear to have changed their mind on subdividing the Rohe Potae block. Wilkinson later postulated that their original opposition had been 'for the purpose of preventing sales, &c., and to keep the power in the hands of the chiefs'. But having found that the court could not award the land to iwi and hapū only, they had furnished lists of owners. From here, he wrote, 'commenced the jealousy, ill-feeling, bickerings, and quarrelling that finally resulted in their subdividing the original large block, with over four thousand five hundred owners, into numerous small blocks, with separate lists of owners for each'.<sup>190</sup>

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185. Document A79, p 180.

186. Document A79, pp 180–181.

187. 'Mr Mitchelson's Visit', *Waikato Times*, 12 April 1888, p 2.

188. Document A79, pp 182–183.

189. 'Mr Mitchelson's Visit', *Waikato Times*, 12 April 1888, p 2.

190. Document A79, p 184.



As with the original decision to go to the court in 1886, control over the court process was likely a key consideration for the Te Rohe Pōtae Māori leaders. Due to an amendment in 1886, any Māori could now initiate a partition, with or without the sanction of the community of owners or its leaders.<sup>191</sup> This presented an unacceptable risk to the tribal leadership. They therefore strove to maintain control of the process and to proceed with subdivision in an orderly fashion. They likely also realised that one block of 1.6 million acres, with 4,500 owners, would be unmanageable.<sup>192</sup>

At the January 1887 hui, Ormsby had also expressed his concern about the Crown purchasing interests in Māori land before title had been ascertained. Ormsby requested that ‘the settling [of native land sales] should be prohibited until the titles had been individualised’.<sup>193</sup> In response, Ballance assured Māori that ‘[t]he Government would not purchase any land until the sub-divisions had been made’.<sup>194</sup>

Other than contemporary newspaper reports, no written record of this commitment appears to exist, and there was later disagreement between Crown officials and Te Rohe Pōtae Māori over its meaning. Loveridge argued that ‘the bureaucracy in Wellington took note of his promise, and honoured it’. When the Crown commenced purchasing two years later, having ‘decided that sufficient progress with sub-division had been made’, T W Lewis ‘considered [it] necessary’ to write a formal letter to Wahanui, Taonui, and Hauauru to inform them of the Crown’s intentions.<sup>195</sup> Hauauru, however, had apparently interpreted Ballance’s assurance to mean that the Crown would wait for *all* subdivisions to be completed before starting purchasing. Wilkinson – who had been present at the January 1887 hui – assured Lewis that he had ‘never heard any Minister propose, or agree . . . not to commence purchase until the portion of each hapu was subdivided and surveyed into a separate block’.<sup>196</sup> Given the context in which the commitment was made, however, as a response to Ormsby requesting a halt to sales until titles had been individualised, we do not consider Hauauru’s interpretation to be unreasonable. Ultimately, this appears to have been yet another assurance given by the Crown that it did not keep.

#### 10.4.3 Defining the iwi and hapū subdivisions

After providing a brief overview of the court’s work in defining the iwi and hapū subdivisions of the Rohe Potae block, this section considers several aspects of the court’s process. In doing so, it assesses the extent to which Te Rohe Pōtae Māori were able to be involved in the court’s decision-making and to influence its operations during title determination.

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191. Document A79, pp184–185.

192. Document A79, pp185–186.

193. Document A79, pp180–181.

194. Document A68 (Loveridge), pp81–82.

195. Document A68, p82.

196. Document A79, pp220–221.

**10.4.3.1 Overview**

In November 1887, Judge Mair adopted the approach requested by Te Rohe Pōtae Māori, and particularly by Wahanui, Te Rerenga, and Hauauru. The Rohe Potae block would be subdivided on a tribal basis first, proceeding to hapū and individual divisions at a later time.<sup>197</sup>

The court began working on the tribal divisions of the Rohe Potae block in April 1888. The boundary between Ngāti Maniapoto and Ngāti Rangatahi was resolved easily, the parties having already agreed outside of court. After further time was allowed for discussion between the parties, the division between Ngāti Maniapoto and Raukawa was also resolved within a matter of days.<sup>198</sup>

The Ngāti Maniapoto and Hikairo boundary, however, was the subject of considerable disagreement. Along with Raukawa, Ngāti Maniapoto and Hikairo shared common ancestors, making it difficult to set a firm boundary between the two's respective areas of interest. Out-of-court discussions, despite several adjournments, did not resolve the dispute. John Ormsby, acting as Ngāti Hikairo's spokesperson, concluded that further 'open air meetings' would not help and referred the dispute back to the court. The resulting 44-day hearing across two months in 1888 involved not just the claimants Ngāti Hikairo and Ngāti Paiariki, but also seven counter-claimants.<sup>199</sup> At the conclusion of this hearing, the court awarded Ngāti Hikairo 'all the western part of the land under claim (from Pirongia to Kawhia).'<sup>200</sup> This prolonged hearing provided an early indication of what could happen when Māori did not reach agreement outside of court.

With the tribal boundaries confirmed, the court next began a task that would continue for more than a decade: the creation of the internal – hapū – subdivisions. Large areas of land passed through the court easily, their ownership having been agreed outside of court. In 1888, this occurred with areas like Hauturu East and West, Kinohaku East, Puketarata, and Tokanui. In these cases, the court's main task was to check and process lists of owners.<sup>201</sup>

Other areas, however, were bitterly contested. In the early period of the court's subdivision work, some of the most contentious cases were Otorohanga and Kawhia.<sup>202</sup> The Otorohanga case involved numerous counter-claimants. With every part of the block contested, the court hearing eventually took 42 days.<sup>203</sup> The Kawhia block, meanwhile, had originally been granted to both Waikato and Ngāti Hikairo. But with the parties unable to agree on the block's division, the court ordered its own division.<sup>204</sup>

197. Document A79, p 175.

198. Document A79, pp 162–163.

199. Document A79, pp 162–163. The counter-claimants included 'representatives of Ngāti Maniapoto, Ngāti Matakoe, Ngāti Makahore and Ngāti Ngawaero'.

200. Document A79, p 164.

201. Document A79, p 164.

202. Document A79, pp 164, 166–167.

203. Document A79, p 164.

204. Document A79, p 165.

Even with out-of-court arrangements increasing the pace of the court's work, subdividing the Rohe Pōtae block remained an immense task. A large number of subdivisions passed through the court in a short period: between July and December 1888, the court defined 25 subdivisions.<sup>205</sup> Despite this steady progress, the overall subdivision of the block proceeded slowly; it was not until the mid-1890s that most of the land to the west of the railway line was partitioned. That, of course, still left most of the land to the railway's east undivided, including the enormous 603,355-acre Rangitoto–Tuhua block. The subdivision case for that block, initially resulting in 80 individual partitions, extended over three years between 1897 and 1900 (see section 10.5.1.1).<sup>206</sup>

As will be discussed further in section 10.5.2, subdivisions were themselves often subject to further partitioning, either initiated by the owners or, later, as a result of Crown purchasing. In 1889, Judge Mair complained that 'As fast as I settle one big block, applications come for subdivision of it.'<sup>207</sup> This kind of partitioning was a considerable cause of concern to the Crown and its purchasing ambitions during this period. Wilkinson, for one, considered it 'absolutely necessary' that the new subdivisions be surveyed before purchasing commence. The continued partitioning of the parent subdivisions therefore represented a potential brake on the pace by which the Crown could begin to acquire Te Rohe Pōtae Māori land.<sup>208</sup>

#### 10.4.3.2 *Role of the Kawhia Native Committee*

As discussed in chapter 8, when Te Rohe Pōtae Māori agreed to let the Native Land Court into their rohe in 1886, they understood that the Kawhia Native Committee – formed in 1884 under the Native Committees Act 1883 – would play a role in the court process, particularly at the subdivision stage. They had been encouraged in this understanding by Native Minister Ballance, who had assured them during the railway negotiations of February 1885 that the powers of the committees would be increased. However, no further changes were ever made to the native committee system to expand their powers.

The claimants submitted that the weaknesses of the native committee regime meant that the Kawhia Native Committee 'failed to provide a viable alternative to the Native Land Court in the district.'<sup>209</sup> The committee 'received neither the authority nor the resources to act in accordance with Te Rohe Pōtae Māori aspirations.'<sup>210</sup>

The Crown made several submissions on native committees. On the one hand, it submitted that '[t]he Native Committees Act 1883 . . . provided the opportunity for Rohe Pōtae Māori to use the Kawhia Native Committee as a means to reach decisions about ownership and interests in the Aotea–Rohe Pōtae block and to

205. Document A60 (Berghan), pp 87–89.

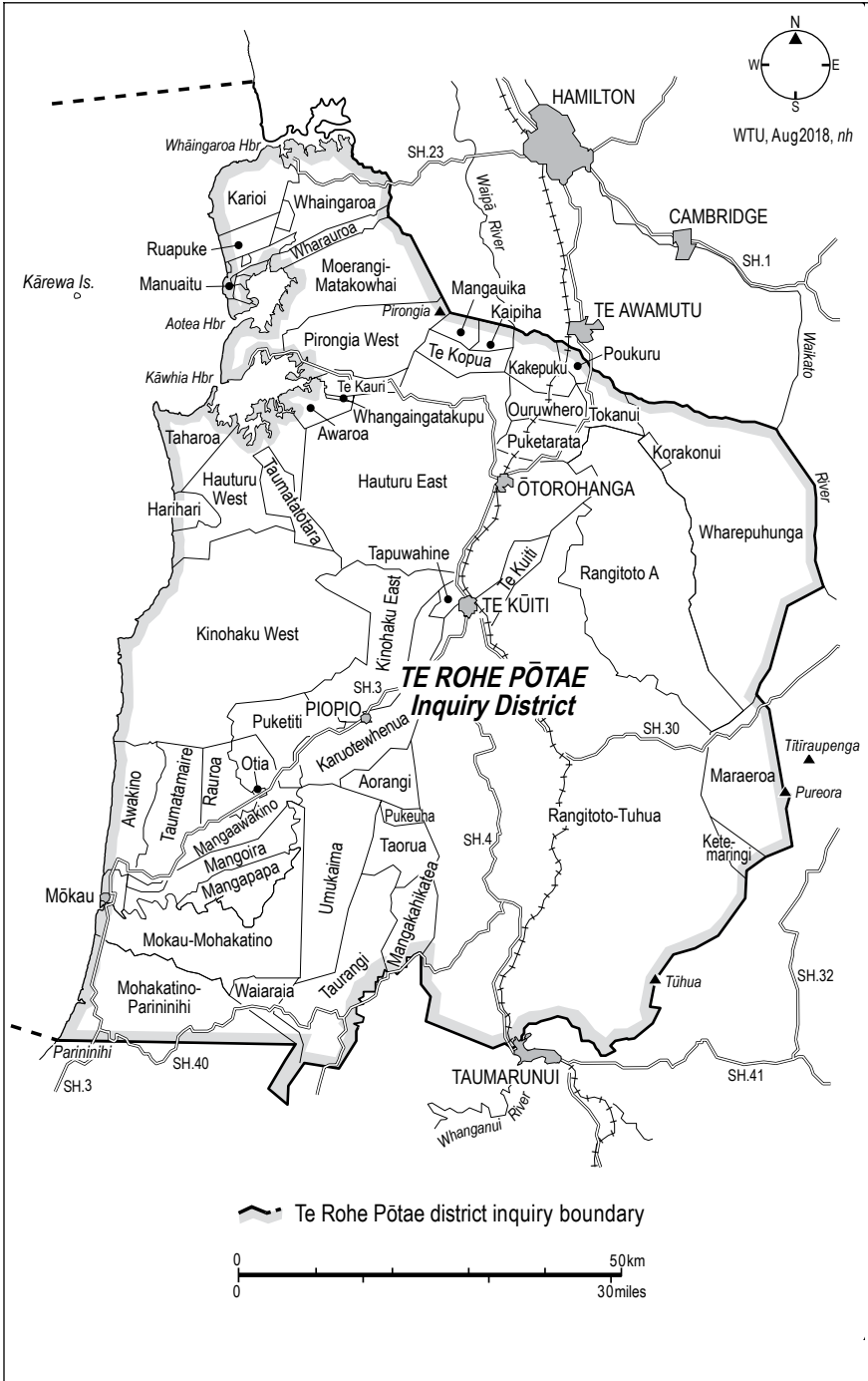
206. Document A79, pp 283–284.

207. Document A79, p 167.

208. Document A79, p 216.

209. Submission 3.4.107, p 29.

210. Submission 3.4.107, p 81.



Map 10.2: Internal subdivisions of the Aotea-Rohe Potae block

report those decisions to the Native Land Court for its information.<sup>211</sup> However, the Crown also accepted that the statements Native Minister Ballance made in 1885 about his ‘intentions and expectations’ to give further powers to the native committees in the Native Land Court process ‘gave Rohe Pōtae Māori sufficient reassurance to agree, subject to conditions, to the construction of the NIMTR through their district.’<sup>212</sup> The Crown conceded that it then breached the Treaty in failing ‘to consult or re-engage with Rohe Pōtae Māori when it did not fulfil’ those representations.<sup>213</sup>

While the Kawhia Native Committee was one of the more active and influential native committees, the evidence available indicates that it played only a very minimal role in the court’s activities within Te Rohe Pōtae. As mentioned above, the committee built the Ōtorohanga venue for the Native Land Court’s sitting, but otherwise played no role in the initial title determination of the Aotea–Rohe Pōtae block. This was not unexpected. Before Te Rohe Pōtae Māori filed their application for the court to investigate title in late April 1886, the committee had resolved to wait until the court’s investigation was complete before hearing the applications it had received to that point. As Orsmy had told Ballance that month, Te Rohe Pōtae Māori had wanted ‘to investigate the title and settle it amongst themselves by the native committees, but found they had not the power to do so, and they were now asking themselves what they ought to do.’<sup>214</sup>

Nonetheless, despite the Kawhia Native Committee’s exclusion from the 1886 hearing, it was clear that Te Rohe Pōtae Māori had expected the committee would play a greater role at the subdivision stage. In the end, however, the committee undertook only one investigation into the ownership of a block within Te Rohe Pōtae, and that occurred before the court’s initial hearing was even complete. In January 1886, the committee had received an application from Hariwhenua and others to determine the ownership of the Mangamahoe block. After deferrals for the parties to assemble their cases and for bereavement, the committee held a hearing and reached a decision on the claim on 2 June 1886.<sup>215</sup> This was after Te Rohe Pōtae Māori had lodged their application with the Native Land Court, but before the court’s Aotea–Rohe Pōtae hearing began.

Three years later, the Kawhia Native Committee’s investigation into Mangamahoe was mentioned by the Native Land Court in its Kakepuku–Pokuru judgment (this block included Mangamahoe). The court did not explicitly endorse the committee’s finding in the Mangamahoe case, but does appear to have used it as evidence for its own decisions.<sup>216</sup> It also referred to testimony Te Maaha Hikuroa and Tupotahi gave to the committee to highlight the differences in the evidence they gave to the court. Although this kind of ‘assistance’ to the court was clearly envisaged by the Native Committees Act 1883, as we saw in chapter 8, Te

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211. Submission 3.4.305, p 25.

212. Submission 3.4.305, p 28.

213. Submission 3.4.307, p 25.

214. Document A79, p 69.

215. Document A79, p 69.

216. Document A60, p 203.

Rohe Pōtae Māori had assumed that the Kawhia Native Committee would play a much more significant role in the title determination process, particularly at the subdivision stage.

The committee had also received requests to investigate the ownership of five other blocks in late 1885 and early 1886, but it appears that it never did so. The committee met for the final time in February 1887 to confirm previous minutes. With no substantive role for the committee in the title determination process, it appears that the decision to go to court in 1886 fatally undermined the committee's relevance. Its final meeting coincided with the decision of Te Rohe Pōtae Māori leaders to allow the court to continue with passing lists of owners to the initial divisions of the Aotea–Rohe Pōtae block. Drs Husbands and Mitchell surmise that this decision superseded their earlier expectation that the committee would play a role in subdivision of the block.<sup>217</sup> It also likely ruled out any revival of the committee. In the end, the expectation of Te Rohe Pōtae Māori that they would have control over the title determination process through the Kawhia Native Committee was never realised, a consequence of the inadequacy of the 1883 legislation.

The fate of the Kawhia Native Committee after its February 1887 meeting is unclear. John Ormsby, chairman of the committee, remained active. He was involved in negotiating compensation for land takings arising from the construction of the North Island Main Trunk Railway, as well as in negotiating resource rights, into the 1890s.<sup>218</sup> He also appears to have acted as a conductor in the Native Land Court for several cases after 1888. But Drs Husbands and Mitchell recorded that 'there is no indication that he did this in his capacity as chair.'<sup>219</sup>

The Central North Island Tribunal observed that the committees formed under the Native Committees Act 1883 'failed because they were created in such a way that they were unworkable.'<sup>220</sup> Similarly, we do not consider that the Crown set up the Kawhia Native Committee to succeed. As discussed in chapter 8, it covered a large, disparate area, but was not established in a manner that ensured equitable representation for all of the district's iwi and hapū. Moreover, it lacked the statutory powers it needed to meet the aspirations of Te Rohe Pōtae Māori, particularly for title determination, and was poorly resourced to discharge the limited functions that it did have. The lack of authority afforded to the native committees was criticised by Te Rohe Pōtae rangatira at the time, and was later singled out by the 1891 Commission on Native Land Laws (the Rees–Carroll commission). As seen in chapter 8, the commissioners criticised the 1883 Act as 'a hollow shell' that 'mocked and still mocks the Natives with a semblance of authority.'<sup>221</sup>

The decline in the activities of the Kawhia Native Committee was mirrored elsewhere, and for similar reasons. Wilkinson reported in June 1888 that the native committees elected in Waikato were languishing due to the court and the effects of

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217. Document A79, pp 69–70.

218. Document A20 (Cleaver and Sarich), pp 103–107.

219. Document A79, p 187.

220. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 317.

221. Document A79, p 188.

individualisation.<sup>222</sup> By the time the Native Committees Act was repealed in 1902, it had been ‘a virtual dead letter’ for most of the preceding decade.<sup>223</sup>

### 10.4.3.3 *Out-of-court arrangements*

With the Kawhia Native Committee unable to play the role that they had envisaged, out-of-court arrangements were the main way for Te Rohe Pōtae Māori to influence the court’s decision-making during this period. From the earliest days of its operations in Te Rohe Pōtae, the Native Land Court encouraged Te Rohe Pōtae Māori to reach agreement outside of court. As noted above, Judge Mair allowed time for arrangements to be struck before the initial 1886 hearing and then granted successive adjournments to further encourage Māori to reach agreements outside of court.<sup>224</sup> This practice continued throughout the period under examination in this chapter and was particularly important during the period when iwi and hapū subdivisions were being defined.

The Crown argued out-of-court arrangements were potential remedies for a number of alleged problems with the court and its processes, including its ability to appropriately recognise whakapapa and tikanga.<sup>225</sup> Counsel also pointed out that out-of-court arrangements were a common feature of the Ōtorohanga court.<sup>226</sup> In response, the claimants argued that this proved ‘that Te Rohe Pōtae Māori were able to agree amongst themselves the boundaries of their hapū and whanau.’<sup>227</sup>

Reaching agreement outside of court could be a difficult and prolonged process. Drs Husbands and Mitchell concluded that this was largely because ‘traditional tribal relations over land did not translate directly or easily into the sort of titles that the court dealt in.’<sup>228</sup> When owners could not do so and failed to reach consensus outside of court, the result all too often was a long, acrimonious hearing. For instance, as mentioned above, while other tribal boundaries had been able to be resolved out of court, the boundary between Ngāti Maniapoto and Hikairo had to be resolved by the court after discussions between the parties failed, the court case eventually taking 44 sitting days over two months.<sup>229</sup>

That noted, Te Rohe Pōtae Māori struck out-of-court arrangements for almost every kind of case the court considered: title investigations, boundaries, the allocation of relative interests, and succession cases.<sup>230</sup> They did so through a variety of forums, including both informal hui and more formal hui of tribal committees. In these contexts, Te Rohe Pōtae Māori seem to have relied heavily on kaumātua

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222. Document A20, p 107.

223. Vincent O’Malley, *Agents of Autonomy: Maori Committees in the Nineteenth Century* (Wellington: Huia, 1998), p 287.

224. Document A79, p 137.

225. Submission 3.4.305, pp 35, 40, 43.

226. Submission 3.4.305, p 26.

227. Submission 3.4.330, p 11.

228. Document A79, p 197.

229. Document A79, pp 163, 197.

230. Document A79, pp 408–409.

to make the appropriate divisions between groups, drawing on their knowledge of history and traditions.<sup>231</sup> Drs Husbands and Mitchell pointed to two particular examples of the role of kaumātua in these discussions:

in Kinohaku East . . . the boundaries of the subdivision were ‘talked over’ and eventually fixed ‘by the Kaumatua.’ It also held for Whakairoiro where Hariwhenua conceded to Te Anga’s request that his application regarding the block should first ‘be referred to the elders’ of the Ngati Ngawaero hapu ‘as they had not been consulted.’<sup>232</sup>

Because these discussions occurred outside of court, there is very little record of how these arrangements were struck. The minute books also reveal very little about how the court processed out-of-court agreements and whether it inquired into them to ensure that they were consistent with ‘Native custom or usage’, as the native land legislation required, or that all the entitled owners had been involved in the discussions. Cases that had been subject to out-of-court agreements were sometimes appealed later, with appellants claiming that the agreements had been reached by unfair processes.<sup>233</sup>

Out-of-court arrangements were not simply a court-driven initiative. By reaching agreements themselves outside of court, Te Rohe Pōtae Māori could influence the court’s decision-making process to at least some degree. The court was largely happy to accept the arrangements Māori had made. In those cases where it was, Te Rohe Pōtae Māori were effectively able to decide matters relating to land themselves, albeit within the context and demands of the Crown’s native title system. If successful, out-of-court arrangements could also dramatically decrease the amount of time required for court hearings. As a result, court fees – examined in more detail in section 10.6.1 – were also reduced.

Out-of-court arrangements also ensured the smooth and efficient operation of the court. The court, only ever a small operation, would not have been able to function efficiently or effectively without out-of-court arrangements. They reduced not only the time and resources taken up by hearings, but also allowed the court to avoid getting bogged down in contentious cases that it found difficult to adjudicate. The benefit of out-of-court arrangements to the court’s work was recognised by Judge Walter Edward Gudgeon, who in 1898 told court participants that the court’s ‘one way’ of dealing with cases was ‘to leave it to the people . . . in the first place’ to settle things themselves.<sup>234</sup> The court frequently implored the parties to ‘come to terms as far as possible’ or ‘to settle the matter outside if possible’. Judges not only allowed adjournments to enable parties to discuss matters outside of the courtroom but sometimes ordered them to do so.<sup>235</sup>

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231. Document A79, pp195–196.

232. Document A79, pp195–196.

233. See, for example, document A79, pp 409–411.

234. *Rangitoto Tuhua* (1898) 33 Otorohanga MB 313; doc A79, p 406.

235. Document A79, pp196–197.



This all suggests that, despite the claims of Crown officials and colonial observers to the contrary, the process of deciding land matters could be left to Māori and still largely proceed smoothly. Indeed, it also suggests that formal recognition of Māori consensual decision-making might have led to less disharmony in the court process itself. Had the Crown amended the native committee regime along the lines advocated by Ballance in 1885, the committees could have provided such recognition, albeit with recourse to the court remaining for contested or appealed cases.

There are numerous examples of successful out-of-court arrangements being reached in Te Rohe Pōtae during this period. In the Hauturu West subdivision case in 1888, for instance, the ownership of most blocks was determined outside of court, and relatively quickly, with all four subdivisions passing through the court within three days. Only Hauturu West 1 faced a delay, with the case stood over for a night until agreement was struck. The lists of owners for the Hauturu West blocks were then passed within a week.<sup>236</sup>

However, the main problem was that out-of-court arrangements had no legal standing under the native land laws. The court certainly encouraged out-of-court arrangements and, under the native land legislation, it was allowed to give effect to any voluntary arrangements reached by the parties outside of the court.<sup>237</sup> However, as with decisions of the native committees, the court was under no legal compulsion to adhere to out-of-court arrangements and remained the final decision maker.

Drs Husbands and Mitchell argued that, because of this, parties were incentivised to go to court if they were unhappy with the agreements reached outside of court, and as a result, ‘they could . . . drag all parties into the Court.’<sup>238</sup> For the Otorohanga subdivision case, for example, Henry Edwards told the court that one meeting to reach an agreement outside of court had ‘only lasted about five minutes’ before one of the parties, Te Hauparoa, had left ‘in anger’. Te Hauparoa had resolved ‘that the matter must be decided by the Court.’<sup>239</sup> The case eventually took 42 hearing days.<sup>240</sup>

We agree with the Central North Island Tribunal that ‘it was up to Maori to decide how they would resolve . . . disputes’ and that the Crown’s role was ‘to provide their arrangements with legal force.’<sup>241</sup> We consider that a more robust system – whereby the committees could have exercised full, final determination roles with appeal rights for contested cases – would have been fairer and ensured that Māori were the arbiters of their title system.

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236. Document A79, pp190–191.

237. For example, under section 56 of the Native Land Court Act 1880.

238. Document A79, p 527.

239. Document A79, p 199.

240. Document A79, p 164.

241. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 299.

**10.4.3.4 Location and timing of hearings**

The court had the potential to be a significant presence in the lives of Te Rohe Pōtae Māori, particularly in the critical period when the boundaries and ownership of parent blocks were being determined. The location and timing of its hearings had a direct bearing on how much Māori would be inconvenienced by its operations. Although Te Rohe Pōtae Māori often had input into where and when the court sat, these matters were ultimately decided by the judge.

As discussed in section 10.2.3, the claimants raised concerns about the location, timing, and notification of court sittings in Te Rohe Pōtae. The location of hearings, they argued, forced Te Rohe Pōtae Māori 'to incur significant and unreasonable costs' (see section 10.6.3).<sup>242</sup> The timing and notification of hearings, meanwhile, 'did not allow for proper (and on occasion any) participation by the relevant parties.'<sup>243</sup> The Crown argued that the location of court sittings was decided by the court itself following submissions from Māori, and that the court's location 'met substantially the wishes of Rohe Pōtae Māori.'<sup>244</sup> Counsel also pointed out that Judge Mair 'sought to minimise disruption to communities by not sitting during harvesting periods,' and frequently granted adjournments.<sup>245</sup>

The court mostly sat at Ōtorohanga during the period between 1886 and 1890. On the urging of Wahanui, Te Rerenga, Hauauru, and other rangatira, Judge Mair agreed in late 1887 that sittings in Ōtorohanga would only deal with business related to Te Rohe Pōtae.<sup>246</sup> On at least one occasion, from January to March 1889, the court sat in Kāwhia to deal with several nearby blocks, including the Kawhia block itself. This was presumably done for the convenience of the owners in the affected blocks, though the start of the sitting was nonetheless delayed for a week to allow for interested parties to arrive.<sup>247</sup>

A particular issue relating to the timing of Native Land Court hearings concerns how the court accommodated planting and harvesting seasons. Court sittings held during spring, late summer, and autumn could take Māori away from their cultivations at critical times. During this period, Judge Mair was willing to accommodate the wishes of Māori around harvest time and to adjourn sittings on request. In 1887, for instance, the court did not open until 1 March in order to allow the parties to complete their harvest.<sup>248</sup>

Once a hearing was underway, the court could adjourn proceedings for a number of reasons. The court frequently granted adjournments to allow for further discussion outside of court, both on its own initiative and at the request of Māori. Adjournments were also made to allow parties time to prepare, to hold hui, and to wait for the arrival of interested parties. The court did not always grant the adjournments that Māori sought. In response, Te Rohe Pōtae Māori sometimes

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242. Submission 3.4.107, p 88.

243. Submission 3.4.107, p 87.

244. Submission 3.4.305, pp 54–55.

245. Submission 3.4.305, pp 8, 56.

246. Document A79, p 175.

247. Document A79, p 165.

248. Document A79, pp 174–175.

used the strategy of refusing to attend court. When Wahanui's brother Te Wiwini died in May 1890, for instance, Judge Mair granted only a weekend adjournment, despite a request from Wahanui and Taonui for a longer period. In protest, 'the overwhelming majority' of Māori did not attend court for nearly two weeks, a significant demonstration of the mobilisation and cohesion of Te Rohe Pōtae Māori at this time.<sup>249</sup>

#### 10.4.3.5 *Role of judges*

While Te Rohe Pōtae Māori were able to influence the court's process and decision-making in some respects, the judge remained the central figure in the Native Land Court process. Tasked with a range of roles pertaining to the ownership of Māori land, the judge remained the ultimate decision maker on most matters, both procedural and substantive.

The claimants accepted that the judges who served in Te Rohe Pōtae were familiar with Māori, but cautioned that colonial society struggled 'to produce judges who were competent in law, whakapapa and Te Rohe Pōtae Māori tikanga'.<sup>250</sup> They further argued that the native land legislation constrained the judges.<sup>251</sup> In the Crown's view, the judges about whom biographical information is available 'were highly suitable candidates to be judges'.<sup>252</sup> The Crown recognised that judges had to deal with complex and contradictory evidence, but argued this 'would likely have arisen in any forum'. In that context, the preference of judges for 'accommodation and compromise' was inevitable.<sup>253</sup>

By the time he arrived to preside over the Ōtorohanga court, Judge William Gilbert Mair had had a long career in public service. Most recently a presiding judge in Taupō, he had served as a soldier during the invasion of the Waikato and had played 'a leading role in the fighting at Rangiaowhia and Orakau'. Afterwards, he had been a resident magistrate in a number of areas and had led campaigns against Te Kooti in Te Urewera. He acted as resident magistrate and native agent in the Waikato during the 1870s and apparently had 'an extensive and intimate acquaintance with native affairs' in the area. He was also known as 'an accomplished Maori linguist'. As discussed in section 10.3.2, in response to concerns from Te Rohe Pōtae Māori that judges should be fluent in te reo, Ballance had undertaken that a Māori-speaking judge would hear the Aotea–Rohe Potae application.<sup>254</sup>

Judge Mair seems to have played a pivotal role in the approach taken by the Ōtorohanga court during its first few years of operation. Drs Husbands and Mitchell stated:

249. Document A79, p 180.

250. Submission 3.4.107, p 83.

251. Submission 3.4.107, p 84.

252. Submission 3.4.305, p 45.

253. Submission 3.4.305, p 46.

254. 'William Gilbert Mair,' in *A Dictionary of New Zealand Biography*, ed Guy H Scholefield, 2 vols (Wellington: Department of Internal Affairs, 1940), vol 2, pp 46–47; doc A79, pp 106–107.

There is little doubt that the Court presided over by Judge Mair in Otorohanga was more amenable to Maori input and influence than earlier courts. To an important and perhaps unprecedented degree, iwi and hapū leaders were able to set the agenda of the Court and control the movement of land through its process.

They cautioned, however, that 'such control remained within strict limits. Ultimate power remained with the judge.'<sup>255</sup> Although he was often willing to accommodate the parties appearing before the court, Judge Mair remained willing to exert his control over the process if he considered it necessary. As will be discussed in section 10.7.1.1, he did so when Ngāti Maniapoto and Ngāti Raukawa boycotted the court in 1887 and again in early 1888. Further, despite the agreement that Europeans should not take part in court proceedings, and the protests of some Māori participants, in October 1889 Judge Mair allowed WH Grace to act on behalf of claimants to the Tokanui block.<sup>256</sup> He was able to do so due to an 1886 amendment that gave presiding judges the discretion to approve appearances by counsel.<sup>257</sup> As these examples demonstrate, the judge remained the ultimate decision maker on court procedure.

On the whole, Te Rohe Pōtae Māori seem to have liked and respected Judge Mair. Kingi Wētere and four others told Ballance in May 1891 that Mair 'was well acquainted with all matters affecting the Rohe Potae and our cases' and that he was the only judge able to 'deal with questions touching the Rohe Potae.'<sup>258</sup> This does not detract from the main point, however, that the legislation gave him the ultimate authority.

#### 10.4.3.6 Role of assessors

Judge Mair was assisted in his work by a Māori assessor. At his meeting with Te Rohe Pōtae Māori at Kihikihi in April 1886, Native Minister Ballance had reassured Māori that 'no objectionable assessors' would be allowed to sit on the court in Te Rohe Pōtae.<sup>259</sup> To avoid accusations of bias, Māori assessors were usually selected from outside the district. They were, however, generally men of standing within their own communities or on a national basis.<sup>260</sup> While the claimants did not submit directly on the role of assessors in the court process, the Crown described them as 'an important feature of the Native Land Court regime.'<sup>261</sup>

Two assessors served on the Ōtorohanga court from 1886 to 1890: Paratene Ngata from 1886 to 1889, and Nikorima Poutotara in 1890. The father of Apirana Ngata, Paratene Ngata was a Ngāti Porou leader who had fought with Ropata Wahawaha against adherents of Pai Marire on the East Coast and then against

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255. Document A79, p 223.

256. Document A79, p 175.

257. Native Land Court Act 1886, s 65.

258. Document A79, p 234.

259. 'Mr Ballance and the Natives', *Waikato Times*, 20 April 1886, p 4

260. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p 404.

261. Submission 3.4.305, p 46.

Te Kooti. He had served as an assessor on the Native Land Court in other districts throughout the 1870s and 1880s.<sup>262</sup> Nikorima Poutotara, meanwhile, was a leader of Ngāti Maru and the son of Riwai Te Kiore. Upon his death in 1903, he was described as ‘a diplomatist of no mean order.’<sup>263</sup>

The available evidence indicates that the assessors played a reasonably active role in the court’s process between 1886 and 1890. Drs Husbands and Mitchell contended that they played ‘a more significant role . . . than that of assessors in many other places.’<sup>264</sup> Ngata and Poutotara frequently cross-examined witnesses, checked witness testimony against evidence given in earlier cases, inspected disputed lands, set boundaries, wrote decisions in te reo Māori, and attempted to mediate disputes between the parties outside of court.<sup>265</sup>

Ngata saw his role as ‘understanding the truth and falsehood of the korero’ given in court. To do so, he cross-checked evidence against previous cases and looked ‘at the character of the speakers who were before the Court, if they were a truthful person or a person whose character had been seen in other Courts.’<sup>266</sup> During the Otorohanga-Orahiri case, for instance, Ngata cross-examined witnesses, ‘questioning them sometimes at considerable length on the detail of their evidence and the key points of their claims.’ Later, he was involved in attempting to resolve disputes over Otorohanga by guiding the parties’ discussions outside of court and inspecting the disputed area.<sup>267</sup>

Such was the extent of the involvement of the assessors in this early period that Ngata would later claim, in an unpublished memoir, that he had ‘the greatest task’ in the court’s work, including in making decisions. However, it was his ‘friend [Judge Mair who] had the greatest money and honour for most of the work the two of us completed.’<sup>268</sup> This suggests that, although the work of the court could not have proceeded without the assessors, and although individual judges like Judge Mair seemed to rely on them, the court regime as established by the Crown gave assessors only a limited role to play. The assessors were no substitute for greater Te Rohe Pōtae Māori involvement in the court’s decision-making.

#### 10.4.3.7 Recognition of customary interests

Native Land Court titles were not intended to reflect customary tenure exactly, but rather to simplify the diverse range of customary rights to land into a form more suited for engagement with the colonial economy. Nonetheless, the court was still required to reach its decisions ‘according to Native custom or usage’.

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262. Steven Oliver, ‘Paratene Ngata’, in 1769–1869, vol 1 of *The Dictionary of New Zealand Biography*, ed William H Oliver (Wellington: Allen & Unwin and the Department of Internal Affairs, 1990), pp 310–311.

263. ‘Personal’, *Auckland Star*, 9 September 1903, p 2; ‘Local and General News’, *New Zealand Herald*, 14 September 1903, p 4.

264. Document A79, pp 204–205.

265. Document A79, pp 205–206.

266. Document A79, pp 206–207.

267. Document A79, pp 205–206.

268. Document A79, pp 206–207.

The claimants identified several aspects of Native Land Court processes and titles that they said distorted the court's recognition of customary rights. In particular, they alleged that the adversarial nature of the court process distorted the evidence presented and promoted conflict which damaged intra-hapū relationships.<sup>269</sup> They submitted further that 'a good deal of the responsibility lay with the tenure system', as it 'insisted upon clear divisions and distinct lists of owners even when the situation on the ground remained multiple and fluid'.<sup>270</sup> Overall, the claimants considered that '[t]he Native Land Court was a totally inappropriate vehicle to determine Māori customary rights and interests'.<sup>271</sup>

While Crown counsel accepted that parties before the court possibly presented evidence 'in the way that would best suit their case', they argued that the court would have likely been 'alert to such techniques'. They further argued that the adversarial system had the advantage of allowing challenges to evidence so that a fuller picture might be presented.<sup>272</sup> Counsel further submitted that out-of-court arrangements would have allowed tikanga to be reflected in court decisions.<sup>273</sup> The Crown accepted that its native land legislation 'did not provide for the overlay of residual rights from the customary system it replaced', but also contended that it did not prevent Māori from 'continuing to recognise shared, overlapping and usufructuary rights if they chose to do so and it remained practicable to do so'.<sup>274</sup>

Where the parties were unable to reach out-of-court arrangements, the job of determining customary ownership was left to the court's European judge and Māori assessor. Unpicking these competing claims was rarely a simple task, particularly for outsiders to the district. Part of the difficulty, of course, was that the court's job was to simplify the complexities of customary tenure. This was always going to be a difficult, if not impossible, task. The communal rights that Māori held under customary tenure did not easily fit within defined boundaries and lists of owners, and rights between groups often overlapped. The court was also entirely unable to recognise other kinds of right in land, particularly resource rights.

It is clear that the court in Te Rohe Pōtae sometimes struggled with the task. Several decisions of the Ōtorohanga court refer to the 'very conflicting' or 'very contradictory' evidence presented. In the Pukeroa Hangatiki case, the court described the conflicting evidence it had received about 'ancestors, bases of title, boundaries, ancient marks, pas, settlements, burial places, eel-weirs & other signs'. As a result, the court had found 'it difficult in some instances to obtain a clear insight owing to direct contradictions'.<sup>275</sup>

It was not always that the evidence was contradictory, but simply that the occupation and use of an area by different groups was too complex for the court and its

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269. Submission 3.4.107, pp 67–68.

270. Submission 3.4.107(a), p 19.

271. Submission 3.4.107(a), p 15.

272. Submission 3.4.305, pp 32, 35.

273. Submission 3.4.305, pp 37–38, 43.

274. Submission 3.4.305, p 36.

275. Document A79, p 201.

simplified form of title to grapple with. In its Kopua–Pirongia–Kawhia judgment, for instance, the court admitted that ‘both sides’ occupied the block, but was not clear why they did so. The presence of Waikato on the land made things even more ‘perplexing’ for the court.<sup>276</sup>

Sometimes the evidence presented by parties to the court would also have done little to help resolve conflicts over rights. The claimants, as well as historians like Dr Ann Parsonson, have argued that the adversarial nature of the Native Land Court process distorted the evidence presented by Māori to support their claims.<sup>277</sup> That is because testimony to the court tended to focus on those things that separated groups – such as battles – rather than points of unity, such as shared whakapapa or intermarriage. Indeed, acknowledging shared interests ‘could be to a party’s disadvantage’ in court.<sup>278</sup> Dr Thomas gave the example of Hone Pumipi, a Ngāti Maniapoto chief of Mōkau, who during his testimony agreed with some aspects of the case presented by a Ngāti Tama witness. William Grace, representing Ngāti Maniapoto in the hearing, thought that Pumipi had ‘nearly cooked our case.’<sup>279</sup> The reluctance of court participants to highlight shared rights or experiences was especially noticeable in regard to the Kingitanga, which ‘had bound most of them together for more than a generation’, yet was scarcely mentioned in court lest it damage their cases.<sup>280</sup>

As Crown counsel pointed out, judges were ‘alert to issues relating to the accuracy and completeness of the evidence’ given by court participants.<sup>281</sup> Drs Husbands and Mitchell pointed to occasions where judges harshly criticised witnesses for the quality or truthfulness of their evidence.<sup>282</sup> Judge Gudgeon, for instance, criticised Ngāti Maniapoto witnesses in the Pukuweka (Rangitoto–Tuhua 2) case for their refusal to discuss certain matters:

There are so many things that the Ngati Maniapoto have not heard of, that evidence of this description is of comparatively little value. They do not say that Ngati Maringi were not slain on this land or that Ngati Kumi Kumi were not killed in revenge, they merely say they do not know.<sup>283</sup>

Gudgeon was similarly dismissive of Ngāti Maniapoto evidence concerning Kāwhia, which he considered ‘deliberately ignored’ matters of conquest that would have also required them to admit that Waikato had rights in the land concerned.<sup>284</sup>

276. Document A79, pp 201–202.

277. Document A79, p 140; Ann Parsonson, ‘Stories for land: Oral narratives in the Maori Land Court,’ in Bain Attwood and Fiona Magowan (eds), *Telling Stories: Indigenous History and Memory in Australia and New Zealand* (Crows Nest, New South Wales: Allen & Unwin, 2001), pp 22–23.

278. Document A79, p 415.

279. Document A28, p 262.

280. Document A79, p 141.

281. Submission 3.4.305, p 35.

282. Document A79, pp 414–415.

283. *Pukuweka Judgement* (1897) 29 Otorohanga MB 157; doc A79, p 413.

284. Document A79, p 140.

Judge Gudgeon's criticisms occasionally extended to the decisions made by Judge Mair. The court's failure in such instances to reach a settled view of customary interests could leave Māori vulnerable to inconsistent decision-making between different cases. One particularly prominent example concerned the court's treatment of Ngāti Raukawa over several decades. Because Ngāti Raukawa have settled their Treaty claims with the Crown, we do not have jurisdiction to make findings on these issues, but mention them here simply as context.

Ngāti Raukawa's engagement with the Native Land Court began in 1868, with the Maungatautari case. In that instance, the court found that Raukawa had abandoned the area following their conquest by Waikato. In other cases over the next two decades, the court ruled on Ngāti Raukawa interests several more times, sometimes finding that they had retained their interests and sometimes not.<sup>285</sup> As discussed in section 10.4.1, during the 1886 hearing of the Aotea–Rohe Potae block, Judge Mair's court accepted Ngāti Raukawa's claims to Wharepungua, finding that Waikato had not conquered the area as claimed. However, in 1892, when Judge Gudgeon dealt with an application to determine the relative interests of the owners of Wharepungua, he sharply criticised the court's decision in 1886. Although he could not overturn the court's earlier decision, he did define the relative interests of the owners according to his understanding of the relative strength of their claims to the land.<sup>286</sup> Of the 991 owners accepted by the court in 1886, Gudgeon considered that 572 had 'no right' to the land; he accordingly awarded them only a quarter-share each.<sup>287</sup> The power that the judge had in the Native Land Court process meant that differing opinions of this kind about the rightful ownership of land could have serious consequences for the court's Māori participants.<sup>288</sup>

No matter how much judges were able to critically analyse the evidence they were hearing, they ultimately remained 'outsiders looking in.'<sup>289</sup> We agree with the Central North Island Tribunal that the decisions that the Native Land Court was called upon to make required an 'extensive knowledge of whakapapa.'<sup>290</sup> The Ōtorohanga court's apparent struggle with reconciling the conflicting evidence it received, and then with translating that evidence into the form of title provided by the native land legislation, demonstrates that the court was poorly equipped to deal with the nature of customary tenure.

#### 10.4.3.8 *Restrictions on alienation*

When investigating title to a piece of land, the Native Land Court was charged with imposing restrictions against alienation if it was deemed necessary. These restrictions, the Te Urewera Tribunal found, were 'the most important' protection

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285. Document M25 (McKenzie), pp 3–19.

286. Document A85, pp 368–369.

287. Document A85, p 377.

288. Transcript 4.1.16, p 790 (Paul Husbands, hearing week 6, Aramiro marae, 12 September 2013).

289. Waitangi Tribunal, *Rekohu*, p 146.

290. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 484.



mechanisms offered by the Crown to ensure that Māori communities retained sufficient land. Yet in practice they were largely ineffective, undermined by a series of amendments that allowed the Crown to purchase ‘individual interests as if there were no restrictions on titles.’<sup>291</sup>

The claimants submitted that the Crown failed to honour restrictions against alienation, or to ensure Te Rohe Pōtae Māori retained sufficient land.<sup>292</sup> The Crown accepted that, ‘over time . . . the restrictions on alienation were reduced’ and that, where it then purchased land despite restrictions, ‘landowners who wished to retain their land with the restrictions on alienation intact’ faced ‘negative consequences’. However, counsel also noted that ‘Crown policy faced a dilemma: whether to treat Māori on the same basis as non-Māori and allow them to deal with their land as they wished or exercise a more protective role.’<sup>293</sup>

At the time of the initial title determination to the Aotea–Rohe Potae block in 1886, the court was required to investigate whether it was necessary to impose any restrictions on alienation on the title.<sup>294</sup> In the event, at the 1886 hearing, it was Wahanui who requested that the land encompassed by Aotea–Rohe Potae block be declared inalienable. In response, Judge Mair declared that ‘all the orders made at this sitting would contain restrictions against sale.’<sup>295</sup>

By the time the Ōtorohanga court came to defining the iwi and hapū subdivisions of the larger Rohe-Potae block, the law concerning restrictions on alienation had changed. Under section 13 of the Native Land Court Act 1886 Amendment Act 1888, the court was to investigate whether an owner had a ‘sufficiency of inalienable land for his support’. If they did not, the court could set aside such land as was necessary for their support and declare it inalienable.

We do not have complete statistics for the number of blocks that were declared inalienable by the Native Land Court during this period. According to a schedule likely produced in early 1890, as at the end of 1889 the court had declared 24 blocks inalienable in Te Rohe Pōtae, covering an area of 74,345 acres.<sup>296</sup> In addition, there is evidence that seven other blocks totalling 10,420 acres were declared inalienable between 1889 and 1890.<sup>297</sup>

We do not know how many of these blocks were restricted at the owners’ request. In general, the minute books simply note that a block was to be inalienable, but do not record whether the owners had requested such a restriction or whether it had been imposed by the court on its own initiative. Later, the owners of Kinohaku East 1 (Ototoika) and Marokopa said that they had requested that

291. Waitangi Tribunal, *Te Urewera*, vol 3, pp 1272–1273.

292. Submission 3.4.107, p 92.

293. Submission 3.4.305, pp 69–70.

294. Native Land Court Act 1880, s 36.

295. (1886) 2 Otorohanga MB 80; doc A79, p 152.

296. Document A91 (Te Rohe Potae Inquiry Research Programme document bank), pp 315–319.

297. These blocks were: Kinohaku East 1 (Ototoika, 1,347 acres), Kinohaku East 1A (Te Uira, 607 acres), Maketu (984 acres), Marokopa Reserve (123 acres), Puketarata 10 (144 acres), Te Kuiti (7,080 acres), and Te Rete (135 acres). See doc A79, pp 194–195, 422; doc A60, pp 420, 530, 1045. As discussed in section 11.4.5, a number of other blocks were also declared inalienable in the years after 1890.

restrictions against alienation be imposed on their land.<sup>298</sup> The minute books, however, give differing levels of detail for how the restrictions came to be imposed against the two blocks. When the lists of owners for Marokopa were approved in February 1889, for instance, the minute book noted that Te Aroa asked ‘that the land be made inalienable by sale but open to lease for 21 years.’<sup>299</sup> But in the case of Ototoika, the minute book only recorded that the land was to be inalienable and gave no indication of any owner request.<sup>300</sup>

The court could also remove restrictions against alienation from titles, generally upon application of a proportion of the owners. Under the 1888 Act, a majority of owners could apply to the court to remove restrictions. The court could only do so, however, if all owners agreed and if they had sufficient lands elsewhere.<sup>301</sup> The requirement for unanimous consent for the removal of restrictions was progressively reduced, first to a majority of owners in 1890, and then to one-third of the owners in 1894.<sup>302</sup>

From 1892, the Crown was also empowered to remove or ignore restrictions against alienation without any reference to the court. An amendment of that year allowed the governor to remove or declare void any court-imposed restrictions on alienation ‘for the purposes of a sale to Her Majesty.’<sup>303</sup> Then, in 1894, the Crown exempted itself entirely from court-ordered restrictions, meaning that the governor no longer had to declare a restriction void before proceeding to purchase.<sup>304</sup>

We examine the extent to which the Crown purchased land in Te Rohe Pōtae that the court had declared inalienable more fully in chapter 11. At least at first, the Crown appeared reluctant to purchase land that was subject to alienation restrictions. In 1890, for instance, Lewis directed Wilkinson that the ‘Crown could not buy in face of restrictions and unequal shares’. By mid-1892, however, the Crown had commenced purchasing in Whakairoiro 4, the parent block of which had been restricted; it completed its purchase by November. The next year, the Crown began purchasing in the restricted Te Kuiti block.<sup>305</sup> It appears that most Crown purchasing in blocks with restrictions against alienation on their titles occurred after the 1892 amendment allowing the governor to remove or declare void those restrictions. In those circumstances, the court would not have been asked to remove the restrictions.

Some owners were not happy that the Crown was purchasing despite the restrictions against alienation. In March 1894, for instance, Hotutaua Pakukohatu and 11 other ‘leading members of the tribe’ wrote directly to Premier Seddon asking for him to ‘give full effect to the restrictions’ they had placed on Kinohaku East 1 (Ototoika). Wilkinson nonetheless began purchasing interests in the block

298. Document A79, pp 250, 425–426.

299. *Marokopa Block* (1889) 5 Otorohanga MB 281.

300. *Ototoika* (1890) 9 Otorohanga MB 339.

301. The Native Land Court Act 1886 Amendment Act 1888, s 6.

302. Native Land Laws Amendment Act 1890, s 3; Native Land Court Act 1894, s 52.

303. Native Land Purchases Act 1892, s 14.

304. Native Land Court Act 1894, s 76.

305. Document A79, pp 423–424.

two months later.<sup>306</sup> Similarly, in 1899, Hoani Haeriti complained to the Native Land Court about the Crown's purchase of 1,705 acres of Marokopa, despite it having been declared inalienable on his request when the title was investigated. In response, the court simply noted that 'the Law has said that the imposing of restrictions is not to prevent the Crown from buying' and that it was the owners' choice to sell or not.<sup>307</sup>

#### **10.4.4 Defining relative interests and the commencement of Crown purchasing**

The final step in the process of individualising ownership interests in Māori land – at least for the purposes of alienation – was the definition of the relative interests of the owners in a block. Not all owners who were declared as having an interest in a block of land on a title had the same connections to the land as others. Some owners had long-standing ancestral connections to land, along with occupation rights. Other owners, meanwhile, were included on titles out of 'aroha' or through marriage.

Under the 1886 Act, the court could define relative interests when a person interested in the land applied for it to do so.<sup>308</sup> But in 1888, the law was amended so that the court was required to define relative interests when issuing an order after an investigation of title or partition.<sup>309</sup> This was the provision that was in effect for most of the period in which the Ōtorohanga court was defining the iwi and hapū subdivisions of the Aotea–Rohe Potae block.

Until 1890, however, the Ōtorohanga court under Judge Mair issued subdivision orders without also defining relative interests, leaving that process for later. Drs Husbands and Mitchell suggested that this may have been at the urging of Te Rohe Pōtae Māori, who had long expressed a wish for tribal and hapū subdivisions to be completed first. They pointed to a statement in court by Te Moerua Natanahira in 1889 in regard to the subdivision of Hauturu, who said that he wanted hapū boundaries to be completed before defining individual interests.<sup>310</sup> Crown officials noted at the time the marked reluctance of Te Rohe Pōtae Māori to go beyond hapū ownership and accede to individualisation.<sup>311</sup>

In June 1889, the Crown advised Te Rohe Pōtae Māori that it intended to start purchasing land in the district. Over the next six months, as Crown officials conferred over how they would proceed with purchasing, the issue of relative interests was discussed. Wilkinson was hesitant to purchase interests in blocks where the relative interests of the owners had not been defined. He warned that 'it would be impossible for a person unacquainted with the Native owners to form any opinion as to their relative ownership'. T W Lewis, Under-Secretary for the Native Department, shared Wilkinson's concerns but considered that, in the interim, purchase officers should operate on the assumption that all interests were equal. The

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306. Document A79, pp 250, 425.

307. Document A79, pp 425–426.

308. Native Land Court Act 1886, s 42.

309. Native Land Court Act 1886 Amendment Act 1888, s 21.

310. Document A79, p 238.

311. Document A67 (Boulton), pp 235–236; doc A55 (Marr), pp 58–59.

result, he hoped, would be that Māori owners with greater interests would realise they were being disadvantaged and would therefore go to court to seek definition of their interests.<sup>312</sup> We examine the extent to which the Crown purchased shares in land before relative interests were defined in chapter 11.

In late 1889, Lewis also conferred with the chief judge of the Native Land Court, as well as Judge Mair, concerning the Ōtorohanga court's failure to determine relative interests. Lewis reported to Wilkinson on 28 December 1889 that, as a result of these discussions, when the court resumed it would 'proceed to determine and apportion the relative interests of the owners in all of the Blocks in which orders have been made up to date'.<sup>313</sup>

At its sitting on 20 May 1890, the Ōtorohanga court announced that it would henceforth begin defining relative interests and would keep open all orders adjudicated since the passage of the 'Act of 1887' until this had been done.<sup>314</sup> The only response from the court attendees was from Te Moerua Natanahira of Ngāti Peehi and Ngāti Kanawa, who urged that hapū boundaries be defined 'before individual interests are defined'.<sup>315</sup>

During his cross-examination of Drs Husbands and Mitchell, Crown counsel stated that, on the Crown's analysis, until December 1890, when the sitting ended, Judge Mair determined relative interests for around 87 blocks, including several subdivisions of Aorangi and Kakepuku.<sup>316</sup> The Crown provided minute book evidence concerning these latter two blocks, but did not provide a list of all 87 blocks for which Judge Mair determined the relative interests. It is not clear how many were simply new subdivisions, and how many had previously been determined by the court without relative interests having been defined. Aorangi, one of the blocks cited by the Crown, was an entirely new block, first brought before the court in May 1890. The court issued orders for Aorangi proper and three subdivisions in August, with relative interests defined when the lists of owners were passed in November.<sup>317</sup> The original Kakepuku case, meanwhile, had originally been heard and determined in 1889 without the relative interests of the subdivisions being defined. When Kakepuku was partitioned in October 1890, however, the court defined the relative interests of the owners of the new subdivisions.<sup>318</sup>

In March 1891, Wilkinson complained again that the Ōtorohanga court was failing to define relative interests. He provided the Native Under-Secretary with a list of 92 blocks for which the court had made orders without having defined the

312. Document A67, pp 208–209.

313. Document A67(a) (Boulton document bank), pp 146–148; doc A67, pp 211–212.

314. *Aorangi* (1890) 9 Otorohanga MB 82–83; doc A79, p169. There does not appear to have been any amending legislation passed in 1887. The reference to the 'Act of 1887' is most likely a reference to section 21 of the Native Land Court Act 1886 Amendment Act 1888, which required the court to determine relative interests at the time of the title or partition order.

315. Document A79, p169.

316. Transcript 4.1.16, p 670 (Paul Husbands, hearing week 6, Aramiro Marae, 11 September 2013).

317. Document A60, pp 103–108; doc M32 (Crown bundle of documents for hearing week 6), pp 44–46.

318. Document A60, pp 197–205; doc M32, pp 47–52.

relative interests of the owners. Almost all of the orders he listed had been made during the court's 1888 and 1889 sittings, suggesting that the court had not been able to clear the backlog during its 1890 sitting. Wilkinson considered that, in this state, the blocks were 'practically useless as to any benefit that can be got from them either by the Native owners themselves, or anyone else who may desire to acquire them'. He charged that, in doing so, the court had 'defeated' the purpose for which it had been established: 'to change the old Native title to that of one from the Crown for the purposes of settlement'.<sup>319</sup>

Wilkinson's memorandum led to a further intervention by the Native Under-Secretary in April 1891. He first approached Native Minister Cadman, who agreed that the relative interests should be determined 'as quickly as possible'. The Under-Secretary then wrote to the chief judge of the Native Land Court, H G Seth-Smith, asking for the process to be 'hastened'. The chief judge responded that '[t]his can be arranged'.<sup>320</sup>

In the event, the Ōtorohanga court did not sit again until July 1892. When it did resume, it had a new judge – Judge Gudgeon. Defining the interests of owners of subdivisions that had already passed through the court made up a large part of his work. A *Gazette* notice in late June announced that the relative interests of 41 blocks in Te Rohe Pōtae would be defined at the court's next sitting. The listed blocks had mostly been included in Wilkinson's March 1891 memorandum.<sup>321</sup> In less than four months, the court defined owners' interests in over 100 blocks, a significant chunk of the subdivisions that had passed the court by that stage.<sup>322</sup> The court's minute books do not reveal anything about the process by which Judge Gudgeon determined the relative interests, just the speed. The lists of owners with relative interests attached appear in the minute books between the court's other work. There is no indication of how and when the interests were determined before they were recorded in the minute books.<sup>323</sup>

#### 10.4.5 Treaty analysis and findings

By the end of 1890, the Native Land Court had made orders for 254 individual blocks within the boundaries of the original Aotea–Rohe Potae block, 'representing an area of over a million and a half acres of land'.<sup>324</sup> This had all occurred in three and a half years and represented a momentous change in Te Rohe Pōtae.

The Kawhia Native Committee, in which Te Rohe Pōtae Māori had placed so much hope prior to the establishment of the court, did not play any substantive

319. Document A67(a), pp 294–298; doc A79, pp 218–219.

320. Document A79, p 219.

321. The *Gazette's* list of 41 blocks included 'all subdivisions' of Hauturu East, Hauturu West, Kinohaku East, Kinohaku West, and Tokanui. Wilkinson's list had included these subdivisions separately, somewhat accounting for the different totals.

322. Document A79, p 219.

323. For an example, see the definition of the relative interests of the owners of Mangawhero numbers 1 and 4: (1892) 13 Otorohanga MB 29–30.

324. GT Wilkinson, 'Annual Report Upon the State of the Natives in the Waikato and Thames Districts: Waikato and the King Country', 10 June 1891, AJHR, 1891, G-5, p 4.

role in the title determination process. Indeed, it struggled to remain afloat, lacking resources and established by an under-powered legislative scheme. It undertook only one investigation into the ownership of a block. Although its decision was later referred to in a court decision as evidence, this was hardly the kind of role that Te Rohe Pōtae Māori had wanted or expected for the committee in the court process.

In the absence of a greater role for the Kawhia Native Committee, out-of-court arrangements were instead the most important way for Te Rohe Pōtae Māori to influence the Native Land Court's decision-making at the title determination stage. They offered Te Rohe Pōtae Māori a chance to have a say in decisions affecting their land, as well as reducing some of the costs of the court process. As a result, large areas of land were able to pass through the Ōtorohanga court with minimal dispute.

However, out-of-court arrangements, while significant, were not the same as tribal control of the court, nor were they an endorsement of the court. We consider that out-of-court arrangements were pragmatic responses to the court system, but these responses occurred within a framework that Te Rohe Pōtae Māori fundamentally did not want.

Moreover, if parties were dissatisfied with the arrangements proposed outside of court, they could quickly return to the court instead for a final decision. The result in these instances was often a long, contentious, and costly hearing in an adversarial court process. In these circumstances, and with the stakes so high, Te Rohe Pōtae Māori had to pursue exclusive claims, focusing on what separated them from other groups rather than what tied them together. Te Rohe Pōtae Māori discovered this darker side of the court's process early, right from the initial title determination in 1886. Despite their hopes during their negotiations with the Crown for an orderly and civil process to determine title to their lands, Te Rohe Pōtae Māori were instead quickly confronted with a fiercely contested hearing and were pitted against groups they had previously regarded as allies.

There is also little evidence of the court seeking to ensure that the out-of-court arrangements it was approving reflected custom, or even that they had been reached by a fair process. This left the interests of people who were not as well versed with the process or who were not present during these discussions vulnerable.

The Crown argued that out-of-court arrangements would have mitigated the impact of several problems with aspects of the court.<sup>325</sup> Crown counsel also argued that their use 'is likely to have ensured that decisions incorporated the tikanga of the parties involved'.<sup>326</sup> That may be the case, but the problem is that we do not know. As the National Park Tribunal stated when commenting on the use of out-of-court arrangements in their inquiry district, although 'justice may have been done, it could not be clearly seen to have been done'.<sup>327</sup> We concur with the

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325. Submission 3.4.305, pp 35, 37–38.

326. Submission 3.4.305, p 43.

327. Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, pp 309–310.

Turanga Tribunal that ‘the Crown had to ensure that there was a proper and accessible system of checks’ for out-of-court arrangements.<sup>328</sup> Such a system was not in place in Te Rohe Pōtae. The Kawhia Native Committee might have been able to provide a more transparent process alongside the court, but, as already discussed, it was not involved in the title determination process.

When the parties could not reach agreement outside of court, the Native Land Court was poorly prepared to undertake the task of determining customary ownership. On one hand, it was required to reach decisions ‘according to Native custom or usage’. On the other hand, it was required to fix boundaries and to allocate interests to owners on an individual basis when such boundaries and ownership did not exist under custom. Strangers to the district, the judge and assessor had to rely on the complex, and sometimes very different, customary evidence presented by the parties. The court often struggled with the task, even with the assistance of the assessors.

Granted, Judge Mair seems to have been keen to accommodate Māori by granting adjournments for harvest season, and to move the court’s location to be closer to the relevant owners. These kinds of decision lessened the impact that the court’s operations had on its Māori participants and helped avoid some of the negative impacts that had been associated with its sittings in other districts. Judge Mair was also willing to adopt the preferred approach of the Te Rohe Pōtae Māori leadership to the subdivision of the Rohe Potae block, starting with the tribal subdivisions, then proceeding to the hapū and individual subdivisions. This orderly approach to the subdivision of the block was in stark contrast to the court’s normal approach and testament to the influence of the tribal leaders at the time.

Alongside his conciliatory approach to court proceedings, Judge Mair seems to have had other strong attributes, such as being fluent in te reo Māori. Nonetheless, he still appears to have been poorly equipped to deal with the complexities of customary tenure that existed in Te Rohe Pōtae. It seems that, irrespective of the personal qualities of the judges, the serious deficiencies in the structure of the court made it difficult, if not impossible, for them to undertake their task successfully.

While Te Rohe Pōtae Māori were accommodated under the court’s process, they were still not in control of it. The judge and the court remained the ultimate decision maker, with the power to dismiss Te Rohe Pōtae Māori concerns, to substitute its own decisions, and proceed regardless. For instance, despite the reluctance of Te Rohe Pōtae Māori to furnish lists of owners or to proceed to subdividing the Rohe Potae block, Judge Mair’s insistence that they do so ultimately carried the day. There were clear limits to the extent to which judges were willing – or, indeed, able under the native land legislation – to accommodate the wishes of the court’s Māori participants.

There were also occasions when it appears that the Crown was able to influence the court’s proceedings. Restrictions on alienation were one area where the wishes of Te Rohe Pōtae Māori appear to have eventually been thwarted by the Crown’s

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328. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p 451.

purchasing imperatives. Imposed at the time of title determination, they were an important protection for owners. We do not know how frequently owners were requesting restrictions on alienation relative to the court deciding to impose them, though we know that owners did request them at least sometimes. Whoever was responsible for their imposition, however, the Crown steadily weakened the provisions allowing restrictions to be removed.<sup>329</sup> Eventually, it amended the law so that its own purchases would not be impeded by the restrictions at all, and did so at a time when under pre-emption it was the only purchaser.<sup>330</sup> As the court told one owner in 1898, ‘the Law has said that the imposing of restrictions is not to prevent the Crown from buying’<sup>331</sup> It was, in other words, made legal for the Crown to buy despite its Treaty duty of active protection.

Similarly, the court’s announcement in 1890 that it would begin defining the relative interests of owners in Te Rohe Pōtae seems to have been inspired at least in part by pressure from Crown officials for it to do so. After an 1888 amendment, the court was legally required to define relative interests when issuing an order after a title determination or partition. The reasons behind the court’s failure to define relative interests up to 1890 are unclear. There is evidence in at least one case that owners were hesitant to define relative interests before completing the hapū subdivisions, and we know that, in general, Te Rohe Pōtae Māori were reluctant to go beyond hapū subdivisions. In that context, it is possible that Judge Mair had been acceding to the wishes of Te Rohe Pōtae Māori in not defining relative interests, but we cannot be certain.

However, with ownership interests undefined, the Crown could not safely commence purchasing. Crown officials were unhappy with this situation and approached judges of the Native Land Court on two occasions urging that the Ōtorohanga court get on with what it regarded as urgent work.<sup>332</sup> An initial intervention at the end of 1889 resulted in the court’s May 1890 announcement. However, rather than clear the backlog of blocks that had already passed through the court, the court under Judge Mair apparently focused on defining the relative interests of blocks passing the court from that time on. This led to a further intervention in March 1891, with the Under-Secretary for the Native Department asking the Native Minister and the chief judge for the process to be ‘hastened’. When the court resumed sitting in 1892 under Judge Gudgeon, it dedicated a significant part of its time that year to defining relative interests, and did so at speed.

We consider that these examples demonstrate an inappropriate level of Crown influence over the court. Moreover, the Crown’s ability to intervene in the court process and influence its activities also demonstrates a broader imbalance between the Crown and Te Rohe Pōtae Māori in the Native Land Court system. The Crown had an inherent advantage: if it did not like something about the way that the court was doing business, it could simply amend the native land legislation.

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329. Document A79, pp 422–423.

330. Native Land Court Act 1894, s76.

331. Document A79, pp 425–426.

332. Document A67, pp 211–212; doc A79, p 219.



Thus right from the start of the Ōtorohanga court's operations, there was a gap between what Te Rohe Pōtae Māori expected of the court process and what was required by law. The legislative regime created a court that could ultimately usurp Māori control over their lands, and undermine their desire to control their title determination process. As the Taranaki Tribunal noted, the court could 'decide for Maori that which Maori should and could have decided for themselves'.<sup>333</sup> This was a point of concern for Te Rohe Pōtae Māori and they raised this concern numerous times in the years before the court's entry into their rohe, to no avail.

Indeed, in practice the court typically operated in a manner that demonstrated that Te Rohe Pōtae Māori were best placed to be making decisions about their land. As shown above, the court effectively rubber stamped many out-of-court agreements at the title determination stage.

This all suggests that it would have been simpler and more Treaty-compliant to provide in legislation for Te Rohe Pōtae Māori input and control into the title determination via the Kawhia Native Committee. Te Rohe Pōtae Māori had expected, based on the commitments given by the Crown during their negotiations, that the Kawhia Native Committee would be able to play a role in title determination beyond what was provided for in the Native Committees Act 1883.

As the Crown has conceded, despite Ballance's commitments in February 1885 to give native committees a greater role in title determination as well as a measure of self-governance, the Crown made no substantive amendments to the native committee regime. We welcome the Crown's concession on this point. However, we consider that the concession does not adequately express the gravity of the Crown's breach in this respect. The Crown's failure to follow through with its commitment to reform the native committee legislation represented a cynical disregard for the demand of Te Rohe Pōtae Māori for *mana whakahaere*.

As we found in chapter 8, in failing to empower the committees as promised, the Crown breached its duty of good faith. In asking to determine title themselves, Te Rohe Pōtae Māori had been requesting no more than what the Treaty guaranteed them. The Crown's failure to provide for Te Rohe Pōtae Māori to manage land titling as they wished breached its obligation to act in accordance with their *tino rangatiratanga*, and breached the principle of autonomy.

With the Kawhia Native Committee marginalised and absent from the court process, Te Rohe Pōtae Māori were left to manage the title determination process as best they could. Although the Ōtorohanga court presided over by Judge Mair made some accommodations for Te Rohe Pōtae Māori in the court process, the deeper legal and structural deficiencies of the court process ultimately prevented them from playing anywhere near the role they had hoped for. We find that, having imposed the court on Te Rohe Pōtae Māori against their express wishes, the Crown's failure to then provide them with a substantial, formal role in the court's title determination process was in breach of the express terms of article 2 of the Treaty and its guarantee of *tino rangatiratanga*. It was also in breach of the principle of partnership and the duty to actively protect Māori rights in land.

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333. Waitangi Tribunal, *The Taranaki Report*, p 282.

Finally, it is clear to us that many of the inadequacies of the court during this period were caused by the native land legislation and the form of title it was charged with imposing. Both Te Rohe Pōtae Māori and the court found it difficult to account for the complexities of customary ownership within the confines of the Crown's native title system. As discussed in the next section, however, the consequences of native land legislation and the title awarded would have an impact well beyond the court's process.

### **10.5 WHAT WAS THE EFFECT OF SUBSEQUENT PARTITION AND SUCCESSION ON TE ROHE PŌTAE MĀORI LANDOWNERS?**

By the end of 1890, there were some ominous signs for Te Rohe Pōtae Māori. Judge Mair was already noting in 1889 the vast scale of partitioning that was occurring within Te Rohe Pōtae. There was the looming threat of Crown purchasing, which by the end of 1890 was slowly beginning. Te Rohe Pōtae Māori leaders were also beginning to discover that, once every owner had their interest in a block defined, their influence only went so far.

Throughout the 1890s, the consequences of the form of title awarded by the court became clear. Te Rohe Pōtae Māori landholdings were made increasingly uncertain, the result of not only the court process and native land title, but also of the commencement of Crown purchasing in the district. Māori attempts to combat this uncertainty – most often by seeking further partition – appear to have only accentuated the issues they were facing.

As outlined in section 10.2.3, the impacts of native land titles on Te Rohe Pōtae Māori landholdings and society were a major issue for the parties. The claimants alleged that those titles 'seriously undermined the tribal structures of Te Rohe Pōtae Māori whanau, hapū and iwi', while also making it much easier for owners to sell land than to retain or develop it.<sup>334</sup> The Crown did not deny that native land title had negative impacts for Te Rohe Pōtae Māori, including the undermining of tribal structures. However, the Crown also argued that individualisation,

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334. Submission 3.4.107, pp 41, 99. A large number of claims raise issues concerning the impacts of individualisation and native land title on Te Rohe Pōtae Māori landholdings, including: Wai 440 (submission 3.4.198); Wai 472, Wai 847, Wai 986, Wai 993, Wai 1015, Wai 1016, Wai 1054, Wai 1058, Wai 1095, Wai 1115, Wai 1437, Wai 1586, Wai 1608, Wai 1612, Wai 1965, Wai 2120, Wai 2335 (submission 3.4.140); Wai 1469, Wai 2291 (submission 3.4.228); Wai 1593 (submission 3.4.230); Wai 2274 (submission 3.4.125); Wai 2313, Wai 2314, Wai 586, Wai 753, Wai 1396, Wai 1585, Wai 2020, Wai 2090 (submission 3.4.204); Wai 1386, Wai 1762, Wai 1500 (submission 3.4.160); Wai 1806 (claim 1.1.177); Wai 1824 (submission 3.4.181); Wai 2117 (submission 3.4.161); Wai 729 (submission 3.4.240); Wai 762 (submission 3.4.170); Wai 836 (submission 3.4.131); Wai 928 (submission 3.4.175); Wai 1255 (submission 3.4.199); Wai 1455 (submission 3.4.156); Wai 1640 (submission 3.4.191); Wai 366, Wai 1064 (submission 3.4.205); Wai 987 (submission 3.4.167); Wai 1230 (submission 3.4.168); Wai 1447 (submission 3.4.187); Wai 1962 (submission 3.4.172); Wai 656 (submission 3.4.241); Wai 1112, Wai 1113, Wai 1439, Wai 2351, Wai 2353 (submission 3.4.226); Wai 1499 (submission 3.4.171); Wai 1588, Wai 1589, Wai 1590, Wai 1591 (submission 3.4.143); Wai 1611 (submission 3.4.152); Wai 1898 (submission 3.4.200); Wai 1975 (submission 3.4.201); Wai 1978 (submission 3.4.232); Wai 2087 (submission 3.4.218); Wai 2273 (submission 3.4.141).

fragmentation, alienation, and partition were not contrary to Treaty principles, and that clothing land in native land title ‘did not lead inevitably to . . . alienation.’<sup>335</sup>

The section begins with an overview of the court’s activities and process between 1892 and 1907. It then moves on to consider the justification for and impacts of partitioning, and the impacts of succession on Māori land ownership in Te Rohe Pōtae. Finally, the section considers the impact of Native Land Court processes and title on economic development and tribal society.

### **10.5.1 Overview: the court and native land title in Te Rohe Pōtae, 1892–1907**

From the early 1890s, at the same time as the court continued its work associated with the original determination of title and ownership to the Rohe Potae block, its range of activities also expanded. In particular, as its purchasing programme gained pace throughout the 1890s, the Crown became an active – and at times, the dominant – participant in the court process. Alongside this, the court also became increasingly concerned with the administration of blocks that had already passed through the court.

#### **10.5.1.1 Continued subdivision**

In some respects, the court’s work during this period continued largely as it had in its first few years of existence. Subdivision of the iwi and hapū subdivisions, for instance, continued for the rest of the 1890s. In 1892, it determined the subdivisions of Puketarata, Te Taharoa, Kawhia, Pirongia West, and Kinohaku West. It then continued in 1896 with Karuotewhenua B and Mangawhero 2, and the following year with Pukeroa Hangatiki, Otorohanga 1, Hauturu East 1, and Kakepuku 1. In August 1897, the subdivision of the enormous Rangitoto–Tuhua block finally made it to court. It took a year for the court to complete the initial partition; the case then resumed in 1900 to hear evidence on ownership lists and the boundaries of 14 subdivisions. Some subdivisions were fiercely contested, such as Taraunui, Whatitokarua, and Rangitoto, while others – such as Pukuweka, Mataraiia, and Oturoa Rereahu – moved through the court relatively rapidly, their fate already having been agreed outside of court.<sup>336</sup>

#### **10.5.1.2 Increasing Crown presence**

In other respects, the court’s activity changed quite drastically during this period. After the Crown commenced purchasing in Te Rohe Pōtae in 1890, and particularly from 1894 on, an increasing amount of the court’s time was taken up with processing the Crown’s land purchases. On application from the Crown, the court defined and partitioned out the Crown’s interests in blocks, and processed and enforced applications for survey charging orders and liens.<sup>337</sup> In March and April 1894, for instance, Wilkinson for the first time brought 40 blocks before

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335. Submission 3.4.305, pp 30–31, 77, 82; transcript 4.1.24(a), pp 112–113 (Crown counsel, hearing week 17, James Cook Hotel Grand Chancellor, Wellington, 11 February 2015).

336. Document A79, pp 283–284.

337. Document A79, p 283.

the court seeking the definition of the Crown's interests in them. The interests it had acquired represented 124,738.25 acres of Te Rohe Pōtae land. According to Drs Husbands and Mitchell, this process was repeated 'at least 300 times between March 1894 and December 1901', with the result that the Crown's interests became real, connected to 'a tangible piece of land with its own name and boundaries'. Non-sellers' interests, on the other hand, 'continued to exist in the twilight zone of shares which were neither under communal ownership nor set out in defined parcels of land on the ground'.<sup>338</sup>

Drs Husbands and Mitchell argued that, during this period, the increased focus on the Crown's purchasing programme not only 'underlined a change in orientation of the Otorohanga Court', but also 'signified a major shift in the balance of power and influence within the Court itself'. With the work of title determination largely – but not yet completely – finished, the principal actors in the court changed. Rather than Te Rohe Pōtae Māori rangatira or kaiwhakahaere featuring significantly in the court, George Wilkinson, in his role as the Crown's land purchase officer, 'began to increasingly occupy centre stage'. He bought the shares from owners, verified signatures, calculated how much land the shares represented, calculated survey costs owing, negotiated the division of the land with the non-sellers, and then appeared in court to apply for the awards to the Crown. In doing so, he 'was able to ensure that the overwhelming majority of his purchases passed through the Court with little or no trouble'.<sup>339</sup>

As the Crown's involvement in the court process increased, there is evidence that the distinctions between the court and the Crown occasionally blurred. Drs Husbands and Mitchell pointed to some obvious, but isolated, cases. For instance, in February 1892 Wilkinson temporarily acted as the court's interpreter, while in March 1894 his home was used as a court venue when its usual location was being used as a polling booth. We accept the Crown's submission that these were 'practicable and limited solutions to one-off situations rather than . . . examples of widespread and enduring systemic failings'.<sup>340</sup> But there were other more systemic connections between the court and the Crown. Once Crown purchasing commenced, land purchase officers and the registrar of the court communicated frequently, with officials seeking information about the status of land that the Crown wanted to purchase. Court officers were also commonly copied into minutes exchanged between various Crown officials.<sup>341</sup>

Drs Husbands and Mitchell also pointed to two occasions where judges were directly involved in discussions with Crown officials. In one minute about the Rangitoto–Tuhua 4 (Horokio) sale block, Chief Land Purchase Officer Sheridan wrote to the chief judge of the court about extending the block. The chief judge then instructed the registrar to 'arrange to have the matter brought before the

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338. Document A79, pp 251–252.

339. Document A79, pp 252–254.

340. Submission 3.4.305, pp 48–50.

341. Document A79, pp 390–392.

Court whilst Judge Mair is in the district'. In another minute about Kinohaku East 1B, Patrick Sheridan, the head of the Native Land Purchase Department, asked Judge Gudgeon to clarify whether the Crown could purchase without individual interests being further defined.<sup>342</sup>

In addition, during the cross-examination of Drs Husbands and Mitchell, counsel for Wai 457, Wai 535, and Wai 1469 questioned the witnesses about a Crown purchase deed for interests in Mangauika that had been attested by Judge Mair at the same time as the block had been before the court.<sup>343</sup> They subsequently provided further evidence on this point, noting that Judge Mair had acted as a witness to the sale of 13 individual interests in Mangauika during 1890. On 10 occasions, he had done so when the block was before the court in some fashion. On 21 December 1890, for instance, Judge Mair acted as witness for six sellers. The next day, the court confirmed the lists of owners for Mangauika and Mangauika 1. Drs Husbands and Mitchell further noted that 'all thirteen of the sales witnessed by Judge Mair were made before the extent of individual interests had been formally determined by the Court'. He also served as an attesting witness for the sale of four interests in Puketarata in 1890, though in only one instance was there a direct overlap with the attestation and the block being before the court.<sup>344</sup>

The claimants did not submit directly on this latter evidence, but on the basis of the evidence presented in Drs Husbands and Mitchell's main report concluded that 'It is not difficult to conclude that the Judges of the Native Land Court were strongly influenced by the Crown.'<sup>345</sup> In response to the examples of Crown officials contacting judges directly, the Crown emphasised that '[the] number of examples before the Tribunal is small' and submitted that judges had administrative as well as judicial roles, so needed to engage with officials. Crown counsel further submitted that 'the evidence does not suggest that the Judges were involved in any particular impropriety' and that the matters they were called on to deal with would have likely come before the court anyway.<sup>346</sup>

We disagree. Beyond any question of judicial impropriety, it is clear that Crown officials should not have been involving judges in these kinds of discussion. In both examples cited above, the Crown's requests could – and should – have been conveyed through the registrar. Similarly, although it may have been convenient for Judge Mair to act as a witness to the Crown's purchase of interests in Mangauika, it was clearly improper for him to have done so while the block was before the court. We consider that this kind of conduct merely demonstrates that the Native Land Court and its judges were intimately associated with the Crown and the latter relied upon it and the native land legislation to impose its colonial agenda on Māori.

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342. Document A79, pp 392–393.

343. Transcript 4.1.16, pp 856–865 (Paul Husbands and James Mitchell, hearing week 6, Aramiro marae, 12 September 2013).

344. Document A79(g), pp 17–20.

345. Submission 3.4.107, p 86.

346. Submission 3.4.305, pp 48–49.

**10.5.1.3 Administration of existing blocks**

From the early 1890s, the court also dedicated a significant amount of time to the administration of blocks that had already passed the court. The processing of succession orders was particularly dominant and in some years consumed most of the court's time. In 1894, for instance, 29 of the court's 63 sitting days were spent dealing with successions, while in 1900 it spent 29 of its 41 sitting days processing successions. Successions became an especially significant part of the court's work after 1900 when Crown purchasing declined.<sup>347</sup> The court also had to administer the interests of minors, appointing and replacing their trustees, certifying when they had attained the age of 21, and transferring money to trustees for land sold on a minor's behalf.<sup>348</sup>

**10.5.1.4 Law changes and the provision for incorporations**

The law governing Māori land and the Native Land Court continued to be amended frequently. Two particularly significant amendments were introduced by the Native Land Court Act 1894. First, the Native Appellate Court was established, replacing the previous system of rehearings. This will be discussed in more detail in section 10.7.2.1.2.

Secondly, section 122 of the 1894 Act made provision for incorporations, allowing the court to 'constitute the owners . . . a body corporate', with control vested in a committee. The committee was given the power to alienate land, with proceeds going to the Public Trustee for disbursement, following the payment of expenses. Indeed, this incorporation model seems to have had alienation as its primary focus – committees, for example, could not at first raise finance or generate income.<sup>349</sup>

In Te Rohe Pōtae, it appears that only one block, Mangaora, was constituted as an incorporation under the 1894 Act. The experience seems to have been problematic. Before incorporating, the owners had already entered a lease agreement. Having incorporated, however, the Act required that the block be put up for public auction rather than give effect to the existing lease. In addition, the owners had difficulty gaining finance to meet the survey costs necessary for a final title order. Although a committee of owners was eventually constituted, the lease does not appear to have been confirmed.<sup>350</sup> John Ormsby was later reported as describing the attempt to incorporate at Mangaora as 'an expensive and dismal failure . . . on account of the defects in the law, which the Government would not remedy'. He did not elaborate on what those defects were.<sup>351</sup>

Subsequent amendments to the law made it easier for incorporations to gain financing, and the Native Land Act 1909 expanded the focus of the incorporation provisions to include development and farm management. Nonetheless, other than Rangitoto–Tuhua 66A, which was incorporated in 1910, it appears that

347. Document A79, p 286.

348. Document A79, pp 286–287.

349. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p 503.

350. Document A79, pp 493–494.

351. 'Settlement of Native Lands', *New Zealand Herald*, 21 June 1906, p 5; doc A146 (Hearn), p 431.

very few incorporations were established in Te Rohe Pōtae before 1951.<sup>352</sup> We will explore the use of incorporations in Te Rohe Pōtae in the twentieth century further in a future chapter of our report.

The Central North Island Tribunal considered the 1894 provisions for incorporations in some detail. In that inquiry district, as in this one, only one incorporation was created under the 1894 provisions. They attributed this limited uptake to the perceived difficulties at the time in establishing incorporations, ongoing legal uncertainty about their powers, and the lack of benefits offered by the incorporation model. The Tribunal also noted the broader context within which the incorporation provisions were introduced, with Māori still seeking greater control of their land and abolition of the Native Land Court entirely. The Tribunal considered that, '[in] those circumstances, the incorporation provisions of the 1894 Act were so deficient as to render them useless as a vehicle for the collective tribal management of tribal lands.'<sup>353</sup>

### 10.5.1.5 Judges and assessors

After a period of more than a year when the court did not sit in Te Rohe Pōtae, it resumed sitting at Ōtorohanga in January 1892 with a new judge – Walter Gudgeon – presiding. Like Judge Mair, Judge Gudgeon had a military background. He had been involved in the campaigns against Titokowaru and Te Kooti, and led an Armed Constabulary force in Parihaka. He was also known as an 'excellent Maori scholar' and fluent speaker of te reo Māori, as well as a co-founder of the Polynesian Society.<sup>354</sup>

In all, 11 different judges presided over the Native Land Court in Te Rohe Pōtae between 1892 and 1907.<sup>355</sup> After presiding during the critical period from 1886 through to 1891, Judge Mair returned from 1900 to 1904, and again in 1907. After taking over from Mair for the 1892 sitting, Judge Gudgeon presided again from 1897 to 1898 when the court finally began the initial partition of the large Rangitoto–Tuhua block.<sup>356</sup>

According to Drs Husbands and Mitchell, the men who served as judges on the Ōtorohanga court were '[o]ften conversant in Te Reo Maori and sometimes deeply knowledgeable about aspects of Maori society and culture.'<sup>357</sup> There was no general requirement for judges of the Native Land Court to have legal training.<sup>358</sup> The evi-

352. Document A146, pp 431–433.

353. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 379–381, vol 2, pp 778–781.

354. Document A79, p 234.

355. Document A79, p 388. These judges were: William Gilbert Mair (1886–91, 1900–04, 1907), Walter Edward Gudgeon (1892, 1897–98), Laughlin O'Brien (1894), Spencer William von Sturmer (1894), David Scannell (1894, 1900), Henry Dunbar Johnson (1896), Herbert Frank Edger (1899, 1902, 1907), George Thomas Wilkinson (1904–05), Jackson Palmer (1906), Robert Campbell Sim (1906), and Michael Gilfedder (1907).

356. Document A79, p 388.

357. Document A79, p 390.

358. The exception was for the role of chief judge of the Native Land Court, who from 1894 had to be 'a barrister or solicitor of the Supreme Court of New Zealand of not less than seven years standing'. See Native Land Court Act 1894, s 6; submission 3.4.305, p 46.

dence indicates that only three of the judges to preside in Te Rohe Pōtae were formally qualified as lawyers: Herbert Frank Edger, Michael Gilfedder, and Jackson Palmer.<sup>359</sup> Instead, most had previously worked for the colonial government in some capacity, usually as soldiers or as officials in the Native Department. Many had been officials involved in the Crown's purchasing programme in some way. George Wilkinson, for example, was well known to Te Rohe Pōtae Māori by the time he became a judge of the Native Land Court in 1904, having been the Crown's purchasing officer in the district in the preceding decades.<sup>360</sup> Some other judges had previously worked as surveyors or in the Land Purchase Department.<sup>361</sup>

Each judge brought their own manner of doing things to the court's proceedings and decision-making. The court under Judge Gudgeon, for instance, was very different to Judge Mair's court. Drs Husbands and Mitchell described the 'blunt efficiency' with which he undertook his duties. In 1892, as well as continuing the court's subdivision work, he took on two additional and significant tasks – the definition of relative interests (as discussed in section 10.4.4) and the levying of survey liens (see section 10.6.2). Contentious cases 'that might have previously taken weeks were dealt with in a matter of days', and judgments were rendered similarly quickly.<sup>362</sup> As discussed in section 10.4.3.7, the differing styles of the court's judges could also extend into their decision-making, leaving Māori vulnerable to inconsistencies between different cases.

Judge Gudgeon was also rather more blunt in tone than Judge Mair had been. He seems to have had a particular antipathy towards Tāwhiao and the Kīngitanga, which was occasionally reflected in his comments in court. In 1892, for instance, he scolded Kīngitanga-affiliated Waikato claimants for having failed to behave 'in a sensible manner' by not appearing before the court during the original Aotea-Rohe Potae investigation in 1886. They were, he declared, 'now paying the penalty of their own foolishness' and sharing a block – Te Awaroa – that they were likely solely entitled to.<sup>363</sup> On other occasions during his second term in Ōtorohanga, he referred to Tāwhiao as 'that wretched object the Maori King' and noted that it was 'useless to wait for the Ngati Rora who can never be depended upon since they are half Hauhaus and wholly Kingite.'<sup>364</sup> On the other hand, Gudgeon's ire was also occasionally directed to the Crown, as in the case of a survey error relating to the Waiaraia, Umukaimata, and Mohakatino Paraninihi 1 blocks (see section 10.7.2.3).<sup>365</sup>

It is possible that Mair and Gudgeon's first terms on the Ōtorohanga court ended because they had displeased Crown officials. As detailed in section 10.4.4, the Ōtorohanga court's failure under Judge Mair to define relative interests had been a source of considerable frustration for the Crown's purchasing ambitions in Te

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359. Document A79, p 389; submission 3.4.305, p 46.

360. Document A79, p 390.

361. Document A79, pp 389-390.

362. Document A79, pp 234-235.

363. Document A79, pp 145-146.

364. Document A79, p 382.

365. Document A79, pp 394-395.



Rohe Pōtae. He was one of five judges whose positions were disestablished in April 1891 by the Liberal Government, ostensibly for a retrenchment and reorganisation of the court.<sup>366</sup> Judge Gudgeon's entreaties on behalf of the owners of Umukaimata and Mohakatino Paraninihi 1, meanwhile, reputedly inspired John McKenzie, the Minister of Lands and Agriculture, to declare that 'I'm damned if he (Gudgeon) will go back to that place (Otorohanga).'<sup>367</sup> Unlike Mair, Gudgeon's position was not disestablished; rather, he was moved to another district. In the event, Mair was reappointed as a judge in 1894, and both he and Gudgeon eventually returned to Ōtorohanga. Ultimately, we do not have sufficient evidence to draw any firm conclusions about the seemingly abrupt ends to Mair and Gudgeon's first terms on the Ōtorohanga court.

Seven Māori assessors served on the Ōtorohanga court between 1890 and 1907, while three served either on rehearings or on the appellate court during the same period.<sup>368</sup> The longest serving assessor during this period was Pirimi Mataiawhea of Te Arawa, who served between 1892 and 1893, and again from July 1897 until the close of the court's 1905 session.<sup>369</sup> He was a leader of Te Arawa who, like other assessors on the Ōtorohanga court before him, had fought for 'loyalist' forces during the wars of the 1860s and 1870s.<sup>370</sup>

The importance of assessors in the court's processes and decision-making declined during this period. Until 1894, the assessor's assent was still required for a decision of the court to be valid. The Native Land Court Act 1894, however, dropped this requirement, meaning that the assessor was now there purely to assist the judge.<sup>371</sup> The role of the assessor was further diminished in 1896, after which an assessor was no longer required for the hearing of succession cases.<sup>372</sup>

From 1892 on, the extent of involvement by the assessors in the court's work is less clear than in earlier years. The assessors continued to play a mediation role and to check witness testimony against evidence given in earlier cases. Faced with a boycott of the court by Ngāti Maniapoto in 1896, for instance, the assessor was tasked with explaining to the parties why the court's business should proceed.<sup>373</sup> Their role during hearings, however, seems to have diminished. Drs Husbands and Mitchell analysed nine particularly contentious subdivision cases for the Rangitoto–Tuhua block heard between August 1897 and July 1898, in which the parties disputed the histories of occupation of the blocks concerned. The assessors should have been well placed to question the witnesses on these issues. However,

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366. Document A79, p 233.

367. Document A79, p 395.

368. Document A79, pp 448–449. The assessors to serve on the Native Land Court were Paratene Ngata (1886–89), Nikorima Poutotara (1890, 1894), Pirimi Mataiawhea (1892–93, 1897–1905), Karaka Tarawhiti (1894), Reha Aperahama (1896), Mita Taupopoki (1896), and Te Karepu Haerehuka (1906–07). Tata Tamati was involved in rehearings at Kāwhia and Ōtorohanga in 1894. On the Native Appellate Court, the assessors were Nikorima Poutotara (1900) and Poata Mereamo (1904–05).

369. Document A79, pp 396, 448.

370. Document A79, p 396.

371. Native Land Court Act 1894, s18.

372. Native Land Laws Amendment Act 1896, s6.

373. Document A79, pp 402–403.

the historians found that while the assessors were engaged during court hearings, they no longer seemed to play a central or pivotal role. In the nine cases, the assessor questioned 11 of the total 54 witnesses called, while the judge examined 29 of the witnesses.<sup>374</sup> The assessors, then, took ‘a supporting rather than a leading role’ during this period, perhaps reflecting their diminishing powers under native land legislation.<sup>375</sup>

#### **10.5.1.6 Timing, notification, and location of hearings**

On average, the court sat for around 90 days each year between 1892 and 1907, though some years saw very little activity while others were much busier. In 1892, for instance, the court opened on 250 days, while the next year it opened for just six.<sup>376</sup> The Native Land Court therefore had the potential to be a significant presence in – and disruption to – the lives of Te Rohe Pōtae Māori.

During his first term on the Ōtorohanga court, Judge Mair had been willing to accommodate the wishes of Māori around harvest time and adjourn sittings on request.<sup>377</sup> After his departure, however, the court appears to have frequently sat during harvest season. Drs Husbands and Mitchell recorded that:

The Court sat through August, September, October and November in 1892 and 1897, and August through October in 1896. It was in session in the early part of the year, from January until at least the end of March in 1892, 1898, 1899, 1901, 1904, 1905 and 1907. In 1898 the Court sat more or less continuously in Otorohanga from 11 January to 14 July before relocating to Te Kuiti from 22 July until 20 August. In 1899, it worked largely without interruption from the middle of January until the beginning of July, breaking only to relocate between Te Kuiti and Kawhia and then Kawhia and Otorohanga.<sup>378</sup>

It is unclear whether Te Rohe Pōtae Māori were requesting adjournments for cultivations throughout this period, or how the court responded to their requests. On at least a few occasions, Māori were able to gain adjournments for harvest season. They did so either by request or, in the case of a sitting in 1901, by simply not turning up to court.<sup>379</sup>

Under the provisions of the various Native Land Acts that applied during the period covered by this chapter, the chief judge was generally required to give notice of the receipt of an application ‘in such manner as appears to him best calculated to give [it] proper publicity’. Such notice was also to include the ‘day and place when and where the Court will sit for hearing the application.’<sup>380</sup> According to the

374. Document A79, pp 399–401.

375. Document A79, p 403.

376. Document A79, p 333.

377. Document A79, pp 174–175.

378. Document A79, p 299.

379. Document A79, pp 299–300.

380. As, for example, in the Native Land Court Act 1880, ss 20–21.

general rules of the court, notices were to be inserted in both the *Kahiti o Niu Tireni* in te reo Māori and in the *Gazette* in English. Copies were also required to be sent to a variety of interested parties, including the resident magistrates, native assessors, claimants, counter-claimants, objectors, and other relevant parties.<sup>381</sup>

There were no guidelines for how much time was considered adequate notice of a hearing. In practice, the amount of time between the publication of a notice and the advertised beginning of a hearing in Te Rohe Pōtae could vary considerably. In the period between 1892 and 1902, the amount of time given as notice ranged from 5 days to 43 days.<sup>382</sup> The median amount of notice given was 19 days.<sup>383</sup> Sometimes very little notice was given: on seven occasions during the same period, the court gave eight days or less notice before the beginning of sittings. On most of these occasions, a relatively small number of applications were gazetted, but this was not always the case. The 8 March 1894 notice, for example, was published just five days before the commencement of the advertised sitting on 13 March, but included 174 applications.<sup>384</sup> We did not receive any evidence about how long it took for notices to be physically distributed in Te Rohe Pōtae. This would have had an impact on the effectiveness of the notices, particularly where very little notice was given.

Even where adequate notice was given of a court sitting, there were no guarantees that the sitting would begin on the date advertised. At one extreme, for example, two Kinohaku West cases advertised to be heard in Te Kūiti on 19 August 1898 were not heard until at least March 1899.<sup>385</sup> The court had been adjourned a week earlier due to the absence of Judge Gudgeon. Despite this, on 19 August there was still 'a large attendance of natives and other parties interested' at court due to the *Gazette* notice.<sup>386</sup> The court was adjourned until early September, perhaps the result of a request from claimants for an adjournment to allow them to tend to their cultivations. In the end, the court does not appear to have sat again until mid-January 1899; the reasons for this delay are unclear.<sup>387</sup> It then had to deal with a backlog of previously gazetted cases before moving on to the cases advertised in July and August of the previous year.

The sheer number of applications advertised in each notice could have a significant impact on the actual start date of court hearings. A hearing originally scheduled to begin in late April 1897 did not begin until mid-July – a delay of 81 days. The notice for the hearing advertised 795 cases. Similarly, a hearing of 421 cases scheduled to begin mid-February 1902 did not commence until late June, a delay of 126 days.<sup>388</sup>

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381. Native Land Court Rules 1882.

382. Document A79, pp 447–448.

383. Document A79, p 373.

384. Document A79, pp 447–448.

385. Document A79, p 447.

386. (1898) 33 Otorohanga MB 374.

387. The claimants had made a request for an adjournment to allow them to tend to their crops, but it is unclear if this request was acted on by the court or if the adjournment until September was the result of other factors; see (1898) 33 Otorohanga MB 374–375.

388. Document A79, pp 447–448.

The court in Te Rohe Pōtae continued to sit most often in Ōtorohanga. But as the nature of the court's business changed from the 1890s on, the court occasionally sat in other locations when it was more convenient to do so. These locations included Kāwhia, Kihikihi, Te Kūiti, and Taumarunui. Between 1892 and 1907, the court spent 1,052 days sitting in Ōtorohanga and 381 days sitting on other locations.<sup>389</sup>

It is unclear if Māori were usually involved in the decision to move the location of court sittings. On at least some occasions, Māori successfully petitioned the court to have their cases moved to more accessible locations. In 1892, for instance, a series of Kawhia cases that had been gazetted for Ōtorohanga were moved to Kāwhia on the request of Māori.<sup>390</sup> The same happened in 1899 for Kawhia cases gazetted for Te Kūiti.<sup>391</sup>

### 10.5.2 Partitioning and title fragmentation

When the initial hapū subdivisions were made in Te Rohe Pōtae, the immediate outcome was typically a large block with a significant number of individual owners. Each had an undivided interest that was not marked out on the ground. There was, as already discussed, no provision for communal management of the land or of these interests before 1894. The incorporation model, introduced in that year's Native Land Court Act, did not prove attractive to Te Rohe Pōtae Māori. In these circumstances, partitioning offered the main avenue for owners seeking to having their interests defined and to therefore create landholdings that were usable in the new economy.

At the same time, Crown pre-emption was in place, and the Crown's purchasing programme, particularly throughout the 1890s, was increasingly active. The Crown, as will be explored more in chapter 11, conducted its purchasing by attrition, buying the shares of individual owners and later applying to have its interests cut out, necessitating partitioning.

The Crown only rarely purchased entire blocks. For instance, of the 61 blocks in which the Crown applied to have its interests defined by the court in 1898, it had purchased only nine in whole. Most of the blocks it purchased whole were small and had only a few owners. In the 52 blocks which it had not acquired in whole, the Crown had to have its interests partitioned out. Of the 61 blocks the court processed that year, the Crown had purchased an average of 69 per cent of the shares. In 20 of the 61 blocks, the Crown had purchased less than a majority of the shares. In three Kinohaku East blocks, for instance, it purchased less than a quarter of shares in each block, including in Kinohaku East 1 (Ototoika), where it acquired only 12.5 per cent of the shares.<sup>392</sup>

In blocks where it had not succeeded in acquiring all shares before applying to the court to have its interests cut out, the Crown frequently continued

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389. Document A79, p 281.

390. *Puketarata* (1892) 12 Ōtorohanga MB 122–123.

391. Document A79, p 376.

392. Document A79, pp 257–258.

its purchasing in the ‘residue’ blocks owned by non-sellers. Where these efforts were successful, further partitioning was necessary. This process was sometimes repeated several times.<sup>393</sup> In subdivisions of Kinohaku East 2 (Pakeho), for instance, the Crown had its interests defined 20 times between November 1897 and April 1908. In this way, the original area was not only progressively alienated, but the land remaining in Māori ownership became increasingly fragmented.<sup>394</sup>

A further example of how the Crown’s purchasing could cause multiple rounds of partitioning can be seen in Puketarata. The court awarded the Crown interests in 44 different Puketarata blocks between March 1894 and October 1901. Drs Husbands and Mitchell stated that the owners of these blocks ‘were subjected to successive waves of Crown purchasing followed by Court decreed partition’. The Crown was first awarded its interests in 15 blocks in March 1894. It then continued purchasing, including in subdivisions allocated to non-sellers after its first round of purchasing. Subsequent partitions to allocate the Crown its newly acquired interests occurred between November 1897 and June 1898, and again in January and February 1901. Although the Crown acquired 13 of these 44 blocks outright, in 11 blocks it had acquired less than 20 per cent of the shares when it applied to have its interest cut out.<sup>395</sup>

The deficiencies of the native title system and the effects of the Crown’s purchasing programme therefore made Te Rohe Pōtae Māori landholdings increasingly uncertain during this period. This uncertainty put significant pressure on Māori to further subdivide their land themselves. Partitioning presented an opportunity to reduce the number of owners on each title to a more manageable amount, allowing the possibility of farming or development. Partitioning also helped to secure ownership: as well as reducing the number of owners to keep track of, it defined where interests lay on the ground and so provided some certainty in the face of the destabilising influence of Crown purchasing.

The result of this partitioning, whether initiated by Crown purchasing or by Māori themselves, was the fragmentation of land holdings. Fragmentation was not simply legal, but also geographical, creating smaller, dispersed blocks of land in which ownership interests were concentrated. Sometimes this partitioning was strategic, an attempt to consolidate land holdings in order to facilitate development – though it could have the opposite effect if blocks were rendered uneconomic in the process. Other partitioning was motivated by the desire to have smaller whānau blocks. An example of such ‘family partitioning’ can be seen in Rangitoto A. Created in 1900, the block was originally 109,215 acres with 1,042 owners. It was subdivided in 1904 into 69 sections, around half of which had fewer than 10 owners.<sup>396</sup>

At the same time, partitioning could also be a difficult process to control, particularly with the continuation of Crown purchasing activity. All too often

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393. Document A79, p 261.

394. Document A79, p 263.

395. Document A79, pp 265–266.

396. Document A146, pp 411–412; doc A60, pp 875–876.

the outcome was over-subdivision, with a preponderance of small, uneconomic blocks. Partitioning also incurred further court fees, survey costs, and other court-related costs (see section 10.6). The scale of partitioning taking place in Te Rohe Pōtae was commented on by the Stout–Ngata commission in 1907. This commission was established to report on ‘unoccupied or not profitably occupied’ land and to recommend how such land could ‘best be settled in the interests of the Native Owners and the public good’.<sup>397</sup> Having visited Te Rohe Pōtae, the commissioners commented: ‘We are not aware of any Native district, which until 1888 was closed to the law-courts, where the Native Land Court has been so active and where subdivision has proceeded so far as in this portion of the Rohe-Potae.’ They singled out Kinohaku East, Hauturu East and West, Pirongia, and Rangitoto–Tuhua as areas that were particularly fragmented.<sup>398</sup>

Roy Haar told us about the example of Rangitoto–Tuhua 60.<sup>399</sup> The experience of this block indicates the frequency of partitioning that occurred in some of the blocks in Te Rohe Pōtae. Originally created in 1900 with 153 owners, the block was subdivided into nine blocks in 1904. Four of these subdivisions had between 23 and 34 owners; the remaining five had fewer than 11. By 1929, however, the 1904 subdivisions had been partitioned an additional 47 times.<sup>400</sup>

The example of Kinohaku East 2 section 28 illustrates just how quickly the partitioning process sometimes moved. Kinohaku East was originally partitioned between 1888 and 1892 into 17 subdivisions. Kinohaku East 2 (Pakeho), created in 1888, was the largest of these initial subdivisions at 29,250 acres and had 236 owners. This block was partitioned in 1897 into 28 subdivisions that averaged 1,017 acres in size, and ranged from one to nearly 10,000 acres. Kinohaku East 2 section 28 was the largest subdivision to remain in Māori ownership, at around 4,404 acres with 41 owners. Section 28 was then itself partitioned in 1902 into 17 sections ranging from five to 1,480 acres, with an average size of 243 acres. Most of these new blocks had less than 10 owners, indicating that the partition had been intended to secure the owners’ interests.<sup>401</sup> This all occurred in the space of less than 15 years.

The way that the Native Land Court went about partitioning created other problems for Māori landowners. Although the court in Te Rohe Pōtae began by conducting tribal, then hapū subdivisions, it processed subsequent partitions according to the applications that it received. This ad hoc form of partitioning was contrary ‘to the known and accepted principles of land economy’.<sup>402</sup> The resulting subdivisions were not always viable economic units, limiting the development opportunities for their owners (as will be discussed more in section 10.5.4). A particularly damaging outcome of the court’s ad hoc approach to partitioning was that

397. Document A79, p 264.

398. R Stout & A T Ngata, ‘Native Lands in the Rohe-Potae (King Country) District (An Interim Report)’, AJHR, 1907, G-1B, pp 2–3.

399. Document s29 (Haar), p 6.

400. Document s29(a) (Haar appendixes), pp 2–5; doc A60, pp 974–977.

401. Document A79, pp 494–495.

402. Document A146, pp 611–612.



Map 10.3: Partitions of Kinohaku East 2 (Pakeho)

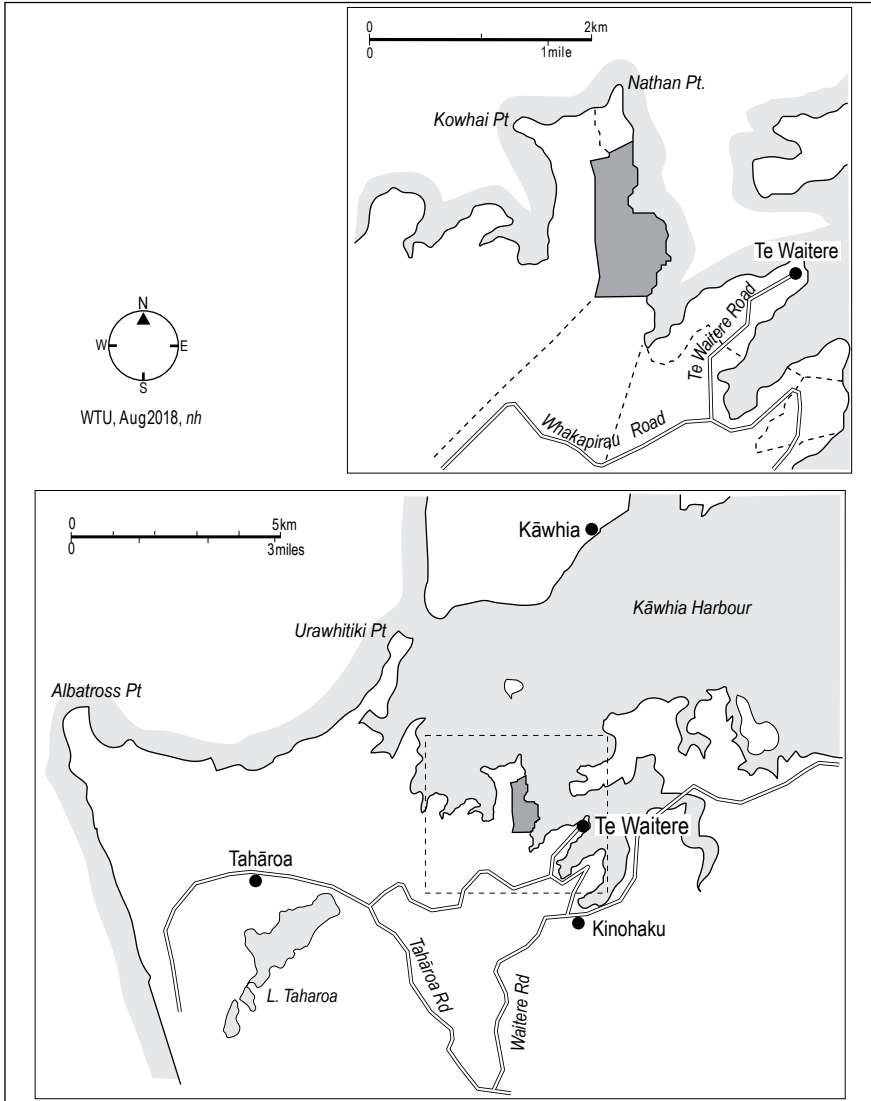
land could end up with restricted access or, in the worst-case scenario, no access at all ('landlocked land').

We heard from several claimants who have interests in landlocked land. John Hone Arama Tata Henry of Ngāti Maniapoto, for instance, gave evidence about Puketiti 4B, which has been landlocked since its partition in 1906. To access the block, the owners have to seek the permission of owners of two other blocks of land. Mr Henry told us that, as a result, the owners cannot easily access or develop the land, nor raise the finance needed to gain access to the block.<sup>403</sup>

Tangiwai Hana King of Ngāti Mahuta told us that there are several landlocked blocks within the Taharoa block, located at the southern mouth of Kāwhia Harbour.<sup>404</sup> Attempts by the owners to provide access to some of the landlocked blocks within Taharoa have failed. In 1912, for instance, Turanga Te Wania designated 19 acres of Taharoa A1C as a roadway to access the surrounding blocks. However, the roadway was never formed, nor linked with public roads. As a result,

403. Document 016 (Henry), pp 21–22; submission 3.4.160, pp 75–77.

404. Document 11 (King), p 4; submission 3.4.171, pp 24–40.



Map 10.4: Taharoa A6D2

of the 19 blocks adjoining the roadway, only one block has access to a public road today.<sup>405</sup>

Another landlocked block is Ramatiti (Taharoa A6D2), the land where Ms King’s mother and grandmother grew up. Landlocked since creation, the block’s owners initially relied on the Māori land between Ramatiti and the road for access.

405. Document J1, pp 6–7.



However, the adjoining Māori land was sold in 1942. Since then, in order to access the land, the owners have had to either rely on permission from adjoining land-owners or approach the land by sea.<sup>406</sup> These landlocked blocks in Taharoa have created numerous difficulties for the owners. Without access, the land is difficult to develop and valued less. Often, the only option is sell to adjoining farmers, something that Ms King told us ‘has happened on so many occasions.’<sup>407</sup> The impacts of landlocked land on Te Rohe Pōtae Māori will be further addressed in future chapters of our report.

### 10.5.3 Succession and the fractionation of interests

At the same time as titles were fragmenting, creating an ever-greater number of increasingly small blocks, succession laws were causing the interests in those titles to fractionate.

The Native Land Court Act 1880 provided that the court should process successions ‘according to Native custom or usage.’<sup>408</sup> Under tikanga Māori, occupation was as important as descent as a means of succeeding to the land.<sup>409</sup> From an early stage, however, the Native Land Court misinterpreted custom and determined instead that all descendants of a deceased owner held equal entitlements in land inherited from their parents, regardless of whether they occupied the land.<sup>410</sup> This became the rule it would apply, and thus succession orders were made in favour of all the children of the deceased in equal shares, whether they occupied the land or not. This meant that, following the deaths of the original owner or owners, the number of owners on each title increased. This process was repeated every time an owner died, meaning that titles became very congested over time. In turn, the value of interests in a block – both in terms of the amount realisable by sale or lease, or of profits from development – declined for each owner.

The impact of the court’s succession rules and the fractionation that resulted was amplified by two other factors. The Māori population, rather than declining as had been expected by Europeans, instead grew steadily after 1900, including in Te Rohe Pōtae.<sup>411</sup> At the same time, the amount of land remaining in Māori ownership significantly decreased. Less land therefore had to be shared between many more people.

There are several examples of the impact of fractionation in Te Rohe Pōtae caused by the Native Land Court’s succession rules. Once the court had made a title order, it did not take long for successors to begin to crowd titles. When Te Moani Mauritu, sole owner of the 102-acre Kinohaku East 2 section 28B6, died in 1910, his seven children inherited the block in equal shares. Similarly, the 78-acre Kinohaku East 2 section 28B3 was originally awarded to five owners, but by 1920 it had 11 owners owing to successions resulting from the deaths of three of the

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406. Document J1, pp 11, 14–15.

407. Document J1, p 5.

408. Native Land Court Act 1880, s 45.

409. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 690.

410. Document A79, p 500.

411. Document A146, p 101.

original owners.<sup>412</sup> Thomas Tūwhangai told us of the 6,572-acre Hurakia block, originally created in 1891 with 367 owners.<sup>413</sup> By 1936, when the remaining 1,768 acres in Māori ownership were consolidated as Hurakia A1, there were 297 owners on the title – only 70 owners fewer than when the block was more than three times bigger. As of 2014, there were 1,846 owners.<sup>414</sup>

Over time, with more and more successions, the issue has become particularly pronounced in some blocks. Dr Beryl Roa told us, for instance, that at the time of our hearings in 2013 the 301-acre (122 hectares) Kopua A2 had 716 owners, with ‘hundreds of descendants’ still to succeed to the block. For most, she said, this block ‘is their only entitlement left in Kopua One’, a block that was originally 9,375 acres.<sup>415</sup>

#### 10.5.4 Effects on economic development

By the time the Aotea–Rohe Potae block went through the court in 1886, the New Zealand economy was in the midst of significant changes. Improvements in transport, such as the arrival of refrigerated shipping and the building of railways, changed the nature of New Zealand farming. Once subsistence-based, farming instead was becoming an intensive industry, dependent not just on additional stock but ‘sustained improvements in the productivity of land, labour, and stock’. While this shift required significant investment, it resulted in surpluses of meat, butter, and cheese for profitable export. At the same time, wheat, once a mainstay of the Te Rohe Pōtae economy, declined in importance.<sup>416</sup>

Drs Husbands and Mitchell argued that ‘Maori in the Rohe Potae district should have been well placed to take advantage of changes in the national economy’. They had retained ownership of most of their lands, some of which were likely to be ideal for pastoral and dairy farming. They also possessed other valuable resources, such as the ‘[e]xtensive stands of timber on lands soon to be made accessible by the arrival of the railway.’<sup>417</sup> Perhaps most significantly, they had the railway and should have stood to gain both from its construction and from the increased value of their land.

Native Land Court title was supposed to go some way towards facilitating the entry of Te Rohe Pōtae Māori into the colonial economy. Of course, title alone was not sufficient for successful economic development: resources, knowledge, access to finance, and stable institutional arrangements were also important.<sup>418</sup> However, title influenced the ability of Māori to retain land and its attendant resources, as well their ability to raise capital, either through sale or finance.

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412. Document A79, pp 500–501.

413. *Hurakia* (1891) 28 Waikato MB 179–185.

414. Document R13 (Tūwhangai), pp 32–33; doc R13(a) (Tūwhangai appendixes), pp 1, 16.

415. Document O3 (Roa), p 5; doc A91, p 313.

416. Document A146, pp 381–382; doc A79, p 508.

417. Document A79, p 508.

418. Document A146, p 18.

The benefits that were touted to Te Rohe Pōtae Māori before the court entered the district did not, for the most part, eventuate. By 1901 – 15 years after the introduction of the court into Te Rohe Pōtae – Māori appear to have been behind Pākehā on several economic indicators. Compared to Pākehā, not as much Māori land was in crops or in sown grass, and they had fewer cattle or pigs per capita.<sup>419</sup> Sheep grazing, which was thriving amongst Te Rohe Pōtae Māori by 1890, declined as more land (particularly those lands suitable for farming) were alienated.<sup>420</sup> Dairy farming became a major part of the Te Rohe Pōtae economy, though it was again a Pākehā-dominated industry. There was the bright spot of the Te Kuiti Co-operative Dairy Factory Company, which involved a number of Māori shareholders. But even they, the 1907 commission reported, were not ‘farming on an efficient scale.’<sup>421</sup> Timber-cutting leases provided Te Rohe Pōtae Māori some income, though not enough to enable them to run their own saw-milling operations.<sup>422</sup> These measures had become even more skewed by the 1930s, at which point most Te Rohe Pōtae Māori were economically marginalised, with less land, wealth, and income than their Pākehā neighbours.<sup>423</sup>

The impacts of partitioning and the court’s succession rules left Te Rohe Pōtae Māori land increasingly susceptible to alienation, and to Crown purchasing in particular. When the court arrived in Te Rohe Pōtae in 1886, Māori had retained control over almost all of their land. However, by 1910, this situation had changed dramatically: more than half of the inquiry district had been alienated.

It was not simply the amount of land retained by Te Rohe Pōtae Māori, but the way that it was held. As outlined above, uneconomic blocks and interests became a common feature of land holding in Te Rohe Pōtae, the result of a court system that paid little regard to what was needed by Māori for economic development. These blocks were small, geographically fragmented, often with an unmanageable number of owners, and sometimes with restricted or no access. The pressures of Crown purchasing, as well as the lack of an effective mechanism for communal management of land, encouraged partition or alienation rather than development, exacerbating the problem further.

By the early twentieth century, these problems were becoming clear to both Te Rohe Pōtae Māori and the Crown. As will be discussed in chapter 12, when preparing vested lands for settlement, for instance, the Department of Lands and Waikato-Maniapoto Maori Land Board chose to ignore the partitions originally created by the court, indicating they were not suitable for farming.<sup>424</sup>

Te Rohe Pōtae Māori, along with others, began calling for an improved system. At Easter 1909, for instance, some Te Rohe Pōtae Māori attended an important

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419. Document A79, pp 508–511.

420. Document A79, pp 512–514.

421. R Stout and AT Ngata, ‘Native Lands in the Rohe-Potae (King Country) District’, AJHR, 1907, G-1B, p 8; doc A79, pp 515–516.

422. Document A79, pp 517–518.

423. Document A146(b) (Hearn summary), pp 14–15.

424. Document s5 (Pumipi), p 4.

hui at Tokaanu convened by Te Heuheu Tukino to discuss various land matters. Among other things, the attendees – numbering ‘500 or 600’ – criticised the court’s system of partitioning.<sup>425</sup> Specifically, the hui resolved:

In the matters of partitions :–Before the partition of any block by the Native Land Court, there should be placed before the Court a sketch plan, together with the report of an authorised surveyor, pointing out the best road-lines upon such land, so that the Court shall be enabled to give each subdivision means of access, either by abutment upon the road, or by some approach to that road. There should be some means whereby the Registrar of the Chief Judge of the Native Land Court may give effect to a partition agreed to in writing signed by all the parties owning or holding an interest in the land.<sup>426</sup>

We do not have any evidence of how the Crown responded to this call to institute a more orderly, planned system of partitioning.

If Māori owners chose not to partition down to smaller, family subdivisions, they faced significant uncertainty as to the location of their land interests. Often occupation could lead to disputes between owners. What was needed was a management regime that enhanced collective ownership and controlled occupation. No such management system existed until 1894. In 1891, William Rees and James Carroll explained the problem:

As every single person in a list of owners comprising, perhaps, over a hundred names had as much right to occupy as anybody else, personal occupation for improvement or tillage was encompassed with uncertainty. If a man sowed a crop, others might allege an equal right to the produce. If a few fenced in a paddock or small run for sheep or cattle, their co-owners were sure to turn their stock or horses into the pasture. That apprehension of results which paralyses industry cast its shadow over the whole Maori people.<sup>427</sup>

Similarly, in larger blocks, the Crown could purchase a minority of undivided interests over the course of several years before triggering a partition of its interests. In the interim, Māori were deterred from developing their land.<sup>428</sup>

Economic development also required access to capital. As will be discussed in future chapters of our report, this was a particular problem for Te Rohe Pōtae Māori. While Native Land Court titles made it easy for Māori to sell interests in land, it proved difficult for them to do anything else with their land. Gaining financing on native title, even from the Crown, was difficult.<sup>429</sup> Selling land was

425. ‘Tokaanu Maori Conference’, *Auckland Star*, 17 April 1909, p 4; doc A146, p 395.

426. ‘Maori Lands’, *Dominion*, 31 May 1909, p 6.

427. ‘Report of the Commission Appointed to Inquire into the Subject of the Native Land Laws,’ AJHR, 1891, G-1, pp x-xi; doc A79, p 491.

428. Document A146, p 406.

429. Document A146(b), p 8.

also an option to raise capital for development, but the low prices the Crown paid for Te Rohe Pōtae Māori land severely limited their ability to accumulate capital. One justification the Crown gave at the time for the low prices it set for Māori land was the higher transaction costs associated with multiple ownership – a result of the titling and Māori land management system it had itself imposed.<sup>430</sup>

The Crown failed to provide Te Rohe Pōtae Māori with the kind of stable title that would have facilitated greater economic development. As has been seen, Native Land Court titles were by no means static. They were subject to partitioning every time the Crown made purchases, or when owners wanted to secure their interests through subdivision. Succession laws that were contrary to Māori custom could dramatically and frequently increase the number of owners in each block. In addition, the statutory regime governing native land title was also in constant flux, with a barrage of law changes over the years. Each amendment further affected collective and individual rights, and meant that Te Rohe Pōtae Māori landowners had to be constantly vigilant to maintain their rights. The instability of native land legislation stands in stark contrast to the stability of the Torrens title system governing general land. The fundamental tenet of that system – indefeasibility of title – has not changed since 1870. The effect of these constant changes in tenure and the status of land was uncertainty that was severely detrimental to investment and successful economic development.

### 10.5.5 Effects on tribal organisation and society

The management and retention of land was not just an economic matter for Te Rohe Pōtae Māori. Land was central to both Te Rohe Pōtae Māori tribal organisation and society. The titles awarded by the Native Land Court had long-lasting effects on both.

The previous sections examined how patterns of Māori landholding changed following the introduction of the Native Land Court into Te Rohe Pōtae, particularly as a result of partition and succession. The Crown has accepted ‘that the individualisation of Māori land tenure provided for by the native land laws made the lands of Te Rohe Pōtae Māori iwi and hapū more susceptible to fragmentation, alienation and partition, and that this contributed to the undermining of tribal structures in Te Rohe Pōtae’. The Crown has conceded ‘that its failure to protect these tribal structures was a breach of the Treaty of Waitangi and its principles.’<sup>431</sup>

At first, Te Rohe Pōtae Māori leaders had been able to exercise some control over the court process, with partitions first awarded on an iwi and then hapū basis. Eventually, however, the combination of individual titles, increasing partitioning, and the lack of a mechanism for the communal management of land meant that the traditional leadership of Te Rohe Pōtae lost its influence over decision-making for the collective. With individuals able to sell their interests without reference to the collective, maintaining control over the pace and extent of alienation became

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430. Document A146, p 211.

431. Submission 3.4.305, p 9.

almost impossible for Māori rangatira and communities. It also made it very difficult for those communities to make strategic decisions about their land, or to develop tribal lands. Partitioning, which could be done in an attempt to defend against further sales, also had the effect of continuing the shift away from communal control of land by iwi and hapū to individual owners.

As discussed in section 10.3.1, the decrease in tribal control caused by the operations of the court and the new title system was not unintended on the part of the Crown. Henry Sewell, for instance, hoped that the court would lead, among other things, to ‘the detribalisation of the Maoris’.<sup>432</sup> Just as importantly, by 1886, after the court had had a similar impact in several other districts, the court’s impact on Māori tribal organisation was certainly not unknown. In 1892, Wilkinson reported that ‘the Native Land Court, in doing away with old Maori title to land and substituting a European one for it, has almost entirely destroyed the influence that the chiefs formerly had over their people in the matter of the disposal of their land’. As a result, he said ‘Jack is now as good as his master’.<sup>433</sup>

This decrease in tribal control was not, however, what Te Rohe Pōtae Māori had wanted prior to the entry of the court into the district. Indeed, Te Rohe Pōtae Māori rangatira continued to act on behalf of their people. Their attempts, however, were most often rebuffed by the Crown. In March 1894, for example, a group of prominent members of Ngāti Kinohaku wrote to the premier concerning their land at Ototoika (Kinohaku East 1). They pointed out that they and their ‘ancestors and parents’ had lived on the land for seven generations. They requested that the land ‘be permanently reserved for us and our descendants forever to be a permanent settlement for us and our dead’, with no subdivisions made.<sup>434</sup> In response, Wilkinson, while noting that the letter had come from ‘leading members of the tribe’ and that ‘there may be a good deal of truth’ to their claims, dismissed the letter as ‘mere sentiment’. He instead reaffirmed the rights of the individual owners ‘to decide themselves whether he will or will not sell his interest’.<sup>435</sup> The Crown then commenced purchasing of the block in 1894 and partitioned its interests out in 1898.

The contrast between Wilkinson’s attitude in 1894 and that of the Native Ministers a decade before is stark. Prior to the court’s entry into the district, the Crown recognised that it needed the cooperation of Te Rohe Pōtae Māori for the establishment of the court. This was a recognition of the mana that the traditional structures of authority continued to wield in Te Rohe Pōtae, particularly when compared to other parts of the North Island. Yet by 1894, just eight years after the court had been operating, Wilkinson could dismiss the concerns of rangatira over their land as ‘mere sentiment’ and commence purchasing from those individuals who were prepared to sell.

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432. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 669.

433. ‘Reports from Officers in Native Districts’, AJHR, 1892, G-3, p 5; doc A79, p 528.

434. Document A79, pp 270–271.

435. Document A79, p 271.

### 10.5.6 Treaty analysis and findings

The court continued to be a significant – and potentially disruptive – presence in the lives of Te Rohe Pōtae Māori during this period. The court continued to sit mostly in Ōtorohanga, but also sat in other locations when it was more convenient to do so for the parties involved. Other aspects of the court's process became less flexible: sitting for around 90 days each year between 1892 and 1907, it increasingly did so throughout the year, including during harvest season.

The amount of notice given for court hearings in Te Rohe Pōtae varied considerably during this period, and there were sometimes significant delays between the advertised date of a sitting and the actual start date. The claimants submitted that the 'notification of hearings of the Native Land Court in Te Rohe Pōtae did not allow for proper (and on occasion any) participation by the relevant parties'.<sup>436</sup> The Crown accepted there were delays, but cautioned that there was no evidence to indicate how Māori responded to delays in practice, making it difficult to assess whether they suffered any prejudice.<sup>437</sup> We consider it likely that some Māori were prejudiced by these delays, but do not have sufficient evidence to make any firm finding.

During this period, the influence that Te Rohe Pōtae Māori could exert over the court process declined. While some subdivision work did continue, including the particularly contentious subdivision of Rangitoto–Tuhua, the court's activities increasingly shifted from the business of title determination to the business of processing the Crown's purchases of Te Rohe Pōtae Māori land. Figures like Native Land Purchase Officer Wilkinson increasingly took centre stage. The dynamics between the judges and Māori assessors also changed. A series of legislative amendments in the 1890s steadily eroded the position of assessors.<sup>438</sup> As a result, they appear to have become less active participants in the court process.

As the Crown's involvement in the court process increased, the distinctions between the Crown and the Native Land Court sometimes blurred. Crown and court officials were in frequent contact about the court's business and how it related to the Crown's purchasing programme. On occasion, judges of the Native Land Court were also involved in these discussions. We consider that, while there is only evidence of this occurring twice, it was nonetheless wholly inappropriate for Crown officials to have contacted judges in this way. We agree with the National Park Tribunal that the Crown failed 'to create a clear enough distinction between its land purchasing programme and the adjudicative responsibilities of the court'.<sup>439</sup>

The Crown has conceded that, prior to 1894, it failed to provide a form of title that enabled Te Rohe Pōtae Māori communities to control their land and resources collectively, in breach of the Treaty and its principles. What was needed at this point was some management regime that could complement collective

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436. Submission 3.4.107, p 87.

437. Submission 3.4.305, pp 51–53.

438. Document A79, p 398.

439. Waitangi Tribunal, *Te Kahui Maunga*, vol 1, p 332.

decision-making over such titles. The Crown's view is that the incorporation model provided for in the Native Land Court Act 1894 was a Treaty-compliant mechanism for the collective management of Māori land that mitigated the form of title provided. As will be discussed in a future chapter of our report, incorporations did not prove popular with Te Rohe Pōtae Māori before the second half of the twentieth century. One incorporation was formed early on, in 1895, but was later regarded by John Ormsby as 'an expensive and dismal failure'.<sup>440</sup> We did not receive any evidence of the specific defects that Te Rohe Pōtae Māori found in the 1894 incorporation model.

Other Tribunal panels have pointed to the level of Crown control and the difficulties with raising finance on incorporated land as reasons why Māori in other areas opted not to incorporate. We agree with the Central North Island Tribunal that, at a time when Māori were still seeking greater control of their land and to replace the court with their own committees, 'the incorporation provisions of the 1894 Act were so deficient as to render them useless as a vehicle for the collective tribal management of tribal lands'. That Tribunal concluded: '[we] do not accept the Crown's suggestion that this Act met its Treaty obligation in the 1890s to provide collective management mechanisms.'<sup>441</sup> We agree.

The consequences of the deficiencies of native land title, as well as the lack of an effective mechanism for collective management, began to be felt in Te Rohe Pōtae during the 1890s. Te Rohe Pōtae Māori were often left with little choice but to alienate or partition their land. Crown purchasing had a destabilising impact for Māori landowners. They could never be certain what interests the Crown had acquired until it sought their definition in court. This was an ongoing problem, because even after it had its interests defined, the Crown often continued purchasing in residue blocks owned by non-sellers, necessitating further partitioning at a later stage. In the meantime, the remaining owners' efforts to develop their land were paralysed, lest they discover that the land they wanted to develop was actually owned by the Crown. Reducing the number of owners on each title, which necessitated partition and the costs associated with it, became the safest option. Unfortunately, the result of such partitioning, whoever it was initiated by, was the fragmentation of landholdings. While partitioning could facilitate land retention or development, it could also have a negative effect on development if blocks became too small to be economic, or if they became landlocked.

The succession rules adopted by the court also changed the way that Te Rohe Pōtae Māori land was held. They set in train a process that would steadily increase the number of owners in each block over time, exacerbating the problems caused by title fragmentation and the lack of an effective system for communal management. An increasing amount of the court's time during this period became dedicated to the processing of successions, indicating the extent of fractionation of ownership interests that was occurring even at this relatively early stage.

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440. 'Settlement of Native Lands', *New Zealand Herald*, 21 June 1906, p 5; doc A146, p 431.

441. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 380–381.



The economic benefits that Te Rohe Pōtae Māori had expected from the Crown's entry into their rohe did not, for the most part, eventuate. The way that land was held in Te Rohe Pōtae under native land title both encouraged alienation, reducing the economic base of Te Rohe Pōtae Māori, and made it very difficult for Māori to put their remaining land to effective use. Furthermore, Māori landowners had limited access to capital, and had to contend with an ever-changing landscape of land ownership and native land legislation.

Just as significantly, native land title also changed Te Rohe Pōtae Māori society, diminishing the authority of the collective and of the traditional leadership. Individualisation, whether it resulted in sole ownership or land alienation, made it more difficult for the collective and for tribal leaders to make informed, strategic decisions about their land, or to control the pace of alienation. This was not an unknown consequence by this stage, nor was it entirely unintended.

The Crown has accepted 'that the individualisation of Māori land tenure provided for by the native land laws made the lands of Te Rohe Pōtae Māori iwi and hapū more susceptible to fragmentation, alienation and partition, and that this contributed to the undermining of tribal structures in Te Rohe Pōtae'. The Crown has conceded 'that its failure to protect these tribal structures was a breach of the Treaty of Waitangi and its principles'.<sup>442</sup>

In making this concession, the Crown has also submitted that it does not consider the individualisation of Māori land tenure, alienation, or partition to necessarily be contrary to Treaty principles, even though they had the effect of undermining tribal structures that it had a Treaty duty to protect.<sup>443</sup> The claimants did not respond directly to this submission, but more generally expressed 'disappointment that throughout their submissions the Crown have reduced the concessions made to only apply in certain circumstances and have attempted to gain back the ground conceded'.<sup>444</sup>

We accept that partition and alienation, whether by sale or lease, were not necessarily contrary to Treaty principles. We agree with the Turanga Tribunal that 'precise boundaries and certainty of ownership' were needed for Māori to successfully engage with the new economy and that 'sales, if controlled, could benefit communities'.<sup>445</sup> But, as the Hauraki Tribunal found, 'there were many possible options for giving greater clarity and definition to land interests without full-scale tenure conversion and abrogation of the customary base'.<sup>446</sup>

The individualisation of Māori land ownership provided by the Crown under the Native land regime was not the only option available. Individualisation primarily benefited the Crown and the settlers who wished to acquire Māori-owned land as easily and quickly as possible. It was not something that Māori had asked for; indeed, in Te Rohe Pōtae, Māori had been clear that they preferred hapū titles.

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442. Submission 3.4.305, p 9.

443. Transcript 4.1.24(a), pp 112–113 (Crown counsel, hearing week 17, James Cook Hotel Grand Chancellor, Wellington, 11 February 2015).

444. Submission 3.4.330, p 3.

445. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, pp 439, 510.

446. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 777.

We do not accept the Crown's submission that individualisation was not necessarily contrary to Treaty principles. The Turanga Tribunal made findings relevant to the Native Land Act 1873 and we consider their comments are equally pertinent to the legislation as it existed during this period. They found:

[The 1873 Act's] selective individualisation breached the express guarantee in article 2 of the Treaty's Maori text; the guarantee of tino rangatiratanga. Autonomy, authority and control are all commonly understood meanings of this well used phrase. Tino rangatiratanga was promised in respect to 'whenua' (land), 'kainga' (villages), and 'taonga katoa' (all things treasured). Critically, the promise was made explicitly to all levels of right holders in Maori society: 'ki nga rangatira, ki nga hapu, ki nga tangata katoa' ('to the chiefs, hapu, and all the people'). By excluding hapu from sale or lease decisions, the Act removed a separate right holder to which an explicit Treaty promise had been made. By failing to provide legal support to chiefly leadership in questions of land alienation, the Act similarly breached a Treaty promise explicitly made to hapu leaders. In this way, the Act confiscated rights formerly vested in tikanga Maori. It effectively removed from these two levels, the right to participate in the most important decisions the community collectively and its members individually would ever make.<sup>447</sup>

Like the Central North Island Tribunal, we consider that the individualised titles provided by the Native Land Court 'were in fundamental violation of Treaty guarantees' because they 'deprived communities and leaders of their collective rights and their tino rangatiratanga, and created structural pressures for alienation of interests in land.'<sup>448</sup>

We have already found that the Native Land Court regime that the Crown imposed on Te Rohe Pōtae Māori was seriously flawed and was not Treaty compliant. The legislative regime and the form of title that it created undermined rather than upheld the article 2 guarantee concerning land and was therefore inconsistent with the express terms of the Treaty. In addition, we find that in failing to prevent subdivision below hapū titles, and in making provision for the individualisation of interests, the native land legislation further aggravated that Treaty breach.

We consider that the Crown's breaches were also exacerbated by the fact that, by 1886, when the court was introduced into Te Rohe Pōtae, the effects of individualisation on Māori land retention and society were well-known to Māori and to the Crown. In response, Te Rohe Pōtae Māori had sought a different kind of title, one that would primarily be awarded to hapū, not individuals. The Crown's failure to provide or to even contemplate providing such a title was contrary to the article 2 guarantee of tino rangatiratanga, and also breached the Treaty principles of partnership and active protection.

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447. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p 446.

448. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 537.

## 10.6 WHAT WERE THE COSTS ASSOCIATED WITH THE COURT PROCESS?

Te Rohe Pōtae Māori incurred a range of costs as a result of participating in the Native Land Court. Some costs were the direct result of the court's operations, such as court fees and survey costs. Participation in the court process also gave rise to a variety of other direct and indirect costs. Māori had to travel to attend hearings, and then feed and house themselves while the court was sitting, with all the associated costs. As outlined in section 10.2.3, the claimants argued that the costs charged to Te Rohe Pōtae Māori were 'onerous'.<sup>449</sup> The Crown, however, questioned the overall scale and impact of the costs, as well as how unreasonable they were.<sup>450</sup> This section examines in more detail the costs incurred by Te Rohe Pōtae Māori when securing title, considering both the extent of those costs and their reasonableness.

### 10.6.1 Court fees

The court charged Māori for almost all the work it did (see the sidebar on court fees below). Previous Tribunals have found that, while these fees were 'usually the least of the court-related expenses for Maori communities', they could quickly accumulate.<sup>451</sup> The court charged fees every time that Māori appeared in court – not just for investigations of title, but for rehearings, partitions, subdivisions, and other kinds of case.<sup>452</sup> The costs charged included a daily fee, which at £1 per party was among the highest of the court fees. Similarly, £1 was charged for certificates of title or 'any other order conferring title to land'. The judge had some discretion to reduce or write off court fees; it is not clear how widely used that power was in Te Rohe Pōtae.<sup>453</sup>

Court costs varied considerably. The initial Aotea–Rohe Potae title investigation took three months. For this, the parties incurred total court fees of £136 2s. The court records of the fees are unclear, but it appears that claimants paid at least £48 8s of the total amount, while counter-claimants paid at least £69 10s.<sup>454</sup> For cases

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449. Submission 3.4.107, pp 44–45. Several claimants raised issues concerning the costs associated with the court process in Te Rohe Pōtae, including: Wai 440 (submission 3.4.198); Wai 472, Wai 847, Wai 986, Wai 993, Wai 1015, Wai 1016, Wai 1054, Wai 1058, Wai 1095, Wai 1115, Wai 1437, Wai 1586, Wai 1608, Wai 1612, Wai 1965, Wai 2120, Wai 2335 (submission 3.4.140); Wai 551, Wai 948 (submission 3.4.250); Wai 846 (submission 3.4.251); Wai 1469, Wai 2291 (submission 3.4.228); Wai 2313, Wai 2314, Wai 586, Wai 753, Wai 1396, Wai 1585, Wai 2020, Wai 2090 (submission 3.4.204); Wai 1386, Wai 1762, Wai 1361 (claim 1.2.5); Wai 478 (submission 3.4.155); Wai 928 (submission 3.4.175); Wai 1255 (submission 3.4.199); Wai 1309 (submission 3.4.220); Wai 48, Wai 81, Wai 146 (submission 3.4.211); Wai 366, Wai 1064 (submission 3.4.205); Wai 845 (submission 3.4.166); Wai 987 (submission 3.4.167); Wai 1059, Wai 50 (submission 3.4.221); Wai 1147, Wai 1203 (submission 3.4.151); Wai 1299 (submission 3.4.234); Wai 483 (submission 3.4.135); Wai 691, Wai 788, Wai 2349 (submission 3.4.246); Wai 1962 (submission 3.4.172); Wai 1112, Wai 1113, Wai 1439, Wai 2351, Wai 2353 (submission 3.4.226); Wai 2084 (submission 3.4.174); Wai 2273 (submission 3.4.141).

450. Submission 3.4.305, p 86.

451. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 508.

452. Waitangi Tribunal, *Te Urewera*, vol 3, p 1265.

453. See, for example, the 1885 Rules of the Native Land Court Act 1880.

454. Document A79, p 143.

### Native Land Court Fees

£1 per day for each party  
 2s for swearing in each new witness  
 £1 for a certificate of title or 'any other order conferring title to land'  
 5s for succession orders  
 5s to appoint a new trustee or for approval or sale of lease by trustee  
 10s to file an application for exchange or partition of land  
 £5 to file an application for rehearing  
 2s 6d for inspection of any record<sup>1</sup>

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1. Document A79 (Husbands and Mitchell), p 289.

that were dealt with relatively quickly, such as those where out-of-court arrangements had been reached, court fees were generally small.

In contested cases, however, court fees had the potential to become substantial. Often spread over many weeks, if not months, contested cases could quickly accumulate court fees. Although the 36,289-acre Pirongia West had been the product of a particularly contentious partition case in 1888, its subdivision in 1892 went reasonably smoothly at first. Taking just five days, the case incurred fees of £7 6s, mostly from daily fees. But when the subdivision case was reheard in August and September 1894 it took 23 sitting days, for which the court charged another £36 3s in fees. Combined with the fees from the original hearing, the subdivision incurred £43 9s in court fees.<sup>455</sup>

In the case of subdivision and succession cases, court costs could accumulate depending on the number of subdivisions or blocks that were being dealt with. The partition of Kinohaku East 2 section 28 into 17 subdivisions in June 1902, while unopposed, incurred £17 in court fees.<sup>456</sup> Subsequent partitioning could also add to the total cost of bringing land through the court. After its 1894 subdivision rehearing, Pirongia West was partitioned several more times. As a result, a total of £84 13s in court fees was incurred in respect of the block and its subdivisions between 1892 and 1907.<sup>457</sup> In succession cases, distinct succession orders were required for each block the deceased had shares in, even if all shares were to be inherited by the same person. When Tiki Marata inherited his mother's shares in 16 blocks, he incurred £4 2s in court fees, mostly from the five-shilling charge for each subdivision order.<sup>458</sup>

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455. Document A79, pp 289–290.

456. Document A79, p 292.

457. Document A79, p 291.

458. Document A79, p 292.

### 10.6.2 Survey costs

Survey costs were generally the highest of all court-related costs. Surveys were an essential part of the native land system established by the Crown. The Native Land Court could not issue a certificate of title unless a survey had been deposited with the court. Right from the first Native Lands Act in 1862, it was expected that Māori would bear the costs of surveying their land.<sup>459</sup>

In Te Rohe Pōtae, the Crown took responsibility for the up-front cost of surveys, but Māori had to pay the eventual bill. If payment was not immediately forthcoming, the court would place a lien on the land for the amount owed.<sup>460</sup> In January 1889, the Crown and Te Rohe Pōtae Māori reached an agreement over the cost of subdivisational surveys. The Crown agreed to take charge of the surveys for several blocks, withholding the cost for two years and placing liens on the land under section 25 of the Native Land Court Act 1886 Amendment Act 1888. After the two years had passed, Māori would be expected to repay the amount owing in either money or land, or the lien would begin to accrue five per cent interest per annum. In return, Māori agreed to pay the actual cost of survey rather than the schedule rates. They would be able to submit the names of their preferred surveyors and an agreed price to the Crown for each block, though the surveyor-general would ultimately decide who would undertake a particular survey. Presumably this might have allowed Te Rohe Pōtae Māori to potentially negotiate lower prices directly with surveyors. Drs Husbands and Mitchell noted that the two-year delay before interest began to accrue ‘was markedly more generous’ than what was provided for in the legislation.<sup>461</sup>

#### 10.6.2.1 The scale of survey costs in Te Rohe Pōtae

In total, Drs Husbands and Mitchell calculated that Te Rohe Pōtae Māori were charged £23,728 for survey costs between 1892 and 1907. This figure excludes any interest charged and any survey costs attached to land within the extension areas of our inquiry district.<sup>462</sup> The total figure also does not neatly correspond to a particular acreage, but rather includes the cost of the surveys of every subdivision and partition that occurred within the period. As such, some land would have been counted multiple times as it was repartitioned and then resurveyed. As at 2011, the year Drs Husbands and Mitchell completed their report, the total survey charges were the equivalent of 4.2 million dollars in 2011 dollars.<sup>463</sup>

##### 10.6.2.1.1 FACTORS INFLUENCING THE COST OF SURVEYS

Involving a good deal of time and physical labour, surveys could be an expensive feature of the court process. Surveyors were required to cut a boundary line

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459. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 509.

460. Document A79, pp 301–302.

461. Document A79, pp 300–301.

462. Document A79, p 307.

463. Document A79, p 308.

four feet wide in forest and two feet wide in open country.<sup>464</sup> They charged for each mile cut at a rate approved by the surveyor-general, and could also charge for some incidentals, such as travel expenses. Surveys had to be conducted to a high degree of accuracy, even in blocks of poor quality or where no alienation was contemplated.<sup>465</sup>

It is somewhat difficult to make comparisons between surveys and the costs charged. Different surveyors conducted each survey for different rates, and each block was unique. However, two general factors that could influence the cost of surveys can be identified: namely, the size of the block being surveyed and its terrain.

The length of the boundary line could contribute to, but was not necessarily determinative of, higher survey costs. Some small blocks cost more to survey on a per acre basis than very large blocks. The 12-acre Kakepuku 8, for instance, cost £4 14s 6d to survey – around five shillings per acre. The 2,554-acre Kakepuku 9, meanwhile, cost £62 10s 7d to survey – just sixpence per acre.<sup>466</sup>

Terrain had more of an influence on survey costs. Surveying of forested, hilly, rugged, or inaccessible land required more work than flat and open land. The contract rates for surveying reflected this contrast, with forest cutting set at twice the rate of cutting through open country.<sup>467</sup> The surveyor of the 13,450-acre Pukenui block, for example, was paid £12 for each mile cut through forested areas, but only £6 per mile for ‘open’ country.<sup>468</sup> The surveys of Marokopa and Kinohaku West, located between Kāwhia and Mōkau, were particularly expensive. Totalling 26 subdivisions, and covering an area of 133,000 acres, these blocks incurred £2,957 in survey costs, fees, and interest.<sup>469</sup> The costs of surveying some subdivisions of the mountainous Rangitoto–Tuhua were particularly high; these are discussed in section 10.6.2.3.

By contrast, the initial cost of surveying open land, such as in the northern part of Te Rohe Pōtae, was usually lower than more difficult terrain. The 2,000-acre Kaipiha block, for example, cost just £27 13s 7d to survey. However, as Drs Husbands and Mitchell pointed out, savings could often be ‘offset by the proliferation of partitions that the surveyor was required to mark out.’<sup>470</sup> In Kakepuku, which adjoined Kaipiha on its eastern boundary, the cost of surveying its 14 subdivisions came to £349 15s 5d. In Puketarata, the surveyor charged £453 7s 8d for the survey of 19 subdivisions. At a price per acre rate, the cost of surveying these blocks (seven pence an acre for Kakepuku and sixpence an acre for Puketarata)

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464. ‘Survey Regulations Under ‘The Land Act, 1885,’ *New Zealand Gazette*, 20 May 1886, p 635; doc A79, p 302.

465. Waitangi Tribunal, *Te Urewera*, vol 3, pp 1255–1256.

466. Document A79, p 341.

467. Document A79, p 302.

468. Document A79, pp 302–303.

469. Document A79, pp 303–304.

470. Document A79, p 305.

was higher than for Marokopa and Kinohaku West (five pence per acre), both of which were ‘mountainous and forested’.<sup>471</sup>

#### 10.6.2.1.2 THE CUMULATIVE IMPACT OF SURVEY COSTS

As with court fees, the impact of survey costs was cumulative. Each new partition created had to be surveyed, leading to further charges for the Māori owners. These subsequent surveys could add significantly to the amounts owed. Kinohaku East, which the Stout–Ngata commission described in 1907 as ‘minutely subdivided’, provides a dramatic example.<sup>472</sup> The original survey charge for the 53,718-acre block was £393 13s 11d.<sup>473</sup> Between 1895 and 1902, 63 court orders were made for partitions of the block, increasing the total survey charges to £2,096 13s 10d. Nearly half of this amount – £1,038 2s 4d – related to the original partition of Kinohaku East 2 (Pakeho), as well as its subsequent partition in 1897 into 28 sections.<sup>474</sup>

Other significant increases in survey costs following partitions were recorded in Pirongia West, Pukenui, Hauturu East and West, and Kakepuku. In the case of Pirongia West, for instance, survey charges increased in 1902 from £151 10s 10d to £760 15s 5d. In Pukenui, meanwhile, survey charges increased to £418 after originally being charged at £116 6s 6d.<sup>475</sup>

#### 10.6.2.1.3 THE IMPACT OF INTEREST ON SURVEY LIENS

Survey debts, once converted into liens, also incurred interest. Under the 1888 Act, interest was set at five per cent per annum, and began accruing one year after a court order.<sup>476</sup> As already discussed, the Crown and Ngāti Maniapoto agreed in 1889 to extend the one-year grace period to two years for subdivisional surveys. Later legislation gave the court more discretion in charging interest. The Native Land Court Act 1894 allowed the court to set a ‘fair and reasonable’ interest rate not ‘exceed[ing] five per centum per annum’ for a maximum of five years.<sup>477</sup> However, this discretion was short-lived. In 1895, the Crown amended the legislation again, setting interest at five per cent in all instances. The 1895 Act also abolished the one-year grace period, with interest instead calculated ‘from the date of the approval of the survey by the Chief Surveyor’.<sup>478</sup> Drs Husbands and Mitchell

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471. Document A79, p 305.

472. R Stout and A T Ngata, ‘Native Lands in the Rohe-Potae (King Country) District (An Interim Report)’, AJHR, 1907, G-1B, p 2.

473. Document A79, p 244.

474. Document A79, p 306; doc A60, pp 319–320. The 1897 partition was set off by the Crown’s application to partition out the 8,787 acres it had purchased in the block. As will be discussed in section 10.6.2.2.3, the Crown would have incurred the outstanding survey charges from the 1895 partition proportional to the interests it had acquired in the block. It would have also paid the new survey charges associated with partitioning the three subdivisions in which its interests were awarded.

475. Document A79, pp 306–307.

476. The Native Land Court Amendment Act 1888, s 25; doc A79, p 308.

477. The Native Land Court Act 1894, s 66; doc A79, p 308.

478. The Native Land Laws Amendment Act 1895, s 67; doc A79, p 309.

argued that, under this new regime, it became ‘much more likely that a lien would be subject to interest charges for a prolonged period – perhaps even the full five years – than had been the case under the former legislative provisions.’<sup>479</sup>

Interest on survey liens could significantly increase the amount of debt owing. Only limited records of the interest charged on survey liens are available, covering the period between 1900 and 1908. However, there is enough information to make some observations about the impact of interest on survey liens during that period. In four Pirongia West subdivisions, the interest charged had added 26 per cent to the original lien by the time the debt was paid off. The original lien for Pirongia West 1 section 2G, for instance, was £34 18s 3d. Interest added £8 14s 7d, which along with a 50 shilling order fee, brought the eventual total to £43 17s 10d – a 26 per cent increase.<sup>480</sup> There were similarly significant percentage increases recorded in some Kinohaku East and Pukenui 2 subdivisions during the same period.<sup>481</sup> The impact of interest on the amount of survey liens for Rangitoto–Tuhua is considered in section 10.6.2.3.

While these increases generally involved ‘relatively modest sums’, they ‘nevertheless placed a significant burden upon what was usually a small number of Maori owners.’<sup>482</sup> Pirongia West 1 section 2G had just five owners. Assuming they held equal shares, each would have been liable for £8 10s 14d, a significant sum at the time.<sup>483</sup>

#### 10.6.2.1.4 CROWN ATTEMPTS TO REDUCE SURVEY COSTS

The Crown seems to have made some effort to mitigate the cost of surveys in Te Rohe Pōtae, particularly in the 1880s. As discussed in chapter 8, the Crown agreed in 1883 that the cost to Māori for the survey of the exterior boundary of the Rohe Pōtae would not exceed £1,600. The Government also conducted a trig survey at the same time to reduce the cost of future surveys, though we received no evidence of whether this was successful.<sup>484</sup> The real cost of the boundary survey seems to have been between £12,000 and £20,000; the Crown presumably paid for the outstanding sum.<sup>485</sup> Similarly, as discussed in section 10.6.2, in 1889 the Crown and Māori reached an agreement on the costs of subdivisional surveys. Māori were able to nominate their preferred surveyors in exchange for paying the actual cost of survey rather than the schedule rates. While it is unclear exactly what the effect of this agreement was intended to have been, it is possible that it would have allowed Māori to negotiate lower prices with surveyors directly.

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479. Document A79, p 309.

480. Document A79, pp 310, 347.

481. Document A79, pp 347–348.

482. Document A79, p 310.

483. Document A79, p 310.

484. In the Central North Island inquiry district, trig surveys alleviated costs ‘in some cases’, provided the cost of the trig survey was not added to the charge for individual blocks, see Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 510.

485. Document A79, pp 41–42.



### **10.6.2.2 What payment facilities were available to Te Rohe Pōtae Māori for survey charges? Did survey costs lead to land alienation?**

There were generally two options available to Māori for the payment for survey costs: paying with cash or paying with land, either by alienating a proportion of a block or alienating an entire block for payment of charges owing on one or more blocks.

#### **10.6.2.2.1 PAYING WITH CASH**

Paying for survey charges with cash was possible, though it does not seem to have happened frequently in Te Rohe Pōtae. Drs Husbands and Mitchell identified 54 blocks or sections where survey liens were paid by Māori owners in cash between 1892 and 1907, a very small proportion of the overall number of partitions dealt with during this period.<sup>486</sup> They found that survey liens ‘paid off in cash seem to have seldom exceeded £35, with most amounting to less than £20’.<sup>487</sup> Tauī Wētere, for instance, paid the survey liens owing on several Kawhia blocks, though they were reasonably modest at less than £20 per block.<sup>488</sup> Wētere apparently did so with the intention of keeping the land in the owners’ hands. However, while some owners repaid him their share of the charges, others proceeded to sell their land interests, frustrating his efforts.<sup>489</sup>

Owners had to overcome several difficulties to pay for survey charges with cash, particularly for larger debts. Te Rohe Pōtae Māori were still not fully immersed in the cash economy. Indeed, their ability to enter the cash economy was restricted by Crown pre-emption, which limited the options available to Māori to develop their land. As the example of Wētere above demonstrates, individualisation of land ownership also made it difficult to coordinate multiple owners to all agree – and be able – to pay in cash, particularly without any effective form of communal management of land.<sup>490</sup>

Part payments in cash and land might have alleviated these difficulties. However, the court refused, from June 1898 at least, to accept gradual or partial payments of survey debts. Wilkinson and the Survey Department had had difficulties with keeping track of partial payments in the Pukeroa Hangatiki block, and apparently did not want to repeat the experience.<sup>491</sup>

#### **10.6.2.2.2 PAYING WITH LAND**

More commonly, Te Rohe Pōtae Māori had to pay for survey costs in land. This was often the only real option available to them, particularly for substantial survey debts. As will be explored in more detail in chapter 11, the Crown’s imposition of

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486. Document A79, pp 349–350.

487. Document A79, p 313.

488. Specifically, £5 7s 6d was owing on Kawhia K, £15 19s on Kawhia L, £6 7s 6d on Kawhia N, and £18 14s on Kawhia T: doc A79, pp 312–313.

489. Document A79, pp 312–313.

490. Document A79, p 314.

491. Document A79, p 314.

Sale block	Original block cut out of	Area of sale block (acres)	Area of original block (acres)	Area of sale block as percentage of original block
Kopua 1U	Kopua 1	1,038	9,372	11
Taurangi	Taorua parent block	10,000	Unknown	Unknown
Hauturu West F1	Hauturu West	6,000	42,072	14
Hauturu East A	Hauturu East	6,000	56,615	11
Hauturu East D	Hauturu East	5,000	56,615	9
Mangarapa 3	Mangarapa	400	2,663	15
Umukaimata 4A	Umukaimata	5,000	46,680	11
Total	—	33,438	157,402	—

Table 10.1: Sale blocks created prior to 1896

Source: doc A79 (Husbands and Mitchell), p 351

survey charges on Te Rohe Pōtae land played a key role in the commencement of its purchasing programme in the district, and particularly in breaking the resistance of Te Rohe Pōtae Māori to selling their land.

There were two main methods by which Te Rohe Pōtae Māori paid for survey costs in land. The first was the designation of a 'sale block' specifically intended to meet the survey costs for several other blocks or subdivisions. In early cases, these blocks were created on the initiative of Māori land owners, as in Kopua 1, where 1,035 acres were cut out to pay for surveys, and in Hauturu East and West, where 6,000 acres were cut out of both blocks.<sup>492</sup> In all, 33,438 acres of land was set aside as sale blocks before 1896 (see table 10.1).

From 1896, the court took control of the process of creating sale blocks. Section 10 of the Native Land Laws Amendment Act 1896 empowered the court to create sale blocks with the chief surveyor acting as a trustee along with other 'such persons' who the court thought 'fit' to act as trustees. The court also had the power to name who should receive any surplus after the sale and once all 'of the costs intended to be provided for' had been deducted. According to Drs Husbands and Mitchell, this rather paternalistic provision was meant to ensure that owners actually sold the blocks set aside for survey costs. Sale blocks created under section 10 were particularly prevalent in the Rangitoto–Tuhua subdivisions, with approximately 34,340 acres of the original block used as payment for survey liens (see section 10.6.2.3).<sup>493</sup>

The second method of paying for survey costs in land came in 1894, when the Crown gave itself the power to apply to the court to have land taken in lieu of payment of survey debts. Section 65 of the Native Land Court Act 1894 empowered

492. Document A79, pp 315–316.

493. Document A79, pp 316–317.

Category	Area (acres)
Land from sale blocks created prior to 1896	33,438
Land from sale blocks defined under section 10 of the Native Land Laws Amendment Act 1896	35,166
Land taken in lieu for survey liens paid under section 65 of the Native Land Court Act 1894, 1897–1901	16,704
Land paid in lieu of survey lien upon application of the chief surveyor, 1906–1907	6,080
Total	91,388

Table 10.2: Total land alienated in Te Rohe Pōtae to cover survey and related charges, 1890–1907  
Source: doc A79 (Husbands and Mitchell), p 370

the court to designate an area of, or interest in, land as payment for a survey lien to the entitled party (almost always the Crown). At least before 1906, the court generally did this at the same time as interests purchased by the Crown were being cut out.<sup>494</sup> In this way, the Crown was able also to acquire land from non-sellers to meet their share of the survey charges owing on the blocks in which the Crown was purchasing.

The amount of land that Māori had to alienate to meet survey costs did not just depend on the scale of the survey costs, but on the price per acre that the Crown was willing to pay for the land. Lower prices meant that more land had to be alienated to meet the charges owing. Crown pre-emption further exacerbated this problem, denying Māori owners the opportunity of seeking higher prices on the open market. Māori landowners were understandably unhappy with this situation. In 1899, for instance, the owners of the 826-acre sale block Maraetaua 6 complained to Premier Seddon about the five shillings per acre the Crown was prepared to pay for the block. They pointed to the quality of the land and called for either 15 shillings an acre or to 'let the land be put into the public market, so that the surveys may be paid for and defrayed'. The Crown held to its original offer, however, meaning that the alienation realised only £206 10s of the £340 owing for survey costs.<sup>495</sup>

Witnesses before our inquiry provided different figures for the total amount of land alienated to pay for survey charges in Te Rohe Pōtae. According to Drs Husbands and Mitchell, more than 91,000 acres of land within the boundaries of the original Aotea–Rohe Potae block was alienated to cover survey costs between 1890 and 1907 (see table 10.2).<sup>496</sup> Leanne Boulton, however, calculated a lower figure of 80,625.28 acres as having been alienated up to the end of 1908.<sup>497</sup> Both Drs

494. Document A79, p 317.

495. Document A79, pp 325–326.

496. Document A79, pp 328, 370.

497. Document A67, pp 429–431.

Husbands and Mitchell and Boulton used the court's minute books to compile their totals, but differed on the amount of land given up for survey charges for several blocks. Ultimately, because they provided more detailed figures down to the level of individual subdivisions, we prefer the total compiled by Drs Husbands and Mitchell.

#### 10.6.2.2.3 SURVEY CHARGES AND CROWN PURCHASING

The Crown's approach to paying survey charges for the land it purchased differed according to the amount of land it acquired. Initially, where the Crown purchased an entire block, such as the sale blocks that were created to pay for survey charges of parent blocks, it paid the associated survey costs. Drs Husbands and Mitchell provided the examples of the Crown's purchases of the Kopua 1U and Hauturu East A and D sale blocks. After the blocks had been sold to the Crown, 'the Chief Surveyor withdrew his application to the Court for a survey charging order against the owners'. After 1900, however, the Crown's practice seems to have changed, with sellers incurring the cost of survey for the sale blocks created under section 10 of the Native Land Laws Amendment Act 1896.<sup>498</sup>

The Crown's approach to paying for survey costs remained consistent for when it had acquired only some interests in a block. If there were outstanding survey charges on the block within which it had purchased interests, the Crown generally paid the outstanding charges on the area it was purchasing. Wilkinson explained the reasoning for the Crown's practice in 1901:

It has been generally understood in connection with Rohe Potae purchases where the Government fixes the selling price per acre itself, and the owners cannot sell to anyone else, that Government will pay the portion of survey costs due on the area acquired by it. That is the owners of the land are not to be asked to pay the survey costs on the portion of the block sold to the Government, but only on the portion that they retain.<sup>499</sup>

In addition, further survey charges were incurred as a result of the Crown having its interests cut out of the block. In other districts, non-sellers often had to pay for their portion of these survey costs.<sup>500</sup> That does not appear to have been the case in Te Rohe Pōtae. Drs Husband and Mitchell noted that they found 'no evidence' of non-sellers being charged for the survey costs of the new partition created in these circumstances.<sup>501</sup> The only exception to this approach was where 'the remaining Māori-owned land was divided into more than one section'. In those instances, the Māori owners were responsible for paying for the survey charges associated with the new partitions of their remaining land. Generally, however, the Government paid the full survey cost for the partitions directly resulting from its

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498. Document A79(g), pp 15–16; doc A79, pp 351–352.

499. Document A79, p 311.

500. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 511–512.

501. Document A79(g), p 16.

purchasing of individual interests.<sup>502</sup> We consider the relationship between survey charges and the Crown's purchasing programme in more detail in section 11.4.2.

### 10.6.2.3 Case study: Rangitoto–Tuhua survey costs

Several of the features described above were at play in the massive Rangitoto–Tuhua block. In its concessions, the Crown specifically identified Rangitoto–Tuhua as an area where Te Rohe Pōtae Māori had to give up excessive amounts of land to pay for survey costs.<sup>503</sup> The cost of surveying the various subdivisions of the block also featured prominently in several of the claims before us.<sup>504</sup>

At around 603,355 acres, Rangitoto–Tuhua was the largest parent block within the Aotea–Rohe Potae block.<sup>505</sup> Large parts of the block were rugged and mountainous, and the initial survey costs for some of its many subdivisions were high. Three large blocks cost more than £300 to survey, while five were charged between £200 and £300. An additional 11 subdivisions incurred survey charges between £100 and £200. On a per acre basis, the 92-acre Rangitoto–Tuhua 27 (Haupapa) was the most expensive to survey, at 3s 3d per acre for a total of £23 12s 10d. By comparison, most of the Rangitoto–Tuhua subdivisions cost less than 10 pence per acre to survey. In all, and including the £657 6s 2d charged to the owners for the survey of the block's western boundary, at least £6,789 16s 4d in survey costs were charged to the owners of Rangitoto–Tuhua.<sup>506</sup>

There is also particularly detailed information about the interest charged to survey liens on the Rangitoto–Tuhua subdivisions between 1900 and 1908. The percentage increase in original survey liens due to interest and fees ranged from four per cent to 22.5 per cent on the 20 subdivisions for which information is available. The normal increase on these blocks was between seven and 10 per cent of the original lien. Some of these blocks had already incurred significant survey charges. The 227-acre Rangitoto–Tuhua 6 (Matawaia), for instance, cost £36 14s 8d to survey – or 2s 19d per acre. After interest and fees, this amount rose to £45 – a 22.5 per cent increase – by the time it was paid off.<sup>507</sup>

The survey costs on most Rangitoto–Tuhua blocks appear to have been paid in land. The only survey charge paid for in cash was for the 562-acre Rangitoto–Tuhua 41, which cost £26 18s 4d.<sup>508</sup> Twelve sale blocks totalling 34,340 acres were created under section 10 of the Native Land Laws Amendment Act 1896 (see table 10.3) to pay survey charges and other court costs for 25 Rangitoto–Tuhua blocks (including the sale blocks). During our hearings, Roy Haar of the Pukepoto Farm

502. Document A79(g), p 16.

503. Submission 3.4.305, p 9.

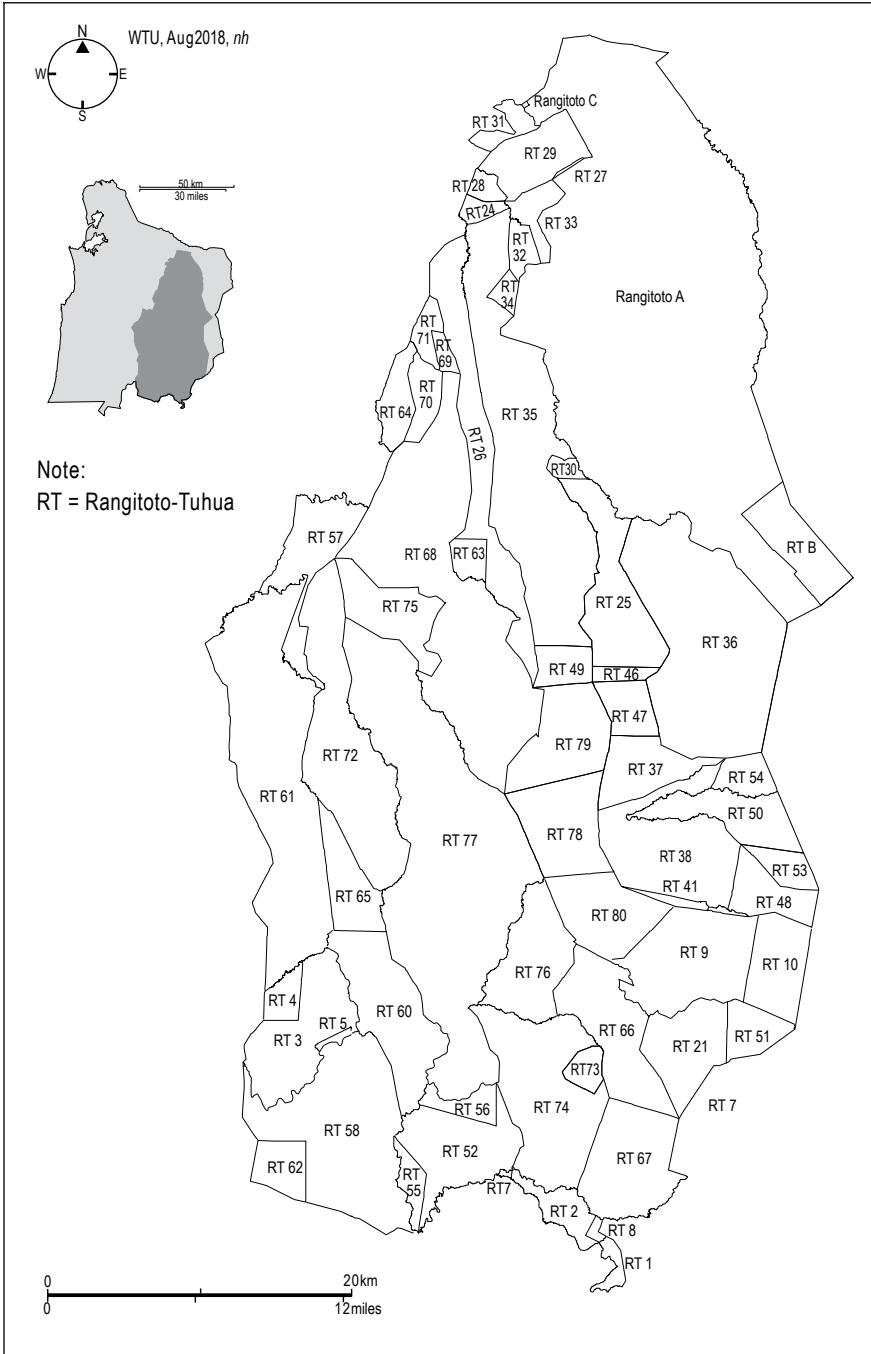
504. These include: Wai 48 (submission 3.4.211, pp 33–34); Wai 478 (submission 3.4.155(a), pp 4–8); Wai 928 (submission 3.4.175(b), pp 29–30); Wai 987 (submission 3.4.167, pp 24–25); Wai 1147 (submission 3.4.151, pp 30–31); Wai 1230 (submission 3.4.168, pp 20–23); Wai 1255 (submission 3.4.199, pp 39–42); Wai 1299 (submission 3.4.234, pp 9–11); Wai 1309 (submission 3.4.220, pp 17, 19–21, 23).

505. Document A79, p 283.

506. Document A79, pp 304–305, 339–341.

507. Document A79, pp 309–310, 339, 348.

508. Document A79, p 350; doc A21 (Douglas, Innes, and Mitchell), p 121.



Sale block	Original block cut from	Sale block area (acres)	Original block area (acres)
Rangitoto–Tuhua 4 (Horokio)	Rangitoto–Tuhua 3	1,770	10,070
Rangitoto–Tuhua 10	Rangitoto–Tuhua 9	6,070	12,437
Rangitoto–Tuhua 46	Rangitoto–Tuhua 25	1,000	10,112
Rangitoto–Tuhua 47	Rangitoto–Tuhua 37	3,000	5,527
Rangitoto–Tuhua 48	Rangitoto–Tuhua 38	4,000	13,239
Rangitoto–Tuhua 49	Rangitoto–Tuhua 35	2,500	30,345
Rangitoto–Tuhua 51	Rangitoto–Tuhua 21	3,000	7,157
Rangitoto–Tuhua 56	Rangitoto–Tuhua 52	2,000	9,031
Rangitoto–Tuhua 61B	Rangitoto–Tuhua 61	1,500	28,525
Rangitoto–Tuhua 62	Rangitoto–Tuhua 58	3,000	21,176
Rangitoto–Tuhua 63	Rangitoto–Tuhua 26	1,500	12,757
Rangitoto–Tuhua 65	Rangitoto–Tuhua 60, 57, and 65	5,000	23,691
Total		34,340	184,067

Table 10.3: Rangitoto–Tuhua sale blocks defined under section 10 of the Native Land Laws Amendment Act 1896

Source: doc A79 (Husbands and Mitchell), pp 351–352.

Trust gave evidence about how survey liens had contributed to the reduction in size of Rangitoto–Tuhua 60 (Pukepoto). He particularly pointed to the 5,000-acre Rangitoto–Tuhua 65, which was cut out of Rangitoto–Tuhua 60 to pay the survey charges owing on Rangitoto–Tuhua 60, 57, and 65.<sup>509</sup>

As it is not clear from the minute books whether the acreages of the sale blocks created under section 10 were included in the given acreages of the original blocks, Drs Husbands and Mitchell provided both minimum and maximum proportions for the amount of land that was taken to meet survey charges. At one extreme, sale block Rangitoto–Tuhua 47 was at least 35 per cent of Rangitoto–Tuhua 37, the original block that it was cut from, and at most 54 per cent. At the other extreme, Rangitoto–Tuhua 61B was 5 per cent of Rangitoto–Tuhua 61. In four of the 12 sale blocks, at least 20 per cent of the original block was taken to meet survey charges.<sup>510</sup>

509. Document s29, pp 2, 6; submission 3.4.155(a), pp 4–8.

510. Document A79, pp 322–324, 369–370. Although proceeds from section 10 sale blocks were sometimes used to pay other court costs as well (as with Rangitoto Tuhua 4 and Rangitoto Tuhua 65), survey costs were the largest item by far.

Year	Name of block	Area (acres)	Area taken in lieu of lien (acres)	Area taken in lieu of lien (percentage of block)
1906	Rangitoto–Tuhua 28	930	38	4.1
1906	Rangitoto–Tuhua 68	35,434	561	1.6
1906	Rangitoto–Tuhua 77A	21,360	544	2.5
1906	Rangitoto–Tuhua 55	1,548	288.75	18.7
1906	Rangitoto–Tuhua 73	1,494	305	20.4
1906	Rangitoto–Tuhua 74	16,317	1,245	7.6
1906	Rangitoto–Tuhua 80	7,744	421	5.4
1907	Rangitoto–Tuhua 31E	518	26.75	5.2
1907	Rangitoto–Tuhua 31G	325	18.25	5.6
1907	Rangitoto–Tuhua 27	92	57.50	62.5
1907	Rangitoto–Tuhua 30	740	199	26.9
1907	Rangitoto–Tuhua 75	10,112	313.50	3.1
1907	Rangitoto–Tuhua 72	7,197.24	214	3.0
1907	Rangitoto–Tuhua 78	8,418	325	3.9
Total		112,229.24	4,556.75	—

Table 10.4: Rangitoto–Tuhua land paid in lieu of survey lien upon application of the chief surveyor, 1906–07

Source: doc A79 (Husbands and Mitchell), pp 362–365

In addition, 4,557 acres of Rangitoto–Tuhua blocks were taken in lieu of survey liens upon application of the chief surveyor between 1906 and 1907. These takings ranged from 1.5 to 62.5 per cent of the original acreage of the blocks (see table 10.4).

As with other blocks, the amount of land that Rangitoto–Tuhua landowners had to give up for survey costs depended on the amount the Crown was prepared to pay for their land. Rangitoto–Tuhua 56, for instance, was created under section 10 of the Native Land Laws Amendment Act 1896 as a sale block to pay for the survey costs of both Rangitoto–Tuhua 56 and Rangitoto–Tuhua 52. (As discussed in section 10.6.2.2.2, section 10 allowed the court to set aside a portion of a block to be sold to cover survey and other court costs.) In 1903, the owners protested the Crown's offer of four shillings per acre and requested five shillings per acre instead. In another letter the next year, Mehana Tuhoro, Haupokia Te Pakaru, and Parehaitina Tuhoro objected to the cutting out of the sale block itself, which had increased the survey charges owing on Rangitoto–Tuhua 52 by £78 7s 1d. They requested that the Crown refund the survey charges owing on Rangitoto–Tuhua



56. The Crown eventually increased its offer to 4s 8d per acre, but resisted paying for the survey of the sale block.<sup>511</sup>

It is clear that the survey costs charged against some Rangitoto–Tuhua subdivisions were excessive, as the Crown has conceded. As a guide for what constituted an excessive survey charge, we agree with the Te Urewera Tribunal that ‘figures of over 10 per cent were too high, and that, where costs amounted to over 50 per cent of the land, this was completely unacceptable.’<sup>512</sup> As discussed, in at least four of the 12 sale blocks created under section 10 the Native Land Laws Amendment Act 1896, at least 20 per cent of the original block (or blocks) was taken to meet survey charges. Four other section 10 sale blocks involved the taking of at least 10 per cent of the original block (or blocks).<sup>513</sup> In four blocks where survey liens were paid in land upon application of the chief surveyor between 1906 and 1907, the proportion was greater than 18 per cent. In one of those cases – the 92-acre Rangitoto–Tuhua 27 – 62.5 per cent of the block was taken to pay for survey charges. At a time when Te Rohe Pōtae Māori were struggling to retain their land and find their way in the new economy, this scale of additional land loss was particularly costly.

### 10.6.3 Other court-related costs

Attending Native Land Court hearings resulted in other, indirect costs to Te Rohe Pōtae Māori. Although the court occasionally sat in other locations in Te Rohe Pōtae to be closer to the blocks being considered, some degree of travel was always necessary for participants. At times, the distances required to be travelled were considerable. Accommodation, food, and the retention of kaiwhakahaere imposed additional costs on participants.

Given these costs, the length of Native Land Court hearings, as well as any delays to the commencement of hearings, were a source of concern for Te Rohe Pōtae Māori. Between 1892 and 1907, the court sat in the district for 1,433 days, conducting business on 1,347 of those days.<sup>514</sup> Court sittings could go on for months at a time, and often dealt with dozens, if not hundreds, of cases. These cases were all advertised in a single pānui, with a single starting date. It was therefore unclear, at least when a sitting began, when particular cases would be dealt with. In addition, advertised start dates to sittings were often missed as the court dealt with backlogs from previous sittings.

There is very little evidence before us to indicate what Māori did in practice when faced with an indeterminate wait for their case to be considered, or how the court dealt with delays. However, there are examples of Māori complaining about delays, indicating that some at least stayed around. A sitting of the court advertised as beginning on 28 April 1894 did not actually commence until 12 May. This delay drew complaints from Hinaki Ropiha on behalf of others from Whanganui

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511. Document A79, pp 325–327.

512. Waitangi Tribunal, *Te Urewera*, vol 3, p 1235.

513. Document A79, pp 369–370.

514. Document A79, p 281.

who had been waiting for the sitting to begin. Hari Whanonga complained on 30 January 1899 about the delay in hearing Maraetaua and Orahiri while the court heard the Pukenui 1 and 2 and Kakepuku 4 cases. Maraetaua and Orahiri would not be heard until 10 February.<sup>515</sup> As discussed in section 10.5.1.6, these delays were by no means the most extreme faced by Te Rohe Pōtae Māori either.

There is only limited evidence of the scale of the incidental costs of involvement in the court process. John Ormsby claimed that the owners of Puhunga had spent between £100 and £140 during the hearing of the block.<sup>516</sup> Some owners of Taraunui (Rangitoto–Tuhua 3) spent £129 10s on incidental costs during the block's three-month hearing in 1897. Although they were able to recover these costs from the proceeds of a sale block (Rangitoto–Tuhua 4), the addition of the costs to the survey charges owed, as well as the price the Crown was prepared to pay for the land, meant that an extra 270 acres had to be sold. Further, by the time the sale of the sale block was finalised in 1904, the principal owner of Taraunui – Miriama Kahukarewao – was so impoverished that she was compelled to ask the Government for an advance to cover the cost of the train fare to come and sign off the sale.<sup>517</sup> This kind of cash poverty suggests that court-related costs were a very real burden on Māori.

In other districts, Native Land Court sittings were accompanied by problems with alcohol and rapacious storekeepers. The evidence indicates that these problems were not a significant feature of the Native Land Court experience in Te Rohe Pōtae. The court sat for the most part in Māori townships and the district was also subject to a prohibition on liquor.<sup>518</sup>

Previous Tribunals have suggested a link between court sittings and poor health amongst Māori attendees. The Central North Island Tribunal, while noting that there was insufficient evidence 'to establish a causal link', concluded 'with some confidence that the conditions in which many Maori lived during sittings, and the toll that absence from home took on normal economic activities were a significant contributor to poverty and poor health in this period.'<sup>519</sup> The Te Urewera Tribunal similarly found that court sittings impacted 'the health and wellbeing of claimants.'<sup>520</sup>

There is only very limited evidence about the health of Te Rohe Pōtae Māori while attending Native Land Court sittings. Conditions at Ōtorohanga could be harsh. During the original sitting in 1886, for instance, the court's attendees were met with a 'most inclement and bitterly cold' winter.<sup>521</sup> At the same time, it should be noted that Wilkinson stated in reference to the 1886 sitting of the court:

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515. Document A79, p 293.

516. Document A79, p 296.

517. Document A79, p 296.

518. Document A79, p 298.

519. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 518.

520. Waitangi Tribunal, *Te Urewera*, vol 3, p 1266.

521. *Waikato Times*, 23 October 1886, p 2; doc A79, p 144.

Notwithstanding that the Court sat continuously through four months of a most boisterous and inclement winter that nine-tenths of the Natives attending Court were living in tents the whole of the time, there was not a single case of death or severe illness amongst them. One cause of this absence of sickness can, I think, be accounted for by the fact that the sale of intoxicating drinks is prohibited in the King-country.<sup>522</sup>

The court's minute books do contain some references to illness among the assembled crowds in Te Rohe Pōtae over the period covered by this chapter. A number of people were 'ill with influenza' during the Puhunga (Rangitoto–Tuhua 61) hearing, causing John Ormsby to seek an adjournment. The court also had to adjourn several times during the Taranui hearing in 1897 due to 'four separate deaths and the illness of both the witness and a kaiwhakahaere'. In both of these specific examples, however, there is no indication of whether the illnesses and death were directly related to the sitting of the court, or 'only incidental to its presence'.<sup>523</sup> More generally, however, we consider it likely that many illnesses at the time would have been more easily transmitted because people were in such close proximity while in court hearings.

#### 10.6.4 Treaty analysis and findings

Although not always the case, it is apparent that participating in the Native Land Court could be expensive for Te Rohe Pōtae Māori. Because Te Rohe Pōtae Māori often held interests in multiple blocks, some Māori would have faced court-related costs several times. Furthermore, most blocks would come back before the court many more times for succession and subdivision cases, incurring yet more costs.

As outlined in section 10.3.2, the parties in this inquiry focused on three kinds of court-related costs: direct court costs, indirect costs, and survey charges. In general, the claimants argued that '[c]ourt related costs were a burden on Te Rohe Pōtae Māori and were so onerous that they faced in many cases long-term detrimental hardship'.<sup>524</sup> The Crown accepted that participation in court proceedings resulted in costs to Māori, but questioned 'the overall scale of the costs, the extent to which they were reasonable, and their overall impact and effect'.<sup>525</sup>

Some direct costs, like court fees, were relatively small on their own, though for long, complex, and contested cases they could become significant. The Crown, indeed, accepted that these fees 'could quickly mount' but argued that apportioning fees relative to participation was fair.<sup>526</sup> We do not agree, particularly given that Te Rohe Pōtae Māori had not wanted the court to sit in their district, and given the limited control they had over its processes.

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522. GT Wilkinson, 'Annual Report Upon the State of the Natives in the Waikato and Thames-Hauraki Districts,' AJHR, 1887, G-1, p 5; doc A79, p 298.

523. Document A79, pp 298–299.

524. Submission 3.4.107, p 44.

525. Submission 3.4.305, p 86.

526. Submission 3.4.305, p 89.

Beyond these direct costs, there were also the indirect costs associated with court participation, including travel, accommodation for hearings, and the retention of kaiwhakahaere. These costs could be exacerbated by the imperfect system of notification, particularly the delays that often occurred for commencement of sittings. Evidence of the scale of these costs in Te Rohe Pōtae is scant, though they were significant at least sometimes. It is known, furthermore, that the court typically sat for extended periods each year and that particularly contentious cases could take weeks, if not months, to be resolved. The claimants also alleged that, during hearings, ‘many Te Rohe Pōtae Māori lived in substandard conditions resulting in sickness and death.’<sup>527</sup> We agree with the Crown that there is insufficient evidence for such a broad conclusion.<sup>528</sup> Nonetheless, as previous Tribunals have observed, we consider that the close proximity of so many people during hearings would have likely made the transmission of illnesses easier.

Survey costs were often the most expensive part of the court process for Te Rohe Pōtae Māori. The claimants submitted that survey costs were ‘excessive’ in Te Rohe Pōtae, while the Crown conceded that Te Rohe Pōtae Māori sometimes ‘had to give up unreasonably large amounts of land to pay for survey costs.’<sup>529</sup> The Crown further acknowledged that survey costs could be ‘an excessive and disproportionate burden’ on Māori, and that Crown pre-emption prevented Te Rohe Pōtae Māori ‘from paying these costs by the leasing of their lands.’<sup>530</sup>

Te Rohe Pōtae Māori were charged at least £23,728 for survey costs between 1892 and 1907. Survey costs often reflected the nature and the size of the block being surveyed. As the claimants pointed out, this meant that the owners of ‘remote, difficult and low-return blocks’ were hit disproportionately hard, particularly because their blocks ‘provided relatively little by way of income to meet those debts, again forcing them to sell to discharge the debts.’<sup>531</sup>

Indeed, survey costs were generally too large to be paid for in cash, particularly as Te Rohe Pōtae Māori were not yet fully immersed in the cash economy. Only 54 blocks had their survey charges paid in whole or in part between 1892 and 1907; most of these charges were relatively modest. Instead, Te Rohe Pōtae Māori mostly paid for survey costs – including interest – in land. At first, owners took the initiative in creating ‘sale blocks’ to pay for survey charges owing on their lands. Soon, however, the court and Crown took control of the process of cutting out land to pay for survey costs. In total, between 1892 and 1907 more than 91,000 acres of Te Rohe Pōtae land was alienated as payment for survey costs.<sup>532</sup>

As private purchasers were excluded from the market by the Crown’s pre-emption regime, the amount of land that Te Rohe Pōtae Māori had to give up for survey costs was determined by the prices that the Crown was prepared to pay. Because

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527. Submission 3.4.107, p 48.

528. Submission 3.4.305, pp 87–88.

529. Submission 3.4.107, p 52; submission 3.4.305, p 93.

530. Statement 1.3.1, p 83; submission 3.4.305, pp 9–10.

531. Submission 3.4.107, pp 56–57.

532. Document A79(b) (Husbands and Mitchell summary), p 15.

these prices were, as the Crown conceded, '[o]ften . . . considered unreasonably low'; Te Rohe Pōtae Māori often had to alienate more land than they would have otherwise.<sup>533</sup> In some instances, as with Rangitoto–Tuhua 56, the owners were able to negotiate slightly higher purchase prices to reduce the amount of land to be alienated. But in other instances, as with Maraetaua 6, they had to accept the amount the Crown was willing to pay. In that case, the result was that the sale did not even cover the full amount of survey costs owing.

The claimants argued that '[i]t was inappropriate that Te Rohe Pōtae Māori were required to pay fees to acquire title to land that they already owned', particularly because the Crown and settlers received the most benefit from the Native Land Court process.<sup>534</sup> The Crown responded that the basic principle for costs should be that 'whoever accrues benefit should contribute costs'. In the case of survey costs, the benefit was gaining secure title. The Crown did accept that it could have taken further steps to reduce the burden on Māori owners, such as imposing 'less onerous consequences for non-payment of survey charges' that would not 'necessarily lead to land alienation.'<sup>535</sup> It also could have differentiated between different categories of owners, including those who did not intend to sell.<sup>536</sup>

Other Tribunal panels have pointed out that it was not only Māori who benefited from securing title. There was a wider national benefit, particularly for the Crown and the settlers who wanted to purchase and settle Māori land. The Te Urewera Tribunal, for instance, commented:

To saddle its indigenous people – particularly those who had scarcely entered the market economy – with the cost of surveying large tracts of North Island land was inequitable. All the more so when, as governments constantly stressed, this land was in the main intended for settlers.<sup>537</sup>

As the Hauraki Tribunal pointed out, taking land through the Native Land Court was often little more than 'the prelude to a succession of partitions and sales', making it difficult to see what benefit Māori received.<sup>538</sup> In Te Rohe Pōtae, as seen in chapter 8, the Crown had been clear that its goal was to acquire Māori land for Pākehā settlement. Furthermore, it had clearly seen settlers – not Te Rohe Pōtae Māori – as the agents of the development that the railway would initiate in the district. In those circumstances, we agree with those Tribunal panels that court-related costs, and particularly survey costs, should have been shared more equally.

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533. Submission 3.4.305, p 9.

534. Submission 3.4.107, pp 50–51.

535. Submission 3.4.305, p 9; transcript 4.1.24, p 139 (Crown counsel, hearing week 17, James Cook Hotel Grand Chancellor, Wellington, 11 February 2015).

536. Submission 3.4.305, p 9; transcript 4.1.24, p 139 (Crown counsel, hearing week 17, James Cook Hotel Grand Chancellor, Wellington, 11 February 2015).

537. Waitangi Tribunal, *Te Urewera*, vol 3, p 1195.

538. Waitangi Tribunal, *The Hauraki Report*, vol 2, p 780.

Accordingly, we find that the Crown, in failing to lessen the costs associated with the court process, or to institute a fairer and more equal distribution of those costs, breached the Treaty principle of active protection.

Two particular factors exacerbated the prejudice that Te Rohe Pōtae Māori suffered as a result of court-related costs and the Crown's Treaty breaches. First, we consider it relevant that the Native Land Court was imposed on Te Rohe Pōtae Māori against their will. They had long resisted the introduction of the court into their rohe and only applied to the court for title determination when they faced losing control of the process altogether. Once the court was introduced into the district, participation in the court system was, as the Hauraki Tribunal found, 'virtually obligatory'.<sup>539</sup> Furthermore, while the court that operated in Te Rohe Pōtae was an improvement in several respects, the Crown never met the core demand of Te Rohe Pōtae Māori that they have control over the title determination process. Yet, despite all of this, it was Māori who bore many of the costs associated with the court and the titling of their lands. In effect, Māori were forced to pay to give effect to the article 2 guarantee of tino rangatiratanga over their land, and they most often paid in land. We consider that this was plainly contrary to the Treaty guarantee of tino rangatiratanga and to the Crown's duty to actively protect Te Rohe Pōtae Māori possession and control of their land and resources.

Secondly, the Native Land Court titling regime usually denied Māori the benefit – secure title – that was supposed to result from survey and titling. As we explored in section 10.4, Native Land Court titles were often a burden to Māori landowners, creating instability and uncertainty that could often only be resolved by partitioning down to smaller blocks with a manageable number of owners. Such partitioning meant that Māori had to incur further court and survey costs in order to gain something resembling the "secure title" promised by the Crown. The Crown acknowledged that there is a question as to whether it created a fair titling system.<sup>540</sup> We consider it did not.

### **10.7 TO WHAT EXTENT DID TE ROHE PŌTAE MĀORI PROTEST THE COURT AND WHAT REDRESS WAS AVAILABLE?**

Despite essentially having been forced into the Native Land Court, most Te Rohe Pōtae Māori sought to engage with its processes in order to prevent the worst outcomes. As the Crown has acknowledged in several inquiries, including this one, 'Māori who did not wish to participate in the Native Land Court were nevertheless bound to in order to seek to protect their land interests and were required to incur the costs that attended their participation and any awards the Court made'.<sup>541</sup>

Nonetheless, Māori who participated in the court did sometimes choose to protest its hearings, while others opposed it entirely. Moreover, participation did not

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539. Waitangi Tribunal, *The Hauraki Report*, vol 2, pp 778–779.

540. Statement 1.3.1, pp 83–84.

541. Submission 3.4.305, p 10.

necessarily mean that the worst outcomes would be avoided; court decisions did not always go the way that participants hoped. For Māori who wanted to challenge court decisions, there were two main avenues for seeking redress: rehearings and appeals, and petitions to the Native Affairs Committee. As outlined in section 10.2.3, the parties disagreed over whether these remedies were adequate or suitable, with the claimants arguing that they were not and the Crown arguing that they were.<sup>542</sup>

This section begins by considering how the court in Te Rohe Pōtae dealt with protest and opposition, both from Māori who were normally participants in its processes and from those Māori who chose to stay away from the court entirely. The section then considers the avenues of redress that were available for Māori who were dissatisfied with court decisions or surveys.

### **10.7.1 Protest and opposition**

There was never universal participation by Māori in the Native Land Court process. Even those who had participated in its proceedings sometimes stayed away from court, either explicitly boycotting the court or employing more indirect forms of protest when they did not agree with a certain course of action. There was also a significant minority who remained outside of the court process entirely and continued to oppose the court's activities in the rohe. How the court dealt with Māori who protested or opposed the court, and whether it recognised their interests, are important issues for whether the court process was fair for Te Rohe Pōtae Māori.

#### **10.7.1.1 *The court's response to protest by participants***

On occasion, Te Rohe Pōtae Māori who were otherwise participants in the court process boycotted court proceedings. In these instances, the court appears to have been more likely to take a softer approach, or at least less able to respond if there was no other business to go forward with. In part, the court's response depended on the scale of the boycott. When most or all of the parties before the court refused to attend, the court sometimes had no other option but to stop its business.

One of the most significant boycotts of the court in Te Rohe Pōtae occurred in 1887. Ngāti Maniapoto and Ngāti Raukawa initiated the boycott in response to the court's decision in the Maraeroa and Hurakia blocks in Taupō. The blocks, located on the eastern boundary of Te Rohe Pōtae, had been heard as part of the Tauponuiatia case. Both groups had been excluded from title to the blocks. Ngāti Maniapoto argued that this had occurred because Taonui had been required to attend the Magistrates court in Cambridge during the original Tauponuiatia

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542. Submission 3.4.107, pp109–115; submission 3.4.305, pp97–99. Several claims raised issues concerning the adequacy of redress, including: Wai 440 (submission 3.4.198); Wai 1469, Wai 2291 (submission 3.4.228); Wai 1944 (submission 3.4.233); Wai 586, Wai 753, Wai 1396, Wai 1585, Wai 2020, Wai 2090 (submission 3.4.204); Wai 1824 (submission 3.4.181); Wai 1147, Wai 1203 (submission 3.4.151); Wai 691, Wai 788, Wai 2349 (submission 3.4.246); Wai 1588, Wai 1589, Wai 1590, Wai 1591 (submission 3.4.143); Wai 2273 (submission 3.4.141).

hearings, meaning the ‘the dividing line between Maniapoto and Tuwharetoa had been fixed without reference to Maniapoto.’<sup>543</sup>

The Ōtorohanga court had adjourned in November 1886 with the ownership lists of the Aotea–Rohe Potae block still outstanding. When the court reopened on 15 June 1887, it expected to continue with this work. However, Taonui, Hauauru, and others refused to proceed. They demanded that their application for rehearing of the Taupō cases be addressed first. Judge Mair granted numerous adjournments for the parties to reconsider, but they would not be moved. In the end, the court did not resume until late November 1887, after Judge Mair had become impatient and insisted that the parties proceed with the completion of the lists. Māori did so, but remained reluctant to begin subdivisions of the Rohe Potae block.<sup>544</sup>

Early the next year, the chief judge rejected an application to rehear the Maraeroa and Hurakia cases. When the Ōtorohanga court reopened two weeks later, Ngāti Maniapoto and Ngāti Raukawa refused to proceed with the subdivisions of the Aotea–Rohe Potae block. On this occasion, Judge Mair was less accommodating. Other parties were before the court, ready and willing to proceed with their applications. Mair declared that it would be ‘very unfair that they should be disbarred’ because of complaints about the Taupō cases. He then threatened to hear the applications of those willing to proceed at Alexandra or Kihikihi. Mair adjourned the court to allow Ngāti Maniapoto and Raukawa to contemplate their options. The next day, Hauauru returned to court and declared that their complaints about Maraeroa, Hurakia, and other blocks would not be forgotten. He pledged that they would ‘still agitate about those places’. But Mair’s threat had the intended effect: the tribes, Hauauru said, would allow the tribal subdivisions to go ahead.<sup>545</sup>

Another boycott occurred in April 1895 when Ngāti Maniapoto, Ngāti Hikairo, and Ngāti Mahuta withdrew their claims before the court to protest the Native Land Court Act 1894. The Act had extended the Crown’s right of pre-emption. Ngāti Maniapoto withdrew 159 claims (the entirety of their claims before the court), while Ngāti Hikairo and Ngāti Mahuta withdrew a combined 177 cases. The judge declined to allow the withdrawal, apparently concerned about the ‘trouble and expense’ advertising the applications again would cause the Government.<sup>546</sup> The boycotters, however, continued to stay away. With no other work before it, the court was left to work through the Crown’s applications for survey charging orders and to have its interests cut out of various blocks. The boycott seems to have ended only following the Crown’s request on 22 May 1895 for the court to define its interests in Kinohaku 2 (Pakeho), which forced the owners into rushed discussions to arrange their relative interests.<sup>547</sup>

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543. Document A79, pp172–174.

544. Document A79, p172.

545. Document A79(a) (Husbands and Mitchell document bank), vol 4, pp142–143; doc A79, pp172–173.

546. Document A79, p 482.

547. Document A79, pp 482–483.



Other boycotts ended much faster. In 1897, for instance, a Ngāti Maniapoto attempt to boycott the court lasted less than a week. The attempted boycott was again a response to the Crown's continued power of pre-emption. Tamihana Te Huirau told the court on 17 July that Ngāti Maniapoto had decided 'not to proceed with the work in the Court in consequence of the pressure of the laws upon us . . . We have decided to call upon all of our hapus to withdraw their cases in order that our wrongs may be addressed by the parliament now about to sit.'<sup>548</sup>

In response, Judge Gudgeon warned the parties present that

for the last 20 years this has been the procedure of the Maoris in the matter of their lands. Now this Court has no desire to interfere with the arrangements made by any tribe but we will say this that if any man comes here and asks us what we intend to do with his claim we will at once tell him to go on with the case and if those who ought to oppose him do not do so they will suffer for the reason that if they are not parties to the suit they will have no right of appeal.<sup>549</sup>

Nonetheless, the court adjourned for two days, with the judge noting that 'it is evident that very little will be done until the Maraetaua & Rangitoto Tuhua block have been dealt with.'<sup>550</sup> When the court resumed on 19 July, it continued with succession cases, and received some applications for partition. This suggests there may have been other parties who opposed the boycott, or who at least 'had business which they wanted the Court to go on with.'<sup>551</sup> By 22 July, the boycott was seemingly over: Ngāti Maniapoto returned to court, with Pepene Eketone appearing to seek the fixing of a partition of Karuotewhenua B.<sup>552</sup>

Te Rohe Pōtae Māori sometimes employed other forms of resistance short of outright boycotts. The subdivision of Rangitoto–Tuhua was originally applied for in 1888, but due to non-attendance it was delayed for nearly a decade. On one occasion, parties who did attend told the court that the other owners had not heard of the sitting, something the judge cast doubt on.<sup>553</sup> The court, however, seemed willing to adjourn cases in these instances, particularly if it had other work to process in the meantime.<sup>554</sup>

#### **10.7.1.2 The court's response to opposition by non-participants**

The court was much firmer with those who refused to engage with the Native Land Court process at all. The Kīngitanga was a particular centre of opposition to the activities of the court in Te Rohe Pōtae, both before and after its arrival. As Waikato-Tainui and the Kīngitanga did not participate in our inquiry, we cannot

548. (1897) 28 Otorohanga MB 252; doc A79, p 484.

549. (1897) 28 Otorohanga MB 252; doc A79(e) (Husbands and Mitchell responses to questions of clarification), p 58.

550. (1897) 28 Otorohanga MB 253; doc A79, p 484.

551. Document A79(e), pp 59–60.

552. *Karuotewhenua B* (1897) 28 Otorohanga MB 273; doc A79, p 484.

553. Document A79, p 177.

554. Document A79, p 179.

reach any conclusions about the prejudice they might have suffered as a result of not attending court sittings. However, we include examples of their treatment here as context for the court's approach to non-participants.

Following the lead of Tāwhiao, a 'significant number' of Māori associated with the Kīngitanga boycotted the court for its initial sitting in 1886. As outlined in section 10.4.1, Te Wheoro was left alone to present evidence on behalf of the Waikato counter-claimants to Kawhia. His testimony was interrupted by Whitiara, who, on behalf of Tāwhiao, called upon the court to withdraw Kawhia from the Aotea-Rohe Potae case. With Ngāti Maniapoto and Hikairo objecting to any withdrawal, the court ruled that the hearing of Kawhia would continue. The court eventually found in favour of the Ngāti Maniapoto and Hikairo claims to Kawhia.<sup>555</sup>

Kīngitanga resistance to the court continued after the initial 1886 hearing and into the twentieth century. After informing the court in Kāwhia that the King disapproved of 'any dealing' within the Taharoa block, Judge Gudgeon proceeded to hear and decide on the case nonetheless. Supporters of the Kīngitanga also expressed their opposition to the court's activities during the definition of interests in Tokanui 1B and C in 1894, the subdivision of Rangitoto-Tuhua in 1898, and the partition of Hauturu East 1E 5C in 1903.<sup>556</sup>

Māori at Te Kumi, located near Te Kūiti, also refused to go to court. One such individual, Te Whata, had interests in several blocks, including as a principal owner of the 3,693-acre Hauturu East 1E section 5C 2. In 1894, that block was subdivided into five parts on the application of an agent for two minors who owned interests in the block. Te Whata and his people, who had not attended court, were awarded the western portion of the block, but it is unclear if this was a fair representation of their actual interests. The court, however, proceeded regardless.<sup>557</sup>

The consequences for these Māori of not attending court could be serious. Land could be awarded to other parties who were prepared to go to court, resulting either in total loss of a block or an unfair allocation of shares within a block. Absentee owners had to rely on the goodwill of those who did participate in court proceedings to place them on the ownership lists. In the Awaroa case in 1892, which concerned land near Kāwhia, Judge Gudgeon made clear the consequences for the Kīngitanga of their boycott of the 1886 sitting:

It seems almost a certainty to the Court that had the Waikato claimants behaved in a sensible manner and appeared before the Native Land Court in support of their claims that there would have been no Ngatimaniapoto owners to dispute with them. They however listened to bad advice and the consequence is that there are 270 Ngatimaniapoto in the block and Waikato are now paying the penalty of their own foolishness.<sup>558</sup>

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555. Document A79, p 145.

556. Document A79, p 382.

557. Document A79, pp 383–384.

558. *Awaroa* (1892) 12 Otorohanga MB 366; doc A79, pp 145–146.

Non-attendance could also limit options for appeal. In their decision on the Karuotewhenua appeal in 1896, the judges of the appellate court warned that an intentional absence in the original case ‘would go far towards depriving them [the appellants] of the right to expect that any grievance they might suffer would be remedied on appeal.’<sup>559</sup> In that case it appears that the appellants had been absent from the original case because of confusion about when it was to be heard, rather than because of an intentional boycott.<sup>560</sup>

## 10.7.2 Redress

### 10.7.2.1 Rehearings and appeals

From 1886 until 1894, the main avenue of redress available to Te Rohe Pōtae Māori dissatisfied with a decision of the Native Land Court was to apply to the court for a rehearing. Section 75 of the Native Land Court Act 1886 provided that Māori who were aggrieved with a court decision could apply for a rehearing within 3 months of the original court decision. If the chief judge accepted an application, he could order that part or all of a case be reheard. Cases set down for rehearing would be heard by two judges and one or two assessors.

In 1894, the Crown enacted legislation constituting a new Native Appellate Court.<sup>561</sup> Replacing the previous system of holding special sittings of the court, the new appellate court usually consisted of the chief judge and one other judge. There was also provision for a native assessor, though in line with broader changes to the assessor’s role within the 1894 Act, his assent was not required for a judgment to be valid. Aggrieved Māori had to lodge appeals in writing within 30 days of the decision being ‘pronounced in open court’. Rehearings could consider ‘every question of law and fact’. Decisions were final, with no further appeals.<sup>562</sup>

While we did not receive any detailed evidence about its application in Te Rohe Pōtae, after 1889 there was one further avenue for redress for Māori. Section 13 of the Native Land Court Acts Amendment Act 1889 gave special powers to the chief judge to remedy errors or omissions without having to go to a full rehearing.<sup>563</sup> These powers were subsequently carried over by section 39 of the Native Land Court Act 1894.

#### 10.7.2.1.1 1886–94 : REHEARINGS

The process for making an application for rehearing appears to have been less than clear. The legislation and rules of the court provided little guidance on the form in which applications were to be made, other than that they should be in writing and should ‘state shortly the grounds upon which such application is made.’<sup>564</sup>

559. *Karuotewhenua* (1896) 11 Otorohanga MB 191; doc A79, p 378.

560. Document A79, p 378.

561. Native Land Court Act 1894, part X.

562. Document A79, pp 429–430.

563. Grant Phillipson, ‘An Appeal from Fenton to Fenton: The Right of Appeal and the Origins of the Native Appellate Court’, *New Zealand Journal of History*, vol 45, no 2 (2011), p 179.

564. Native Land Court Act 1880, s 47; Native Land Court Act 1886, s75; ‘Rules of the Native Land Court’, 15 March 1890, *New Zealand Gazette*, 1890, no 14, p 310.

Further, while applications for rehearing had to be made within 3 months of the original court decision, it was sometimes unclear when an original court decision was deemed to have been made. Almost all applications for rehearing concerning the Kawhia block were rejected as being premature – that is, they were filed before the court had made its formal order. Drs Husbands and Mitchell pointed out that ‘[w]hen the Court resumed in 1887 and again in 1888, it did not make an award of title for the blocks described in the original 1886 application and judgment so it is unclear when the opportunity for an application be filed would have arisen.’<sup>565</sup> Faced with this uncertainty, many applicants filed applications for rehearing multiple times. Only one application – from Hone Te One, concerning Kaipiha – from this time appears to have been considered by the chief judge, and it was dismissed.<sup>566</sup>

Aspects of the way in which the chief judge dealt with applications for rehearing were also rather opaque. The chief judge was not required to give reasons for dismissing an application. No published set of criteria by which the chief judge would consider an application existed. This would have probably made it difficult for Māori applicants to know how to best frame their case for favourable consideration. In practice, the chief judge seemed to focus mainly on the narrow facts of each case, and ‘demanded compelling evidence before allowing a rehearing’<sup>567</sup> By 1888, rehearing applications were considered in open sittings, with the chief judge accompanied by an assessor, an interpreter or translator, and a clerk.<sup>568</sup> The role of the assessor in hearing applications for rehearing was simply to assist the chief judge; they had no decision-making power.<sup>569</sup> Rehearing applications could be contested, with other parties from the original case allowed to set up a counterclaim before the chief judge.<sup>570</sup>

Only a small number of applications for rehearing were granted in Te Rohe Pōtae. Of 35 applications filed between December 1888 and September 1891, only one block – Mangawhero – was reheard.<sup>571</sup> In Turoto, an application by Makereti Hinewai to add names to the list of owners under section 13 of the Native Land

565. Document A79, p 153.

566. Document A79, p 153.

567. Document A79(g), p 14.

568. Transcript 4.1.16, p 654 (Paul Husbands, hearing week 6, Aramiro marae, 11 September 2013); Phillipson, ‘An Appeal from Fenton to Fenton’, p 183.

569. There was some debate over this point. Drs Husbands and Mitchell, pointing to section 24 of the Native Land Court Act 1886 Amendment Act 1888, argued that the assent of the assessor was not required for a rehearing to be ordered. Crown counsel suggested that ‘Drs Husbands and Mitchell state[d] that the legislation did not stipulate that the assessor’s assent to the Court’s decision was required’. This is incorrect – Drs Husbands and Mitchell were plainly referring only to the assessor’s role in deciding whether or not to grant a rehearing. The Crown correctly pointed out that the assessor’s assent was required when the rehearing was actually heard; this does not appear to have been in dispute. See Native Land Court Act 1886 Amendment Act 1888, s 24; doc A79(g), p 3; submission 3.4.305, pp 41–42; Waitangi Tribunal, *Te Urewera*, vol 3, p 1101.

570. Transcript 4.1.16 (Paul Husbands, hearing week 6, Aramiro marae, 11 September 2013).

571. Document A79, p 211. After the Crown provided further information from the *Gazette* and the chief judges’ minute book, Drs Husbands and Mitchell revised the figures provided in their original report, adding one further rehearing application from the period 1888–90: doc A79(g), pp 4–12.

Court Acts Amendment Act 1889 was also successful.<sup>572</sup> Of the unsuccessful applications, several were dismissed for either being premature or too late. In at least five other cases the applicant withdrew their application (no reasons appear to have to been recorded). Of the remaining applications, the chief judge dismissed some for their ‘very slight’ evidence, which was ‘not sufficient to justify a rehearing.’<sup>573</sup> For example, the chief judge dismissed an application concerning the Pakarikari partition case, stating: ‘taking all facts into consideration and the evident care with which the Court arrived at its former decision I don’t think the Court could come to any other conclusion if a rehearing were ordered.’<sup>574</sup> For most of the other applications dismissed by the chief judge during this period, no reason for the dismissal was recorded.

There was an increase in the number of accepted applications for rehearing in the period between 1892 and 1894: eight cases were reheard from a total 27 applications.<sup>575</sup> The reasons for this increase are unclear, but it might have been related to changes in the judiciary (both of the chief judge and the judge sitting at Ōtorohanga), or simply to the nature of the cases before the Ōtorohanga court at that time.

Of those cases that were eventually reheard, the outcomes of the rehearings seem to have been mostly favourable. In the Mangawhero rehearing – the only case reheard before 1892 – the original order was cancelled and a new order was made, with the descendants of Kuarua admitted into the block.<sup>576</sup> Of the eight cases reheard as a result of applications filed between 1892 and 1894, all resulted in either the original decision being amended, overturned, or replaced with a new order.<sup>577</sup> This suggests that, with applications for rehearing having first been vetted by the chief judge, those applications that made it to a full rehearing concerned decisions that were clearly wrong.

#### 10.7.2.1.2 NATIVE APPELLATE COURT, 1894–1910

Under the Native Appellate Court system, aggrieved parties had 30 days after the pronouncement of the decision in open court to lodge a notice of appeal. This was a considerable decrease from the 3 months allowed under the rehearing system. However, it was also clearer when the period in which to lodge an appeal began and ended.

Drs Husbands and Mitchell questioned whether 30 days was sufficient time for Māori to consult and decide whether to lodge an appeal. They also pointed to the fact that during this period Te Rohe Pōtae remained ‘a region where roads were few and people and information must have still often travelled by foot.’<sup>578</sup> The Crown submitted that the 30-day requirement was ‘not an unreasonable “barrier”’

572. Document A79(g), p 6.

573. Such as for the applications concerning Mangamahoe and Kakepuku, see doc A79(g), pp 7–8.

574. Document A79(g), p 6.

575. Document A79, p 429.

576. Document A79, p 211; doc A79(g), p 9.

577. Document A79, p 429.

578. Document A79, p 431.

and assisted in ‘achieving certainty and finality’.<sup>579</sup> However, Crown counsel did not directly address whether the 30-day time limit was practical in the circumstances of the time.

As section 10.7.2.1.1 outlined, under the rehearing system, it was not enough for an application for rehearing to meet the technical requirements. The chief judge also had to deem that the complaint had sufficient basis to justify a rehearing. Under the new appeals system, however, if an appeal met the technical requirements, the Native Appellate Court automatically proceeded to hear the appeal. Once an appeal was underway, assessors sat on the court alongside the two European judges. We received no evidence as to the extent of the assessors’ involvement in Native Appellate Court cases.

Between June 1895 and December 1906, Māori lodged 82 appeals against decisions of the Native Land Court in Te Rohe Pōtae. Nearly half of these appeals – 40 – related to the subdivision of Rangitoto–Tuhua. There were also multiple appeals against the court’s decisions in Kinohaku East 2 (Pakeho), Karuotewhenua, and Taumatotara. From these appeals, the appellate court conducted 39 hearings, and dismissed the remaining 43 appeals, largely on technical grounds. Twelve were dismissed because the applicants failed to pay the required security deposit, 11 were withdrawn by the applicants, and others were deemed invalid or late.<sup>580</sup>

Perhaps as a consequence of the chief judge no longer vetting which cases would be reheard, the results of appeals heard by the appellate court were more mixed than under the old system. Of the 39 hearings held by the Native Appellate Court, 18 resulted in the original order being affirmed or upheld. In 17 other cases, the appellate court cancelled or modified the original orders, while in four other cases it partially upheld and partially modified the original order.<sup>581</sup> For instance, in 1900 the appellate court reversed the decision of the Native Land Court in Pukuweka (Rangitoto–Tuhua 2). In doing so, the Native Appellate Court granted the land to the Whanganui appellants instead of the hapū associated with Ngāti Maniapoto who had won the initial case. The appellate court also overturned the original decision in the Rangitoto title investigation which had favoured Ngāti Matakore exclusively. It instead split the land between Ngāti Matakore and Ngāti Whakatere.<sup>582</sup>

It should be noted that appeals were not necessarily the final recourse for Māori, particularly if they were unhappy with the decision of the Native Appellate Court. As is discussed in section 10.7.2.2, the appellate court’s decision in Pukuweka was subject to petitions, a royal commission of inquiry, and eventually reheard by the Native Appellate Court. Similarly, the ownership of Te Akau was subject to decades of legal dispute, including several appeal hearings, a royal commission, and eventually a Privy Council decision.<sup>583</sup>

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579. Submission 3.4.305, p100.

580. Document A79, p 431.

581. Document A79, p 430.

582. Document A79, pp 430–431.

583. Document A65(c) (Innes response to Tribunal statement of issues), p5.

As with the rest of the Native Land Court process, appeals were not free for Māori. Appeals were subject to court costs, though they were mostly modest. Data available for 27 appeals cases reveals a median court cost of £2 6s. Costs could be more substantial: the Pukuweka appeal incurred £36 8s in court costs, for example.<sup>584</sup> Court costs for appeals also came on top of the range of court-related costs that had already been incurred.

Appellants were also required to pay a security deposit at a rate set by the presiding judge within 14 days of the deposit being set. In setting the amount, judges 'appear to have been guided primarily by the size and potential expense of the case in question'. In general, deposits for appeals in Te Rohe Pōtae ranged from £2 to £40; the median deposit was £10.<sup>585</sup>

The consequences of not paying the deposit for an appeal were serious. If an appellant failed to pay the deposit set by the court, their case was dismissed, while the decision they had objected to was confirmed 'as if' it had been 'affirmed by the Appellate Court'. The effect of such an affirmation was that no further appeals were possible.<sup>586</sup> The court had a discretion to remit payment of the deposit 'if it shall appear to the Court that the appellant is unable to pay the amount required, and that injustice may be done by the dismissal of such appeal unheard'.<sup>587</sup> However, the power does not seem to have been widely used in Te Rohe Pōtae; Drs Husbands and Mitchell identified just two cases. In one case, £1 out of a £20 deposit was forgiven, although the appellant eventually paid the £1 regardless. In another case, £10 was forgiven.<sup>588</sup>

### 10.7.2.2 *Petitions*

Te Rohe Pōtae Māori also had the option of petitioning Parliament with their complaints about Native Land Court cases. These petitions were usually dealt with by the Native Affairs Select Committee. Following an investigation of the claims made in the petition, the committee reported back to the House as to whether further investigation or inquiry was justified. The Government was not obliged to adopt the recommendations of the Native Affairs Committee.<sup>589</sup>

Between August 1889 and the end of 1907, Te Rohe Pōtae Māori submitted at least 36 petitions relating to Native Land Court decisions to Parliament, including 30 that were submitted after the establishment of the Native Appellate Court in 1894.<sup>590</sup> Of this latter group, the Native Affairs Select Committee recommended that the Government further inquire or consider 21, and recommended that the remaining nine did not warrant further investigation.<sup>591</sup> Very occasionally the committee made more specific recommendations. For example, in relation to

584. Document A79, p 433.

585. Document A79, pp 432–434.

586. Native Land Laws Amendment Act 1895, s 40; doc A79, pp 432–433.

587. Native Land Laws Amendment Act 1895, s 40.

588. Document A79(e), p 39.

589. Document A79, p 435.

590. Document A79, p 435.

591. Document A79, pp 435–436.

a petition from Ahurei Hikairo and five others concerning Pirongia West 1, the committee recommended that '[t]he Chief Judge of the Native Land Court should hold an inquiry regarding the injustice which appears to have been done to the petitioners.<sup>592</sup>

Not obliged to adopt the recommendations of the committee, the Crown's response to a positive recommendation varied. Where the Crown opted to take action in response to a recommendation, it usually convened a commission of inquiry to investigate the matter further. For example, Ngāti Kauwhata petitions protesting court decisions concerning Maungatautari eventually led to a commission of inquiry in 1881.<sup>593</sup> Similarly, after having had their application for a rehearing of the Maraeroa and Hurakia blocks rejected in February 1888, Taonui Hikaka and Hitiri Paerata had unsuccessfully pursued a number of other strategies to get the cases reconsidered, including a boycott of the Ōtorohanga court and appealing to the Supreme Court. Ultimately, they were successful in convincing the Native Affairs Select Committee, which in August 1888 recommended that an inquiry be held. In response, the Crown established a royal commission of inquiry in 1889, eventually leading to a new investigation of title to the blocks in 1891.<sup>594</sup>

In 1904, the Government established another royal commission to inquire into 25 petitions from North Island Māori concerning the decisions of the Native Land Court.<sup>595</sup> The Native Affairs Select Committee had already deemed these petitions worthy of further consideration. Included in the list to be considered by the royal commission were four petitions relating to Te Rohe Pōtae blocks – Te Kauri 2, Whatitokarua, Pukuweka, and Papaokarewa (Kawhia M). Pukuweka was one of the most contentious investigations undertaken by the Ōtorohanga court, and a demonstration of the incompatibility of the court's process and title when determining complex customary interests. As noted above, the Native Appellate Court had overturned the original decision in the Pukuweka case in 1900, granting the land to Whanganui instead of Ngāti Maniapoto. Ngāti Maniapoto subsequently petitioned the Government about the appellate court's decision in 1902, seeking a rehearing.<sup>596</sup> The Whatitokarua case had also already been before the Native Appellate Court in 1900, but in that instance the appellate court had affirmed the original decision.<sup>597</sup>

The royal commission held hearings in Te Kūiti and Kihikihi in 1905. The commissioners upheld the complaints of the petitioners concerning Te Kauri 2 and Pukuweka, but considered that the petitions concerning Whatitokarua and Papaokarewa did not warrant further action. In the case of Te Kauri 2, the royal commission recommended some concrete action: 'that the partition complained

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592. Chairman of the Native Affairs Committee, Report on the Petition of Ahurei Hikairo & 5 others, 16 October 1895, doc A59(b) (Mitchell document bank), p 347; doc A79, p 436.

593. Document A120 (McBurney), pp 187–190; submission 3.4.134, pp 25–39.

594. Document A79, pp 172–174.

595. The commission was called "The Royal Commission Appointed Under Section 11 of "The Maori Land Claims Adjustment and Laws Amendment Act, 1904".

596. Document A79, pp 435–436.

597. Document A79, p 455.



of be annulled'; it is unclear whether this happened. In the case of Pukuweka, however, the commission only recommended a rehearing.<sup>598</sup>

The Native Appellate Court eventually reheard Pukuweka in 1910. It set a high bar for overturning its earlier decision, noting 'it would require very cogent reasons' from Ngāti Maniapoto to do so. Whanganui, who were 'in the position of having the judgements of the Courts in their favour', were not required to present evidence in support of their position. The appellate court ultimately upheld its 1900 decision to grant the land to Whanganui. In response, Taonui Hikaka and 18 other Ngāti Maniapoto submitted two further petitions to Parliament. Although the Native Affairs Committee referred both petitions for 'consideration', the Government does not appear to have taken any further action.<sup>599</sup>

In most cases, however, it appears that the Crown took no further action following a positive recommendation from the Native Affairs Select Committee. Drs Husband and Mitchell stated that recommendations 'generally received only cursory investigation before being set aside'. They suggested that this might have partly been because '[a]s a rule, the authorities called upon to verify the validity of a petition's claim were the same as those who had created the grievance in the first place.'<sup>600</sup> Although this certainly occurred in other inquiry districts,<sup>601</sup> we caution that Drs Husbands and Mitchell did not point to any direct evidence that the Native Affairs Select Committee or the Crown consulted Native Land Court judges about any petitions relating to decisions of the Ōtorohanga court.

### 10.7.2.3 Remedying survey errors

#### 10.7.2.3.1 OVERVIEW

When the court was first established, surveys were conducted by private surveyors. However, there were problems with cost and quality of these surveys, drawing criticism from both Māori and Crown officials. As a result, the Native Land Court Act 1873 gave control of surveys to a new Government surveyors' office.<sup>602</sup> The role private surveyors were to play in the court process varied from this point. The 1880 Act excluded private surveyors entirely, while the 1886 Act allowed private surveyors to conduct surveys provided they held a certificate of competency from the surveyor-general.<sup>603</sup>

Despite these safeguards, the sheer amount of surveying work that had to be conducted meant that problems with the quality of surveys sometimes arose. Particularly as partitioning and Crown purchasing increased from the 1890s, the court was responsible for the creation of thousands of new subdivisions, each requiring a survey. George Wilkinson reported to Lewis in April 1903 that surveys were sometimes not 'carried out in accordance with the Court's Order' and

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598. Document A79, pp 436–437.

599. Document A79, pp 439–440.

600. Document A79, p 437.

601. For example, see Waitangi Tribunal, *Te Kahui Maunga*, vol 1, p 325.

602. Waitangi Tribunal, *The Hauraki Report*, vol 2, pp 737–738.

603. Native Land Court Act 1886, ss 79–80.

### Pokuru 3 Urupā Case Study

Some of the difficulties Māori experienced in gaining redress for court errors are highlighted by the example of the numerous petitions that sought the return of an urupā within Pokuru 3. While petitions in 1892 and 1893 were unsuccessful, a petition lodged in 1895 received a favourable recommendation from the Native Affairs Select Committee. However, Native Minister Seddon rejected the committee's recommendation. He considered that 'it was an unusual course to grant a third hearing, and would require strong reasons to justify it'.<sup>1</sup> Later petitions in 1897, 1909, and 1912 also failed to gain a positive result.

The Crown purchased part of Pokuru 3 in 1901, including the urupā, and gazetted the burial ground as a public cemetery in 1903.<sup>2</sup> The chief judge, responding to the 1909 petition, later cited the Crown's action as having been done 'on the petitioner's representations' but noted that 'it was never intended to give her [Rihi Huangā, the petitioner] a grant of land for her own special purposes'.<sup>3</sup> By 1912, when Rihi Huangā made another petition, the urupā had been bisected by a road.<sup>4</sup>

The matter was eventually resolved in 1922. In August of that year, Rihi Huangā wrote to the Minister of Native Affairs, expressing her frustration with the Crown's inaction:

Tenei ahau kei te noho i roto i te mate i te pouri mo taku urupa i Te lakau[,] ara[,] i Pokuru nama 3A[;] na[,] e tama[,]ko taua urupa kua tino kino rawa inaianei nei[,] ara[,] kua mahia te taiepa a nga keeti kei runga tonu i nga tupapaku inaianei nei[,] e tama[,] kua pau atu aku korero ki a koutou aroaro mo taua urupa[,] a, ki te aroaro hoki o te Kooti whakawa whenua Maori[;] i penei te kupu a te kooti ki a au[,] a[,] ka whakahokia mai taua urupa ki a au[;] e tata ana pea ki te 20 tau inaianei e tatari ana ahau kia whakahokia mai ki ahau taku urupa[,] a[,] kaore ano he kupu a koutou kia tae mai ki ahau mo taua urupa[;] no tenei ra tonu ka kite au kua hanga he taiepa ki runga tonu i nga tupapaku[;] koia ka inoi atu nei ano ahau ki a koutou kia tere ta koutou whakahoki mai ki ahau i taua urupa[,] kia tauri ahau ki te whakapai i oku tupapaku[;] ka inoi tonu atu ahau ki a koutou mo taua urupa ake ake.<sup>5</sup>

1. Document A59(b), p 1163; doc A79, p 437.

2. Document A21, annex 7, Pokuru blocks; doc A79, p 438.

3. Document A59(b), p 1163; doc A79, p 438.

4. Document A59(b), p 1163; doc A79, p 438.

5. Document A59(b), p 1508.

Here am I living in suffering with sadness for my burial ground at Te lakau [or Te Takau], that is, on Pokuru No 3A. Now, my son,<sup>6</sup> that urupa is in a really dreadful state now, because the Gages' fence was built above the bodies at the time. Son, I have exhausted my speeches concerning that urupa before you and before the court judging Māori land; the court said to me this, that is, that that urupa would be returned to me. Now it is nearly twenty years that I have been waiting for that urupa to be returned to me, and no further words of yours have come to me concerning that urupa. On this day I saw that a fence had again been built over the bodies. Therefore I am again pleading with you that your return to me of that urupa should be swift, so that I may set in order my dead. I will go on pleading with you for that urupa for ever and ever.<sup>7</sup>

I am sad because of my burial ground at Te lakau that is at Pokuru Nama 3. It has been desecrated because a fence belonging to the Gages has been built upon the portion where persons are buried. I gave very exhaustive evidence before the Court (NLCT) in reference to this matter and the Court gave me to understand that this burial ground would be returned to me. For twenty years I have waited for this understanding to be given effect to but in vain. Since then nothing more has been said about the matter by you. Today a fence has been erected upon the very place where persons are buried. I therefore entreat you to return to me my burial ground as soon as possible to enable me to put it in order. I shall forever entreat you concerning this burial ground.<sup>8</sup>]

In response, and following correspondence between the Native Department and Lands Department (which continued to oppose any return of the burial ground), the Government finally passed legislation later that year (1922) to return the urupā to the Māori owners.<sup>9</sup>

Rudolph Hotu pointed out during our hearings that it took '27 years of persistently reminding the Crown of the need for it to rectify the wrong that occurred through the Native Land Court award'. Furthermore, by the time the Crown took action, Māori were only able to succeed 'in getting [the] 3 roods which remained of the urupa after the dirty great road had been put smack in the middle of it'.<sup>10</sup>

6. This is an older man addressing Pōmare, who was still relatively young at this time.

7. Waitangi Tribunal translation.

8. Contemporary Crown translation (doc A59(b), p 1507).

9. Native Land Amendment and Native Land Claims Adjustment Act 1922, s 44; doc A59(b), p 1500.

10. Document 532, p 12.

had to be redone.<sup>604</sup> The survey of the Mangawhero–Waipa block, for example, was criticised by William Charles Kensington of the Lands and Survey Office and judges rehearing the case for not following the court's order.<sup>605</sup> Other surveys were simply poorly done. In March 1892, a Survey Office official criticised a survey of the 'Kaingapipi and Te Ngarara' blocks as showing 'great carelessness', with aspects of it being 'anything but good'.<sup>606</sup>

The extent to which faulty surveys were a problem in Te Rohe Pōtae during the period covered by this chapter is unclear. Drs Husbands and Mitchell identified seven cases where Māori or Crown or court officials complained of problems with subdivisional surveys.<sup>607</sup> In addition, the Pouakani Tribunal dealt with a series of problems arising from surveys on the eastern boundary of the Aotea–Rohe Potae block. That Tribunal found that the Native Land Court, when hearing the Tauponuiatia block at Taupō in 1886, did not have a sufficient plan to hear the block. This led to problems with the surveyed boundaries that were only rectified in 1892 after Māori had incurred considerable time and expense.<sup>608</sup> This Tribunal has no jurisdiction to rehear those claims.

The claimants pointed us to other examples of survey errors. Ngāti Hikairo highlighted an instance where a surveyor appeared in court in 1911 to admit an error in the survey of the northern boundary of Pirongia West, resulting in the loss of 800 acres of land for the owners. No action appears to have been taken in response.<sup>609</sup> Dawn Magner, of Ngāti Uekaha, Ngāti Urunumia, and Ngāti Te Kanawa, told us about a survey of Hauturu East which resulted in a survey line bisecting a wharenuī at Pohatuirī, near Waitomo.<sup>610</sup> We address these claims in the take a takiwā chapters of our report.

Of the seven examples of survey errors identified by Drs Husbands and Mitchell, the Crown or court only appears to have provided a remedy in two instances – for an error concerning Te Waanu Natanahira's land in the Kinohaku West T block, and for the Umukaimata survey error.<sup>611</sup>

In December 1901, Te Waanu Natanahira complained to Wilkinson that land he had sown in grass had been incorrectly designated as Crown land by a survey. The error was amended by court order in February 1904, after Te Waanu had 'presumably lost at least two years of profitable use and development' of his land.<sup>612</sup>

604. Document A79, pp 501–502.

605. Document A79, p 502.

606. Document A79(a), p 1366; doc A79, p 502.

607. Document A79, pp 502–505.

608. Waitangi Tribunal, *The Pouakani Report 1993*, chapter 10, p 178.

609. *Pirongia West* (1911) 52 Otorohanga MB 366–367; doc A98 (Thorne), pp 279–280; submission 3.4.226, p 50.

610. Document s20 (Magner), pp 6–7.

611. Document A79, p 503.

612. Document A79, p 503.

**10.7.2.3.2 CASE STUDY: UMUKAIMATA SURVEY ERROR**

The most significant survey error in Te Rohe Pōtae concerned the boundaries of the Umukaimata, Waiaraia, and Mohakatino Paraninihi 1 and 3 blocks.<sup>613</sup> The Native Land Court investigated title to Umukaimata and the adjoining Taorua parent block at the same time in 1890. Its investigation was conducted on the basis of a sketch plan, which was all that was required at the time.<sup>614</sup> During the investigation, Whaaro, a counter-claimant, added the Waiaraia block to his claim. This piece of land appears to have been left out by the claimants while they awaited the completion of the Mokau Mohakatino and Mohakatino Paraninihi survey.<sup>615</sup>

The survey of Umukaimata was not completed until 1892. In the interim, the Crown commenced purchasing in the Waiaraia and Taorua blocks. The purchase of these blocks was regarded as politically important. The blocks had been offered for sale to the Crown by Wahanui. Wilkinson in particular was keen to purchase the blocks to reassure Te Rohe Pōtae Māori that the Crown was as ready to purchase land in the rohe as it had professed.<sup>616</sup> The Department of Lands and Survey conducted a limited survey of Waiaraia for the Crown in 1891.<sup>617</sup> The surveyor was only asked to survey a line between two points; the remainder of the block's boundary was defined by the neighbouring blocks, as established by the Native Land Court.<sup>618</sup>

The survey of Waiaraia immediately attracted protests. Taonui Hikaka, one of the principal owners of Umukaimata, wrote to Wilkinson in July 1891 that the 'survey is incorrect in my opinion'. He requested that the purchase be delayed until surveys of the surrounding blocks were completed.<sup>619</sup> Wilkinson was concerned and sought clarification of the size and boundaries of Waiaraia from the Chief Surveyor on several occasions. Eventually, however, he appears to have been reassured by the Chief Surveyor's assurances that 'there is no overlap nor confliction of boundaries' and that any error was the responsibility of the Native Land Court.<sup>620</sup> The purchase of Waiaraia went ahead in mid-August 1891.<sup>621</sup>

Even before the survey of Umukaimata was completed in July 1892, there were further objections to the Waiaraia survey. Te Rewatu Hiriako, another owner of Umukaimata, twice complained to the court in January 1892 that parts of Umukaimata had been included in the Crown's purchase of the Waiaraia and Taurangi blocks.<sup>622</sup> In response, the court complained that 'the survey depart-

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613. Submission 3.4.135, pp 8–29.

614. Document A79, pp 542, 546–547.

615. Document A79, pp 551–552.

616. Document A79, pp 560–561.

617. Document A79, pp 542, 546–547.

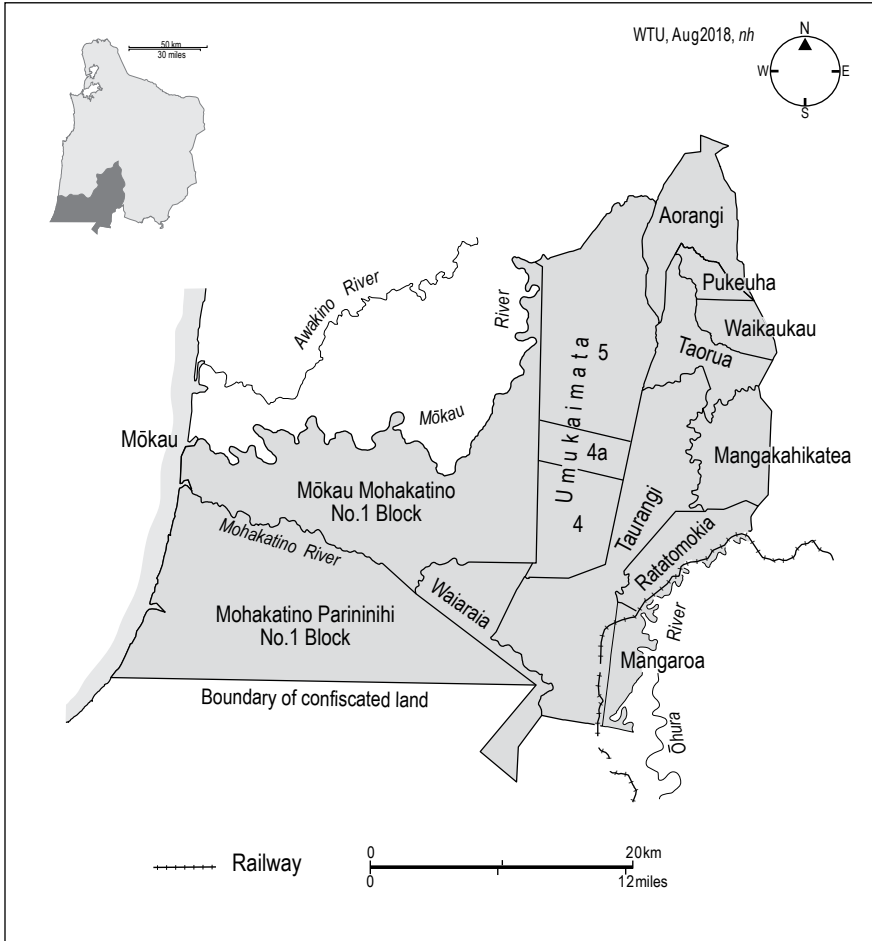
618. Document A79, p 568.

619. Document A79, p 570.

620. Document A79, p 572.

621. Document A79, p 573.

622. *Waiaraia* (1892) 12 Otorohanga MB 22–23; doc A79, p 576.



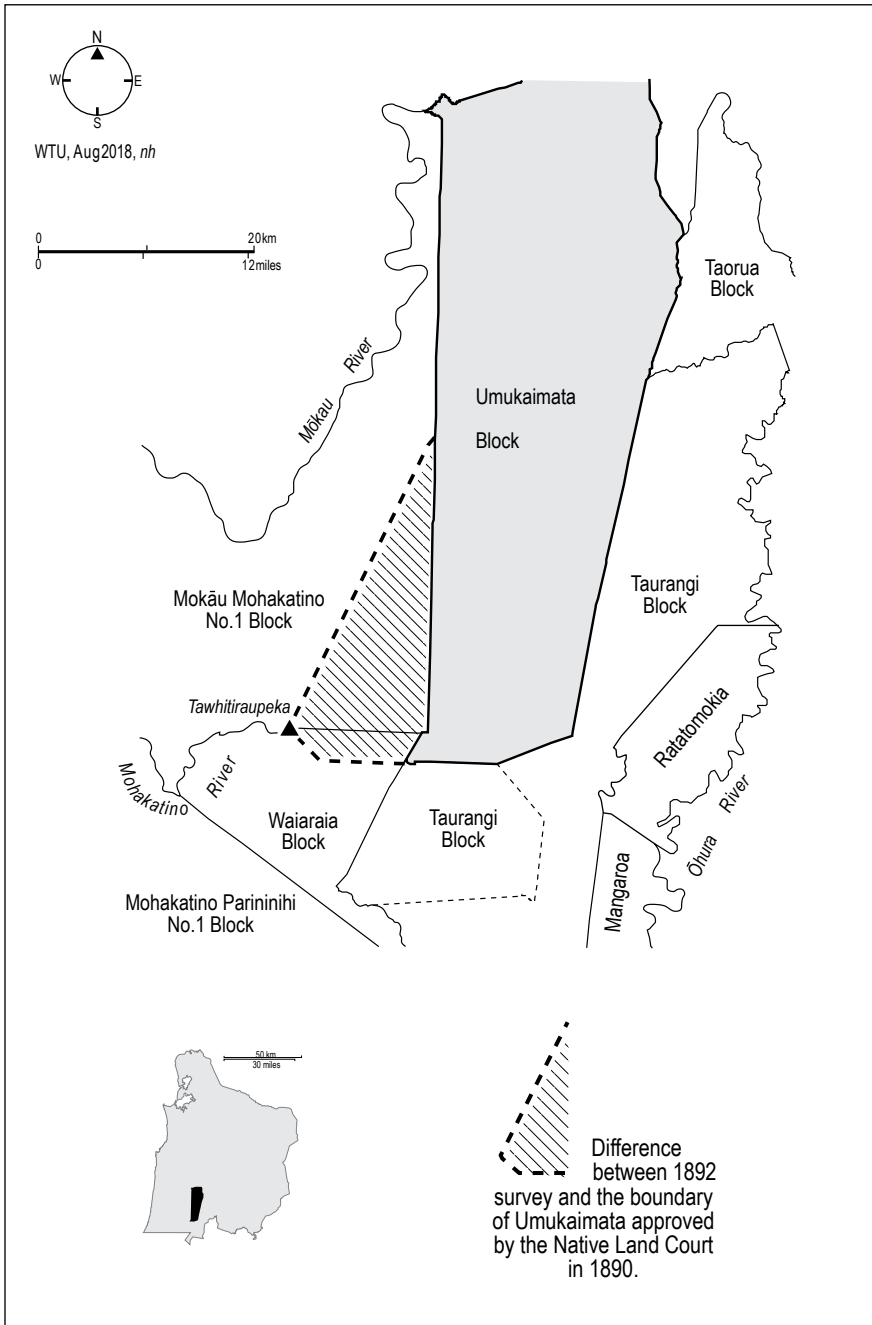
Map 10.6: Umukaimata, Waiaraia, and Mohakatino Paraninihi 1 and 3 blocks as surveyed

ment have inverted the order of things' by surveying Waiaraia first, despite its boundaries being dependent on those of Umukaimata.<sup>623</sup> Judge Gudgeon began to pursue the issue, particularly as complaints continued throughout the year. Wilkinson also reminded the Chief Surveyor that he had raised the matter before the sale went through.<sup>624</sup> The Chief Surveyor admitted to Gudgeon that there was an overlap, but reminded him that 'the rule is that the first Block surveyed & approved must stand.'<sup>625</sup>

623. *Umukaimata* (1892) 12 Otorohanga MB 39; doc A79, p 577.

624. Document A79, pp 577, 579.

625. Document A79, p 578.



Map 10.7: Difference between 1892 survey of Umukaimata and boundaries approved by Native Land Court in 1890

Judge Gudgeon then wrote to the chief judge in August 1892. He reported on the complaints of the owners and detailed ‘several absurdities’ of the boundaries of Umukaimata as passed by the court as compared to its recent survey. He noted that it appeared the Waiaraia survey plan had never been exhibited in court for approval, as was required, meaning there had been no opportunity for Māori to object. He thought that, as a result of the error, ‘the Waiaraia block contains probably 6000 acres of land which properly belongs to the Umukaimata and Mohakatino Parininihi No 1 blocks’. He reported that the owners were ‘naturally very wroth’ that ‘the Govt, through the Native Land Purchase dept’ had ‘successfully swindled them out of so much land’.<sup>626</sup> No action appears to have been taken as a result of Gudgeon’s letter.<sup>627</sup>

Despite the fact that Crown officials, a Native Land Court judge, and Māori were aware of problems with the Waiaraia block from an early stage, it was many years before any remedy for the survey error was provided. After their numerous objections in 1891 and 1892, the Māori owners do not appear to have made any further complaint about the issue until 1907, when Te Rewatu Hiriako, Wiari Te Kuri, and Hone Taonui petitioned parliament.<sup>628</sup> In response, the Crown set aside 2,465 acres of land within Waiaraia as compensation, though the Native Land Court did not hold an investigation to determine who was entitled to ownership of the returned land – known as Te Waro A – until 1915.<sup>629</sup>

Te Rewatu petitioned parliament again in 1925, alleging that the 2,465 acres returned was insufficient redress. He claimed that 11,000 acres had been lost and asked for the balance. Further lobbying by Maui Pomare, Member of Parliament for Western Māori, resulted in an investigation by the Native Land Court in 1928. The court found that the 2,465 acres had only been a ‘rough estimate’, ‘not arrived at on any known facts’. As a result, it could not be determined if the 2,465 acres was ‘adequate recompense’. The judge recommended that an inspection should occur to try and locate the position of Te Pou-a-Wharara, one of the southern boundary points of Umukaimata according to the original court order.<sup>630</sup> An attempt to find the point in 1935 was unsuccessful. By 1936, the Minister of Lands had concluded that ‘I do not see that anything further can be done’ unless new evidence emerged.<sup>631</sup>

In our inquiry, counsel for Ngāti Te Paemate claimed that ‘as with the Crown’s failure to ensure the survey was properly undertaken, by failing to respond to the concerns of the claimants’ tūpuna, the Crown were effectively turning a blind eye to the approach it had taken to the survey’. As a result, the claimants lost land, as well as the time and expense required to pursue a remedy. They consider that the matter remains unresolved.<sup>632</sup> The Crown submitted that it ‘recognises that

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626. *Umukaimata* (1892) 13 Otorohanga MB 47–49; doc A79, pp 580–582.

627. Document A79, p 582.

628. Document A79, pp 582–583.

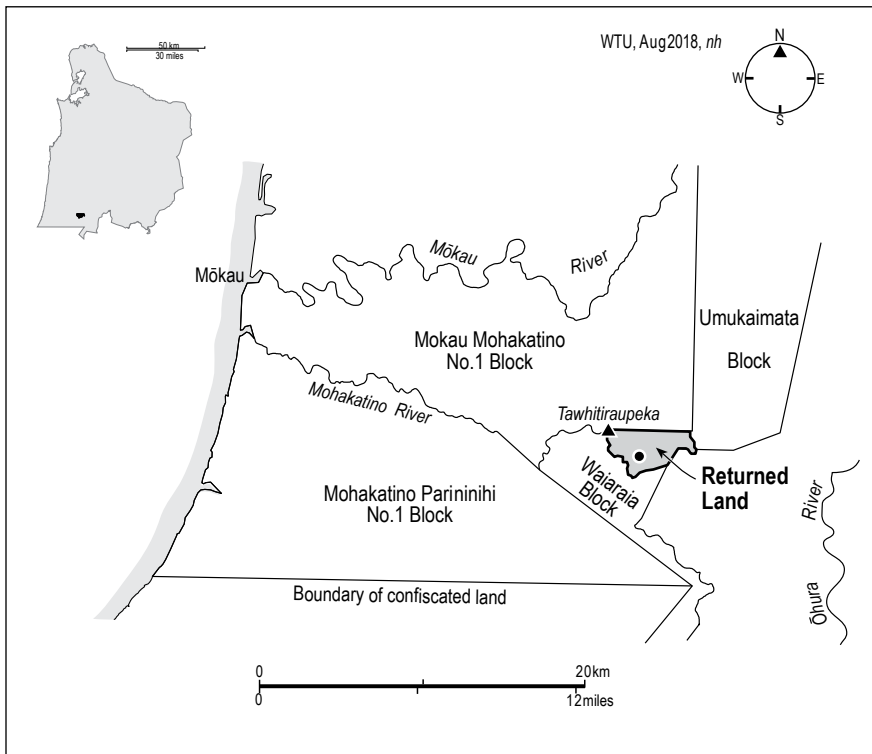
629. Document A79, pp 584–587.

630. Document A79, pp 591–592.

631. Document A79, p 594.

632. Submission 3.4.135, pp 28–29.





Map 10.8: Location of Te Waro A block

a serious error occurred in the survey of the boundaries to the Umukaimata, Waiarara and Mohakatino Paraninihi 1 and 3 blocks and that this caused significant prejudice to the owners of Umukaimata 5'. However, counsel further submitted that this prejudice had been addressed as far as possible by the return of 2,465 acres in 1915.<sup>633</sup>

The location of Te Pou-a-Wharara remains unknown today. However, during our hearings, Crown counsel produced evidence which seemed to significantly narrow down the area in which the point might be located. Drawing upon minute book evidence from 1892, counsel suggested that 'Te Pou-a-Wharara is very near to a point known as Tawhitimarangi', a point shown on the sketch map for Waiarara and near the high point known as "Titi".<sup>634</sup> The Crown further submitted that there was an error in the boundary description for Umukaimata provided by Judge Mair, due to the incorrect placement of the boundary for Mokau Mohakatino No. 1 on the sketch map provided to the court. Moreover, counsel submitted that Judge Mair might have 'incorrectly transposed the words "Mohakatino Paraninihi No.1"

633. Submission 3.4.305, p74.

634. Submission 3.4.310(e), pp 251–252.

for “Mokau Mohakatino No.1” in his boundary description. Counsel submitted that the returned 2,465 acres therefore ‘adequately compensated’ the Umukaimata owners.<sup>635</sup>

Without knowing exactly where Te Pou-a-Wharara was located, it is difficult to assess whether the 2,465 acres returned in 1915 represented adequate compensation for the land lost as a result of the Waiaraia survey. The land that was given to the owners as compensation is not high quality. Barbara Marsh told us during hearings that ‘It’s steep country. You have to lie on your back to look up the hill.’<sup>636</sup>

More than just the quality of the compensation land, however, we consider that timeliness of redress is also very important. Even though the Crown and the court were made aware of the error with the Waiaraia survey from an early stage, it was more than two decades before the Umukaimata owners received some land back as compensation for their loss. This was notwithstanding the concerns and interventions of both Wilkinson and Gudgeon at the time. It was also despite the fact that Waiaraia had been purchased by the Crown itself, meaning that it had the ability to return the land taken in error. In other words, the Crown had every opportunity to provide fast and full redress. It did not.

As the years passed, it became much more difficult for the Crown to fix the problem it had created. In particular, the location of Te Pou-a-Wharara, which might have been easily ascertained in 1891 or 1892, was lost by the time the Crown eventually came to consider redress. In response to complaints from Te Rewatu and others, the Crown did make some effort to try and locate Te Pou-a-Wharara in order to determine exactly how much land had been lost. Those efforts should not be discounted, but by that stage it was just too late. That it took so long for compensation to be provided, and that it only occurred because of the determined efforts of the block’s Māori owners, indicates that the system of providing redress for survey errors was by no means robust.

### 10.7.3 Treaty analysis and findings

Given that Te Rohe Pōtae Māori had so strenuously tried to avoid the court, it is unsurprising that the court’s arrival in the district did not end their opposition and discontent. Some Māori chose to attend hearings, but also withdrew from court proceedings when they were dissatisfied with its decisions or with the Crown’s broader land policies. Other Māori chose to avoid the court entirely, particularly those associated with the Kīngitanga.

The court does not seem to have had any standard approach for protecting the rights of parties who refused to come to court. Rather, the claimants argued, the court ‘was unduly harsh to Te Rohe Pōtae Māori who refused to have their lands subject to’ its process.<sup>637</sup> The Crown argued that, in dealing with such protest and opposition, the court must have been mindful of not setting a precedent that

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635. Submission 3.4.313, pp 29–30.

636. Transcript 4.1.15(a), p 478 (Barbara Marsh, hearing week 10, Maniaroa marae, 4 March 2014).

637. Submission 3.4.107, p 86.

would encourage Māori to stay away from court.<sup>638</sup> One mechanism of protection that the Crown pointed to – the rights of rehearings and appeal – often did not provide relief because the court was not especially sympathetic to the claims of political absentees. The other mechanism of protection – relying on people who did attend to take account of the interests of non-participants – was also clearly inadequate, even if it provided a remedy in some instances.

Claimant counsel submitted that neither the rehearing system prior to 1894 nor the Native Appellate Court established in 1894 were suitable remedies. For the system in place before 1894, counsel were particularly critical of the lack of transparency by which applications were dealt with.<sup>639</sup> Moreover, they argued, ‘the right to apply for a rehearing was an illusory remedy’ because ‘[m]ost applications were dismissed’.<sup>640</sup> Similarly, counsel argued that the Native Appellate Court established in 1894 was not a suitable remedy due to the time limits and costs involved, as well as the fact that it continued to be manned by judges of the Native Land Court.<sup>641</sup>

The Crown submitted that it ‘does not accept that the lack of an Appellate Court until 1894 necessarily means that justice was not done, or seen to be done’. Counsel pointed to petitions and direct complaints to ministers and Members of Parliament as alternative remedies. The Crown noted that the number of rehearings and appeals was low but rejected speculation that might be due to cost or uncertainty. Counsel also did not accept that the requirements for appeals to be lodged within 30 days or security costs, as well as the additional costs of a rehearing, presented significant barriers for those who wished to appeal a decision.<sup>642</sup>

Because of the number of subdivision cases determined by the Ōtorohanga court in the period before 1894, the adequacy of the rehearing system is an important issue for this Tribunal. As pointed out by the claimants, many applications for rehearing were dismissed in Te Rohe Pōtae. Between December 1888 and September 1891 only one application out of 35 was reheard. More applications for rehearing were successful between 1892 and 1894. During that period, eight applications out of 27 proceeded to a rehearing, and all eight resulted in the original decision being changed in some way.

We do not agree that the limited number of applications to be reheard necessarily means that the rehearing system was an ‘illusory remedy’. However, we do share the claimants’ concerns that aspects of the process by which rehearing applications were dealt with lacked transparency. In particular, although applicants had three months from the date of the original court decision to apply for rehearing, it was not always evident when the date of that original court decision was. As a result, several applications in Te Rohe Pōtae were dismissed simply for being premature or late, rather than on their merits. In addition, there was no prescribed form for Māori to make an application, nor any published set of criteria against

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638. Submission 3.4.305, p 67.

639. Submission 3.4.107, p 112.

640. Submission 3.4.107, p 114.

641. Submission 3.4.107, pp 113–114.

642. Submission 3.4.305, pp 97–101.

which the chief judge would decide applications. We consider that these aspects of the system would have caused considerable uncertainty for Māori looking to contest a court decision. The chief judge was at least considering applications for rehearing in person by this stage, but continued to exercise a broad discretion with limited review rights.

The Native Appellate Court, established in 1894, was an improvement over the rehearing system in several ways. The chief judge no longer had complete discretion over whether a complaint had sufficient basis to justify a rehearing. Instead, appeals now only had to meet the technical requirements in the legislation. There was also a much clearer period in which appeal notices had to be filed: within 30 days of the decision being pronounced in court. However, we note that this was a much shorter period than provided for under the rehearing system – a third of the time previously allowed. The 30-day period may have achieved ‘certainty and finality’, as the Crown submitted, but we do not consider that it was practical in the circumstances of the time.

In all, 82 appeals were lodged between June 1895 and December 1906, resulting in 39 proceedings. Of the 39 cases that were reheard, 21 resulted in the original order being changed in some way.

Appeals in the Native Appellate Court incurred what appear to have been reasonably modest costs. However, these costs cannot be considered in isolation, and must be considered alongside the costs that Māori had already incurred in bringing their land through the Native Land Court. We also consider that the requirement to pay a security deposit for appeals potentially presented a barrier to Māori seeking redress. Of the 82 appeals lodged between June 1895 and December 1906, 12 were dismissed for failure to pay the security deposit. The consequences of that failure were serious: the original decision was confirmed as if it had been affirmed by the Appellate Court, and no further appeals were possible. Although the court had the power to remit the deposit if it would cause injustice, that power does not appear to have been widely used in Te Rohe Pōtae.

Petitions to the Native Affairs Committee offered another avenue by which Te Rohe Pōtae Māori could gain redress for court decisions they disagreed with. Thirty-six petitions relating to decisions of the Native Land Court in Te Rohe Pōtae were submitted between August 1889 and the end of 1907. The Central North Island Tribunal considered that petitions to Native Affairs Committee were a ‘significant mechanism’ but was concerned that it was only a recommendatory body.<sup>643</sup> Indeed, in Te Rohe Pōtae positive recommendations from the committee rarely resulted in the Crown taking any further action. While redress was certainly possible through petitions, it could be – and was often – slow, as was the case with the 27 years it took to return the Pokuru 3 urupā to the Māori owners. The lack of speed by which redress was provided to Māori can be contrasted with the rapid pace by which the court operated, and by which the Crown conducted its purchasing of Te Rohe Pōtae Māori land, as will be seen in chapter 11.

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643. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 501.

Given the sheer number of surveys carried out in Te Rohe Pōtae in connection with the court's activities, there do not seem to have been a significant number of serious survey errors. By the time the court arrived in Te Rohe Pōtae, the Crown had taken control of the survey process and instituted a licensing system for the private surveyors contracted to conduct surveys on the Survey Department's behalf. Both the court and the Survey Department were scrutinising surveys. However, there is very limited evidence before us concerning how successful these measures were.

We do know that some errors did occur without being caught by this system of checks, resulting in sometimes serious prejudice to Māori landowners. Claimant counsel argued that '[t]he Crown failed to provide appropriate and affordable processes for remedying survey errors.'<sup>644</sup> The Crown submitted that there was insufficient evidence to 'provide a satisfactory basis for the claimant's broad allegation.'<sup>645</sup>

We are concerned that, of the seven examples of survey errors cited by Drs Husbands and Mitchell, there is only evidence of the Crown providing remedies in two cases. In both cases, the remedies were less than timely. It took over two years, for instance, for the court to fix the survey error of Te Waanu Natanahira's land.

More serious was the Crown's failure to act early to remedy the survey error concerning the boundaries of the Umukaimata, Waiaraia, and Mohakatino Paraninihi 1 and 3 blocks. Crown officials were immediately made aware of concerns about the survey of the Waiaraia block when it was conducted in 1891. But, determined to complete its purchase of the block, the Crown chose to ignore those concerns. During 1892, both the Māori owners of Umukaimata and Judge Gudgeon alerted the Crown again to the survey error. Once again, the Crown took no action in response. It was not until the owners complained again in 1907 that the Crown finally set aside 2,465 acres of Waiaraia as compensation for the owners of Umukaimata.

Only 2,465 acres was provided as redress, likely well under that which was lost. Estimates at the time of the amount of land lost because of the error varied from 6,000 to 11,000 acres. The Crown's failure to act sooner meant that, by the time it was prepared to acknowledge and compensate for the survey error, the location of a critical boundary point – Te Pou-a-Wharara – had been lost, and with it, the opportunity to determine accurately the amount of land lost. That being said, the new evidence presented by the Crown during our inquiry suggests that there may be merit in it now pursuing a further investigation into the location of Te Pou-a-Wharara.

The Crown had every opportunity to provide fast and full redress to the owners of Umukaimata by returning the affected land when it was first made aware of the survey error in 1891 and 1892. We find that its failure to do so was in breach of the Treaty principles of redress, active protection, and good government. The prejudice caused to the owners as a result has been, at best, only partly mitigated by the award of 2,465 acres as compensation.

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644. Submission 3.4.107, p 115.

645. Submission 3.4.305, p 102.

Taken together, we consider that the various mechanisms by which Māori could revisit decisions of court during this period did not constitute a meaningful or robust system of redress. The procedural, financial, and practical hurdles associated with rehearings and then the Native Appellate Court were too onerous in the circumstances of the time, particularly in Te Rohe Pōtae. Other forms of redress were often much too slow, which at times prevented a full remedy being provided. Accordingly, we find that the Crown's failure to provide a meaningful or robust system of redress breached the Treaty principles of redress and active protection.

### 10.8 PREJUDICE

The Crown's Treaty breaches in respect of the Native Land Court have caused significant economic, social, and cultural prejudice to Te Rohe Pōtae Māori. During the hearing of the Crown's closing submissions, Crown counsel acknowledged that, despite the efforts of the Crown 'to improve the way the Court operated and to make it a Court that was better in tune with Māori', the results of the court's operations in Te Rohe Pōtae were nonetheless similar to the experience of Māori in other districts. Of these outcomes, Crown counsel commented:

the individualisation of tenure . . . was just part and parcel of the Native Land Court process – that is what it was set up to do. The lack of communal title is just a consequence that affected all Māori throughout the country. So that outcome is the same for Rohe Pōtae Māori as it is for all the others in the country. And the third outcome, the significant alienation of land, is . . . a result of a whole bundle of factors, but ultimately the outcome is very similar here in this district inquiry as it is in others.<sup>646</sup>

Drs Husbands and Mitchell also argued that, despite improvements in the court's process, 'the outcome for Maori in the Rohe Potae district in terms of land retention and ongoing community control and use appears little better than that for groups in other districts.'<sup>647</sup>

The Crown's native title system and the inadequate protections it offered ultimately facilitated the large-scale transfer of Te Rohe Pōtae Māori land to the Crown and settlers. The methods by which this occurred will be considered in detail in chapter 11, but the scale of that transfer needs to be briefly mentioned here to fully understand the short and long-term impacts of the Native Land Court and its form of title on Te Rohe Pōtae Māori.

As at 1890, 93 per cent of the inquiry district remained in Te Rohe Pōtae Māori ownership. Over the next 15 years, the Crown acquired 639,505 acres of land – around one-third of the inquiry district. A small number of private alienations occurred over the same period, meaning that, by 1905 – less than 20 years after the

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646. Transcript 4.1.24(a), pp 111–112 (Crown counsel, hearing week 17, James Cook Hotel Grand Chancellor, Wellington, 11 February 2015).

647. Document A79, p 539.

court's first sitting at Ōtorohanga – Te Rohe Pōtae Māori retained ownership of 59 per cent of the inquiry district. Within another 20 years, by 1925, this proportion had declined further to 27 per cent, and by 1950, it was just 21 per cent. As at 2010, Te Rohe Pōtae Māori retained ownership of only 233,128 acres – 12 per cent of the original inquiry district.<sup>648</sup>

The permanent alienation of so much land had dramatic economic, social, and cultural impacts for Te Rohe Pōtae Māori. While we accept the Crown's submission that clothing land in Native Land Court title did not necessarily result in its alienation, it is also clear that several aspects of the Native Land Court process and title encouraged alienation at a scale that was severely prejudicial to Te Rohe Pōtae Māori.

In section 10.5, we outlined the impacts that Native Land Court titles had on the economic development and tribal organisation of Te Rohe Pōtae Māori. The economic benefits of native land title that were touted to Te Rohe Pōtae Māori before 1886 did not, for the most part, eventuate. Native land titles were not fit for purpose, and were good for little other than alienation. As a result, Te Rohe Pōtae Māori struggled to use their land effectively, or even to retain it. The long-term result was that Te Rohe Pōtae Māori were often left economically marginalised.

Native land titles and the individualisation of land ownership also fundamentally changed and undermined Te Rohe Pōtae Māori tribal society. With individuals able to sell their land interests without reference to the collective, the ability of rangatira and communities to make strategic decisions about the retention, use, and alienation of their land and resources was seriously compromised. This prejudice was compounded as more and more land was alienated.

Native land titles changed Te Rohe Pōtae Māori society and their relationships with land in other ways. The boundaries established by the Native Land Court, particularly when followed by purchasing, severed Māori from their traditional lands and sites of cultural and spiritual significance. The Te Urewera Tribunal stated that the work of the court, along with land alienation, 'led to the dramatic shrinking of takiwa within which hapū and iwi had established and exercised their customary rights':

It disrupted the transmission of cultural knowledge. When people no longer lived on the land, or hunted its resources, or made journeys across it, few new places could be named; many old names could be easily forgotten. There would be no new waiata about events that took place on the land. People would be separated from wahi tapu. No new tipuna whare would be built.<sup>649</sup>

These sentiments were echoed by claimants in our inquiry. Eliza Rata, for instance, told us:

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648. Document A21, pp 127, 129, 131.

649. Waitangi Tribunal, *Te Urewera*, vol 3, p 1332.

Prior to the Court laying down its boundaries, Ngāti Raerae had ranged freely over our large area of whenua, protecting the resources such as the birds and the Awa and using them to sustain the people. The resources of our whenua and Awa were also used to support our whanaunga and the Kingitanga.

The court, however, ‘restricted our people to a smaller area of land’ and so changed their way of life.<sup>650</sup>

The loss of access to, and in some cases the destruction of, sites of cultural significance, including wahi tapu, were particular grievances for claimants. Tame Tūwhangai told us about how the Native Land Court had impacted upon Ngāti Hari access to Rangitoto–Tuhua 2 (Pukuweka). Pakingahau Hill, for instance, ‘was known as a bird snaring area’ and was where ‘the High Priestess Hinekiore of the Tahere Manu would open the seasonal catch’. However, the area was not awarded to Ngāti Hari when the block went through the Native Land Court, so they lost access.<sup>651</sup> With the loss of other mahinga kai and kāinga, Mr Tūwhangai told us, food sources were depleted, while deforestation caused ‘considerable prejudice to our environmental resources.’<sup>652</sup> Ngāti Maniapoto, meanwhile, have lost access to and control over three significant wahi tapu sites: Rangitaea Pā, Marae-o-Hina Pā, and Orongokoekoea Pā.<sup>653</sup>

The fate of the Paretao eel reserve in the Kawhia block provides a further example of what could happen to collectively owned resources under the native land system. Paretao was a valuable fishery, particularly for tuna. It was made a reserve in 1892, with eight owners who were intended to be trustees on behalf of eight hapū of Ngāti Hikairo.<sup>654</sup> However, the native land legislation did not provide for such a trust, meaning the trustees were regarded instead as owners with rights of alienation. In 1907, the Waikato District Maori Land Board approved a lease for the area, despite the stated intentions of the lessee to drain the wetland on the basis of the health risk it caused to the surrounding township.<sup>655</sup> Frank Kīngi Thorne told us that this resulted in ‘the end of a culture of eel fishing on the shores on Paretao’, as well as ‘the abandonment of kāinga on its shores.’<sup>656</sup>

The effects of the Native Land Court and its form of title on Te Rohe Pōtae Māori have been serious and long-lasting. Subsequent chapters of our report – particularly those concerned with the retention, control, and alienation of Te Rohe Pōtae Māori land – will continue to trace those effects throughout the twentieth century.

650. Document Q30(b) (Rata), pp 8–9.

651. Document R20 (Tūwhangai), p 12.

652. Document R20, p 13.

653. Document P3 (Roa).

654. Document A76(c) (Belgrave answers to questions of clarification), pp 17–18.

655. Document A76(c), pp 17–18.

656. Document A98, p 154.



### 10.9 SUMMARY OF FINDINGS

Our key findings in this chapter have been:

- The Native Land Court that operated in Ōtorohanga was an improvement over the court in other districts. The presiding judge provided some accommodation for Te Rohe Pōtae Māori in the court's process during the title determination phase. For example, the court was willing to sit when and where it was convenient for its Māori participants, and adopted their preferred approach to subdivision of the Rohe Potae block. The court also encouraged Te Rohe Pōtae Māori to reach agreement outside of court as much as possible. These accommodations offered Te Rohe Pōtae Māori an important chance to have a say in decisions affecting their land, as well as reducing the costs of the court process.
- However, Te Rohe Pōtae Māori were still not in control of the process. The judge remained the ultimate decision maker, with the power to dismiss Te Rohe Pōtae Māori concerns and proceed regardless. Where out-of-court arrangements were opposed, the result was often a long, acrimonious, and costly hearing in an adversarial court process. The Native Land Court was poorly prepared to undertake the task of determining customary ownership in these circumstances.
- We found that the Crown's key failure was that the native land legislation and the court process authorised by it resulted in a lack of Māori control and input into title determination, contrary to the express wishes of Te Rohe Pōtae Māori. Despite the expectations of Te Rohe Pōtae Māori, the Kawhia Native Committee did not play any substantive role in the title determination process. We considered that the Crown's failure to follow through with its commitment to reform the legislation relating to native committees so that they could play such a role represented a cynical disregard for the Te Rohe Pōtae Māori demand for mana whakahaere. Accordingly, we found that the Crown's failure to provide Te Rohe Pōtae Māori with a greater role in the court's title determination process was in breach of the express terms of article 2 of the Treaty and its guarantee of tino rangatiratanga. It was also in breach of the principle of partnership and the obligation to act reasonably and in good faith.
- In addition, we found that Native Land Court titles were not in fact or in law awarded in favour of hapū. Rather, they were awarded to individuals belonging to hapū. In this way, they were not reflective of custom. The titles awarded by the court were also ill-suited to the purpose they were supposed to serve – namely, engagement in the colonial economy.
- We found that the Native Land Court regime and the form of title that it created undermined rather than upheld the article 2 guarantee concerning land and were therefore inconsistent with the express terms of the Treaty. We further found that the individualisation of tenure provided for by native land titles breached the express guarantee of tino rangatiratanga in article 2 of the Treaty. The Crown's failure to provide or even contemplate providing

title awarded on a hapū basis, as Te Rohe Pōtae Māori sought, was also contrary to article 2, and breached the Treaty principles of partnership and active protection.

- ▶ We further found that, having imposed its unmanageable form of title on Māori, the Crown by and large failed to meaningfully respond to Te Rohe Pōtae Māori requests for an effective mechanism to communally manage their lands. We consider such a mechanism was essential for the successful participation of Te Rohe Pōtae Māori in the emerging colonial economy. In this way, the law also did not provide for a system of governance that reflected Te Rohe Pōtae Māori custom or aspirations for their mana whakahaere.
- ▶ We also found that the costs of gaining Native Land Court title could be excessive and unreasonable, and were unfairly placed on Te Rohe Pōtae Māori, even though most of the benefits of the new title flowed to the Crown and settlers. Te Rohe Pōtae Māori were faced with an array of costs at every stage of the court process. Survey costs were a particular burden. Te Rohe Pōtae Māori, not fully immersed in the cash economy and restricted in what they could do with their lands by Crown pre-emption, had few options available to repay these debts. Often, the debt could only be repaid by selling land – their most important and valuable resource. We found that the Crown, in failing to lessen the costs associated with the court process, or to institute a fairer and more equal distribution of those costs, breached the Treaty principle of active protection.
- ▶ We found that, for Te Rohe Pōtae Māori who wished to challenge a court decision, the two main options – rehearings and, after 1894, appeals, and petitions to the Native Affairs Select Committee – were inadequate. These options were capable of providing remedies, but Māori had to overcome sometimes onerous procedural barriers first, and they often had to wait too long. We found that the Crown failed to provide a meaningful or robust system of review of court decisions, in breach of the Treaty principles of redress and active protection.

## CHAPTER 11

### NGĀ WHAKAWHITI WHENUA I, 1890–1905: CROWN PURCHASING, 1890–1905

What possible benefit would we derive from roads, railways, and Land Courts if they became the means of depriving us of our lands? We can live as we are situated at present without roads, railways, or Courts, but we could not live without our lands.

—Wahanui Huatare and others, 1883<sup>1</sup>

#### 11.1 INTRODUCTION

In the mid- to late 1880s, as Te Rohe Pōtae Māori lands were going through the Native Land Court, the Crown took a series of steps to ready itself for a programme of land buying. Purchasing officers were appointed. Budgets were allocated. A survey was conducted to determine which lands were most attractive for settlement. Purchasing began in neighbouring land blocks such as Waimarino and Taupouuiatia. And a series of legislative steps eliminated private competitors from the land market. In 1890, as the Native Land Court began to define individual owners' interests on land titles, the Crown's purchasing officers began to make offers.

During the first few years, Te Rohe Pōtae leaders were willing to offer small amounts of land on the southern border in order to clear survey charges and court costs on their remaining lands; otherwise, Te Rohe Pōtae leaders and communities were generally opposed to land sales. Many wanted to develop farms and were willing to open land for settlement, so long as they could manage the process themselves in order to best serve their people's interests. But their consistent preference was to lease, not sell. In all of these respects, their views remained consistent with what they had sought in their June 1883 petition (see chapter 8).

The Crown's goal, on the other hand, was to quickly buy significant tracts of land along the railway line and in other accessible and fertile parts of the district. Its purpose was not merely to open land for settlement and development, which could have occurred if Māori were free to lease on an open market, but also to profit from land sales so it could fund the railway and other settler infrastructure. The Crown's purchasing programme was deliberately focused on breaking down Māori resistance to land selling. It used its lawmaking powers to prevent Te Rohe

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1. 'Petition of the Maniapoto, Raukawa, Tuwharetoa and Whanganui Tribes', AJHR, 1883, J-1.

Pōtae Māori from raising money from their lands by any means other than selling to the Crown. It imposed and then called in survey debts, using this as a means to pressure owners to sell. And, although it negotiated with hapū leaders on some occasions, its main approach was to target individuals, often those with the weakest connections to the land or the greatest need of money.

Over months and years, the Aotea-Rohe Potae block land purchase officer, George Wilkinson, gradually acquired shares from individual owners until he had enough to force non-sellers into court, where the Crown's interests were carved off. Wilkinson then began to target non-selling individuals with new offers, setting off further rounds of selling and partitioning. In the first two years after purchasing began, very few shares or blocks were sold. But late in 1891 the ice began to break, and from 1892 through to the early 1900s, vast tracts of Te Rohe Pōtae land were transferred from Māori to Crown ownership. In all, between 1890 and 1905, the Crown purchased one-third of the district – 639,815 acres out of a total of 1,931,136 acres in the district, excluding its extension areas. This included much of the fertile territory around the Waipā and Pūniu Rivers.<sup>2</sup> Much of the remaining Māori land was fragmented, inaccessible, or otherwise difficult to use.

This chapter considers claims about the Crown's purchasing programme, including its use of lawmaking powers to support purchasing objectives, its purchasing methods and tactics, and the prices it paid. One of the important themes of this chapter is the extent to which the Crown had come to disregard what Te Rohe Pōtae Māori had sought during their 1883–85 negotiations on the opening of the district. Through the period covered by this chapter, the Crown sought to pressure the district's leaders to sell land and otherwise paid little regard to their views. Another theme is the preference given to settler interests over those of Te Rohe Pōtae Māori. This theme is also reflected in our consideration of the Crown's handling of a disputed 1880s arrangement over the use of land and resources in the Mokau Mohakatino block by settler Joshua Jones. As we will see in section 11.6, the Crown legislated twice during the 1880s to support Jones's rights over those of Mōkau Māori. Ultimately, the Crown purchased the land that was the subject of the disputed agreement.

This chapter relies on three main sources of evidence: Leanne Boulton's research report 'Land Alienation in the Rohe Potae Inquiry District, 1866–1908: An Overview'; Tutahanga Douglas, Craig Innes, and James Mitchell's 'Alienation of Māori land within Te Rohe Pōtae inquiry district 1840–2010: A quantitative study'; and Brent Parker's evidence on Crown purchase prices, valuations, and

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2. Document A21 (Douglas, Innes, and Mitchell), p131, table B5. See section 11.5.1 for further detail about how this figure has been calculated. The inquiry district totals 1,931,136 acres (excluding extension areas). All of the Crown's purchases during the period 1890–1905 occurred within the original inquiry district. Wherever we mention land sales as a proportion of the inquiry district, we are referring to the original inquiry district. In all, the Crown's purchases amounted to 33.13 per cent of the original inquiry district during this period: submission 3.4.309(a), p 2; submission 3.4.130(g), pp 2–3; doc A21, pp 7, 34. Also see doc A67, pp 11, 28; doc A95 (Parker), p 4.

sales.<sup>3</sup> The chapter also relies on a number of other relevant research reports,<sup>4</sup> as well as claimant evidence, Waitangi Tribunal reports, and scholarly research.

### 11.1.1 The purpose of this chapter

Land is central to the Treaty relationship. One of the essential features of the Treaty is the mutual recognition of powers: iwi and hapū retained tino rangatiratanga in respect of land and other resources, and the Crown acquired kāwanatanga along with a corresponding obligation to use its governing powers to actively protect Māori land interests.

Land was also integral to Te Ōhākī Tapu. As discussed in chapter 8, in return for recognising the Crown's kāwanatanga, Te Rohe Pōtae leaders sought laws that would protect their lands and recognise their rights to tino rangatiratanga and mana whakahaere in respect of land – in particular title determination and land administration and alienation. The district's leaders reasoned that appealing to the Crown for just laws would allow them to open their district to settlement under their own mana without risking the large-scale loss of land and associated breakdown of communal authority that had afflicted Māori in other districts. Preceding chapters have discussed how the Crown largely failed to meet those demands, instead encouraging Te Rohe Pōtae Māori into court while enacting legislation to support its settlement and public works goals.

Claimants saw the Crown's purchasing programme as a further betrayal of Te Ōhākī Tapu, and in particular of the Crown's assurances 'that Te Rohe Pōtae leaders would retain control of their lands and would benefit greatly from their increased value if they permitted the [railway] to proceed'.<sup>5</sup> They also saw the purchasing programme and supporting legislation as fundamentally at odds with the requirements of the Treaty. Instead of using its lawmaking powers to protect tino rangatiratanga over land, claimants said, the Crown used its powers to coerce sales, control prices, and assert practical sovereignty over the district. The purchasing programme destroyed communities and undermined attempts to develop land.<sup>6</sup>

3. Document A67 (Boulton); doc A21 (Douglas, Innes, and Mitchell); doc A95 (Parker).

4. These include those by Berghan, 'Block Research Narratives' (doc A60); Cleaver and Sarich, 'Turongo: The North Island Main Trunk Railway and the Rohe Potae, 1870–2008' (doc A20); Hearn, 'Māori Economic Development in Te Rohe Pōtae Inquiry District c1885 to c2006' (doc A146); Francis, 'The Rohe Potae Commercial Economy in the Mid-Nineteenth Century, c1830–1886' (doc A26); Husbands and Mitchell, 'The Native Land Court, Land Titles and Crown Land Purchasing in the Rohe Potae District, 1866–1907' (doc A79); Loveridge, 'The Crown and the Opening of the King Country 1882–1885' (doc A41), "In Accordance with the Will of Parliament": The Crown, the Four Tribes and the Aotea Block, 1885–1899' (doc A68), 'Comments on Part 2 of the Marr Report on "Te Rohe Potae Political Engagement 1864 – 1886 (Wai 898#A78)"' (doc A90), and "The Bane of the Native Race": The Problem of Unused Maori Lands in King Country during the First Decade of the 20th Century' (doc A93); Marr, 'The Alienation of Maori Land in the Rohe Potae (Aotea Block), 1840–1920' (doc A55); Robinson and Christoffel, 'Aspects of Rohe Potae Political Engagement, 1886 to 1913' (doc A71); and Thomas, 'The Crown and Maori in Mokau 1840–1911' (doc A28).

5. Submission 3.4.119, p 49.

6. Submission 3.4.119, p 3.

Claimants argued that Te Rohe Pōtae was unique in the history of the Treaty relationship, in that the Crown granted itself exclusive purchasing rights against the express wishes of the district's leaders and in spite of promises to the contrary. Also unique to this district was 'the unusually rapid pace of land alienation', in which one-third of the district was sold within little more than a decade.<sup>7</sup>

### 11.1.2 How the chapter is structured

After considering the findings of previous Tribunals, and claimant and Crown arguments, this chapter addresses three substantive issues. First, in why did the Crown restrict the property rights of Te Rohe Pōtae Māori during 1890–1905? Secondly, how did the Crown buy Te Rohe Pōtae Māori land during this period? And thirdly, did the Crown pay fair prices for the land it purchased? The chapter then considers the Crown's handling of the Joshua Jones lease. It concludes with an analysis of the prejudice Te Rohe Pōtae Māori are alleged to have suffered as a result of the land purchasing programme, followed by a summary of findings and recommendations.

## 11.2 ISSUES

This section establishes the issues for us to determine concerning the Crown's acquisition of Māori land in the inquiry district between 1890 and 1905. It examines the relevant findings of previous Tribunals, the Crown's concessions on these matters, and claimant and Crown arguments on land purchasing, and on the Jones lease.

### 11.2.1 What previous Tribunals have said

The Treaty of Waitangi offers powerful guarantees of Māori communities' land rights. It required the Crown to actively protect Māori possession of, authority over, and exercise of traditional relationships with land.<sup>8</sup> Among other things, this meant it could not take steps to interfere with Māori land rights or to separate communities from their land except with their full, free, informed consent.<sup>9</sup>

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7. Submission 3.4.119, p 3.

8. The Crown acknowledged this obligation: submission 3.4.11, pp 2–3. Also see Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim* (Wellington: Waitangi Tribunal, 1989), pp 65–70; Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim* (Wellington: Waitangi Tribunal, 1987), p 147; Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims*, 3 vols (Wellington: Legislation Direct, 2008), vol 1, p 4.

9. For example, see Waitangi Tribunal, *Report on the Orakei Claim*, pp 147–148; Waitangi Tribunal, *The Ngai Tahu Report 1991*, 3 vols (Wellington: Brooker and Friend Ltd, 1991), vol 1, p [233]; Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: Legislation Direct, 1996), pp 20–21; Waitangi Tribunal, *Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claims* (Wellington: Legislation Direct, 2004), p 19; Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 1, pp 173, 190–191, 200, vol 2, p 423, vol 4, pp 1238, 1241; Waitangi Tribunal, *Tauranga Moana 1886–2006: Report on the Post-Raupatu Claims*, 2 vols (Wellington: Legislation Direct, 2010), vol 1, pp 18, 20, vol 2, p 601.

The Crown was also obliged to act fairly, honourably, and in good faith, which included keeping its promises and honouring any conditions Te Rohe Pōtae leaders and communities imposed as part of their consent for the railway or for the opening of their district to settlement.<sup>10</sup>

With respect to legislation affecting Māori land, many Tribunal inquiries have found that the Crown's right of kāwanatanga is fettered by the article 2 guarantee of the tino rangatiratanga of iwi and hapū,<sup>11</sup> and that the Crown, in exercising its rights to govern and make law, can override tino rangatiratanga 'only in exceptional circumstances and as a last resort in the national interest.'<sup>12</sup> The *Turanga Township* inquiry found that it was not enough for the Crown to claim that a proposal was 'in the public interest or . . . justified for reasons of convenience or economy.'<sup>13</sup> More specifically, some inquiries have found that the consent of affected Māori landowners was required before the Crown reimposed the 'pre-emptive' right enshrined in article 2 of the English text of the Treaty.<sup>14</sup>

Tribunal reports have also described eight conditions that must be met for Crown purchases of Māori land to be Treaty compliant: (i) the rightful owners must be identified, and their relative interests known; (ii) all disputes over mana or ownership must be resolved before the Crown enters negotiations; (iii) the whole community must be involved in the decision, not just individuals; (iv) the area of land must be clearly defined; (v) the nature of the transaction must be clearly explained and understood; (vi) the price must be fair; (vii) the transaction must not cause harm to the community of owners, for example by leaving them without sufficient land for their present and future needs; (viii) the owners must give

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10. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 173–174, 190–191, 208–209, 436; Waitangi Tribunal, *Te Urewera*, 8 vols (Wellington: Legislation Direct, 2018), vol 1, p 134; Waitangi Tribunal, *Ko Aotearoa Tēnei, A Report into Claims concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuatahi* (Wellington: Legislation Direct, 2011), p 24; Waitangi Tribunal, *He Whakaputanga me te Tiriti / The Declaration and the Treaty: The Report of Stage 1 of the Te Paparahi o Te Raki Inquiry* (Wellington: Legislation Direct, 2014), pp 526–527.

11. For example, see Waitangi Tribunal, *Report on the Orakei Claim*, pp 147–149; Waitangi Tribunal, *The Ngai Tahu Report*, vol 1, p [233]; Waitangi Tribunal, *The Ngai Tahu Sea Fisheries Report*, p 269; Waitangi Tribunal, *The Taranaki Report*, pp 20–21; Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, p 19; Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 173, 190–191, 200, vol 2, p 423, vol 4, pp 1238, 1241; Waitangi Tribunal, *Tauranga Moana 1886–2006*, vol 1, pp 18, 20, vol 2, p 601.

12. The *Ngai Tahu Ancillary Claims Report* first applied this test to the taking of land for public works without the consent of affected Māori owners. The *Turangi Township* and *Hauraki* reports later extended the test to cover other circumstances in which the Crown used its lawmaking or governing powers in a manner that interfered with tino rangatiratanga: Waitangi Tribunal, *The Ngai Tahu Ancillary Claims Report 1995* (Wellington: Brooker's Ltd, 1995), p 11; Waitangi Tribunal, *The Turangi Township Report 1995* (Wellington: Brooker's Ltd, 1995), pp 285–286; Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 2, p 671.

13. Waitangi Tribunal, *The Turangi Township Report*, p 285.

14. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 578, 580. Also see Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, pp 64–65.

their free and informed consent.<sup>15</sup> In *Te Urewera* and other reports, the Tribunal has found the Crown in breach of the Treaty principle of active protection when it bypassed community leaders to purchase from individuals.<sup>16</sup> Tribunals have also found that the Crown's obligation to protect Māori interests was heightened whenever it granted itself exclusive purchasing rights.<sup>17</sup>

### 11.2.2 Crown concessions

The Crown made concessions in respect of the laws that supported its land purchasing programme, and the purchasing programme itself.

In respect of the laws, the Crown acknowledged that in 1885 it had led Te Rohe Pōtae Māori to believe that (in return for their consent to the railway) it would provide a mechanism for a measure of self-government with respect to land, establish a new system for Māori land administration under which owner committees would control alienation, and provide for any sales or leases of Māori land to occur in a free market.<sup>18</sup> The Crown conceded 'that it failed to consult or re-engage with Rohe Pōtae Māori when it departed from representations', and therefore breached the Treaty and its principles 'by not acting in good faith and by failing to respect their rangatiratanga'.<sup>19</sup>

With respect to land purchasing, the Crown made the following concession:

The Crown concedes that when it purchased approximately 700,000 acres of land in Te Rohe Pōtae during the 1890s it misused its monopoly by:

Often paying prices which Māori and other observers considered unreasonably low;

Preventing Rohe Pōtae Māori, who had expended large sums of money having their lands surveyed and subdivided, from paying these costs by the leasing of their lands; and

Using aggressive purchasing tactics, including threats to compulsorily acquire land, in order to pressure Rohe Pōtae Māori to sell their land to the Crown.

Through these cumulative acts and omissions the Crown breached its duties to act in good faith and actively protect the interests of Rohe Pōtae Māori in lands they wished to retain, and breached the Treaty of Waitangi and its principles.<sup>20</sup>

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15. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, 3 vols (Wellington: Legislation Direct, 2010), vol 1, p 104; Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, vol 1, p 120; Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 617, 625. Also see Waitangi Tribunal, *Report on the Orakei Claim*, p 206; Waitangi Tribunal, *The Ngai Tahu Report*, p [831]; Waitangi Tribunal, *Turanga Tangata Turanga Whenua: Report on the Turanganui-a-Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2010), vol 2, p 456.

16. Waitangi Tribunal, *Te Urewera*, vol 3, pp 1185–1186; Waitangi Tribunal, *The Hauraki Report*, vol 2, pp 784–785; Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 617.

17. Waitangi Tribunal, *The Pouakani Report 1993* (Wellington: Brooker's Ltd, 1993), pp 240–242; Waitangi Tribunal, *Te Kāhui Maunga: The National Park District Inquiry Report*, 3 vols (Wellington: Legislation Direct, 2013), vol 2, pp 386–388, 418. Also see submission 3.4.119, pp 2–3.

18. Submission 3.4.307, pp 1, 25–26.

19. Submission 3.4.307, p 25.

20. Submission 3.4.307, pp 25–26; also see pp 1–2.



The Crown also conceded that it used its exclusive purchasing powers in a manner that left some Te Rohe Pōtae Māori ‘with little option but to sell their land or shares in land even when they, and other observers, considered that the prices offered represented less than the market value’. In this, the Crown conceded that its conduct of land purchase negotiations ‘did not always meet the high standards of good faith and fair dealing required of the Crown as a privileged purchaser of Māori land.’<sup>21</sup>

With respect to the Joshua Jones lease (section 11.6), the Crown acknowledged that it had not consulted Mokau Mohakatino block landowners before enacting the Mokau Mohakatino Act 1888, which validated the lease against owners’ wishes. The Crown therefore conceded that it had ‘failed to accord the Māori owners of Mokau-Mohakatino equality of treatment, and failed to respect their rangatira-tanga over their land, and this constituted a breach of the Treaty of Waitangi and its principles.’<sup>22</sup>

The Crown also acknowledged that the Act gave ‘an extraordinary degree of support for the claims of a settler against the rights of Māori landowners.’<sup>23</sup> The Crown conceded that its failure to protect owners’ interests had contributed to the sale of the land and breached the Treaty of Waitangi and its principles.<sup>24</sup>

### 11.2.3 Claimant and Crown arguments

Over 70 claims in this inquiry contain grievances related to Crown purchasing in the years 1890 to 1905.<sup>25</sup> Claimants saw the Crown’s purchasing programme as being fundamentally at odds with its Treaty obligations, and with the commitments and obligations enshrined in Te Ōhāki Tapu. According to Tom Bennion, who represented many of the claimant groups on this issue:

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21. Submission 3.4.307, pp 1–2.

22. Document 3.4.296, p 34.

23. Document 3.4.296, p 40.

24. Document 3.4.296, p 40.

25. Wai 440 (submission 3.4.198); Wai 457 (submission 3.4.238); Wai 784 (submission 3.4.147); Wai 847, Wai 993, Wai 1015, Wai 1095, Wai 1115, Wai 1586, Wai 1608, Wai 1612, Wai 1965, Wai 2335 (submission 3.4.140); Wai 972 (submission 3.4.134); Wai 1469, Wai 2291 (submission 3.4.288); Wai 1482 (submission 3.4.154); Wai 1593 (submission 3.4.230); Wai 1599 (submission 3.4.153); Wai 1944 (submission 3.4.233); Wai 2014 (submission 3.4.208); Wai 2313 (claim 1.1.259); Wai 2314 (claim 1.1.260); Wai 556, Wai 616, Wai 1377, Wai 1820 (submission 3.4.279); Wai 586, Wai 753, Wai 1396, Wai 1585, Wai 2020, Wai 2090 (submission 3.4.204); Wai 1361 (claim 1.2.95); Wai 1386 (submission 3.4.93); Wai 1500 (submission 3.4.160); Wai 1806 (claim 1.1.177); Wai 1824 (submission 3.4.181); Wai 729 (submission 3.4.240); Wai 762 (submission 3.4.170); Wai 1309 (submission 3.4.220); Wai 1640 (submission 3.4.191); Wai 48, Wai 81, Wai 146 (submission 3.4.211); Wai 845 (submission 3.4.166); Wai 987 (submission 3.4.167); Wai 1147, Wai 1203 (submission 3.4.151); Wai 1230 (submission 3.4.168); Wai 1299 (submission 3.4.234); Wai 1447 (submission 3.4.187); Wai 1962 (submission 3.4.172); Wai 870 (submission 3.4.202); Wai 1112, Wai 1113, Wai 1439, Wai 2353 (submission 3.4.226); Wai 1448, Wai 1495, Wai 1501, Wai 1502, Wai 1592, Wai 1804, Wai, 1899, Wai 1900, Wai 2126, Wai 2135, Wai 2137, Wai 2183, Wai 2208 (submission 3.4.237); Wai 1499 (submission 3.4.171); Wai 1588, Wai 1589, Wai 1590, Wai 1591 (submission 3.4.237).

Throughout the 1880s Te Rohe Pōtae leaders consistently attempted to protect the district from the rampant alienation and loss of governance and control they had seen elsewhere. A key provision of Te Ōhākī Tapu was an express assurance that Te Rohe Pōtae leaders would retain control of their lands and would benefit greatly from their increased value if they permitted the [North Island Main Trunk Railway] to proceed.<sup>26</sup>

Instead, claimants submitted, the Crown pursued a programme that deliberately undermined the authority, autonomy, and property rights of Māori communities, with the express goal of acquiring as much land as possible at the lowest possible cost. The Crown pursued this course, claimants submitted, in order to fund infrastructure from profits on land sales, and more generally to control settlement and establish ‘practical sovereignty’ over the district.<sup>27</sup>

In addition to these general points, the claimants raised three principal issues, which are discussed below, along with claimant and Crown arguments about the Jones lease.

### **11.2.3.1 *The Crown’s use of its legislative powers to support its land-buying programme***

Claimants submitted that the Crown misused its legislative powers to support its land purchasing goals, at the expense of Te Rohe Pōtae Māori communities. They submitted that the Crown, in breach of its promises and obligations under Te Ōhākī Tapu, and in spite of consistent protests from Te Rohe Pōtae leaders and landowners, granted itself exclusive rights to deal in the district’s land, thereby excluding private competitors and denying incomes and economic sovereignty to Māori landowners.<sup>28</sup> The Crown imposed these restrictions ‘to prevent other uses of the land, to keep prices low, and to coerce sales.’<sup>29</sup> Claimants told us that the Crown’s actions were coercive, were destructive for those who sought to retain land, and were ‘characterised by broken promises and missed opportunities for the Crown to act honourably and in good faith.’<sup>30</sup> Those actions reflected the Crown’s goal, which, they submitted, was to establish ‘practical sovereignty . . . through the process of land acquisition.’<sup>31</sup>

The Crown acknowledged that it broke its promise that Te Rohe Pōtae would be able to sell or lease land in a competitive market, and conceded that it breached the Treaty by failing to consult Te Rohe Pōtae communities before breaking this promise.<sup>32</sup> It also conceded that on occasions it had breached the Treaty by using

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26. Submission 3.4.119, p 49.

27. Submission 3.4.119, pp 3, 51–52; claim 1.5.4, p 7; claim 1.2.102, pp 36, 42; submission 3.4.204, p 35; submission 3.4.170(a), pp 119, 120, 124; submission 3.4.151, pp 36–38; submission 3.4.251, pp 20–21; submission 3.4.199, pp 41–42.

28. Claim 1.5.4, pp 6–8; submission 3.4.119, pp 3–4, 6, 11, 14–15, 53; submission 3.4.170(a), p 118; submission 3.4.251, pp 16, 18–20; submission 3.4.174, pp 11–12; submission 3.4.250, p 7.

29. Submission 3.4.119, p 50.

30. Submission 3.4.119, pp 3–4.

31. Submission 3.4.119, p 52.

32. Submission 3.4.293, p 3; submission 3.4.307, pp 1, 25–26.

aggressive negotiating tactics to persuade Te Rohe Pōtae leaders to make land available for settlement.<sup>33</sup> But it did not regard restrictions on the property rights of Te Rohe Pōtae Māori as being in themselves in breach of the Treaty.<sup>34</sup> It acknowledged that the restrictions that applied from 1887 through to 1910 were put in place to support a land purchasing programme. The ‘core rationale’ for the policy was to exclude private speculators, so it could meet its goal of funding the railway and other infrastructure by buying, developing, and onselling the district’s lands.<sup>35</sup> But the Crown submitted that it had a ‘legitimate role’ in controlling land speculation, and more generally in ‘controlling and regulating settlement for the benefit of the colony as a whole’.<sup>36</sup>

The Crown and claimants agree on the core facts, but disagree to some extent on the Crown’s motivations, and to a greater degree on the Crown’s right under the Treaty to restrict Māori property rights without consent in order to pursue broader policy goals. We will consider these issues in section 11.3.

### 11.2.3.2 *The Crown’s land purchasing methods*

Claimants submitted that the Crown, having restricted the property rights of Te Rohe Pōtae Māori landowners, then exploited the lack of competition to coerce Māori landowners into selling land. Claimants submitted that the Crown also used a range of methods to coerce sales. These included taking advantage of poverty and indebtedness; purchasing from individual shareholders without the knowledge or consent of the wider community; using aggressive tactics including threats of compulsory acquisition if landowners refused to sell; purchasing before title or surveys were completed, in breach of earlier promises; and purchasing from minors.<sup>37</sup> Though sales were ‘technically voluntary’,<sup>38</sup> claimants submitted that they were really forced because the Crown’s actions left Māori landowners with no way of developing their lands and no means of clearing court-imposed debts other than sales to the Crown.<sup>39</sup>

The Crown acknowledged that it used its privileged market position in a manner that left some landowners with little option but to sell their land or shares in land. It also conceded that it used aggressive tactics (including threats to acquire land by compulsion) to pressure Māori to sell. In both respects, it conceded that its

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33. Submission 3.4.307, p 1.

34. Submission 3.4.307, p 21.

35. Submission 3.4.307, pp 8, 16–17, 28, 31.

36. Submission 3.4.307, p 21.

37. Submission 3.4.119, pp 3–4, 21, 25, 27–28, 30–33, 36–37, 38, 53; claim 1.5.4, pp 7, 9–15, 23; submission 3.4.174, p 11; submission 3.4.226, pp 37, 39–40, 41, 44; submission 3.4.154(a), pp 34–35; submission 3.4.181, p 32; submission 3.4.204, pp 34, 37; submission 3.4.147, pp 16, 58; submission 3.4.251, pp 20–21, 27–28; submission 3.4.175, p 41; submission 3.4.167, pp 30–31; submission 3.4.151, pp 5, 34–39; submission 3.4.199, pp 46–47; submission 3.4.171, pp 4, 16; submission 3.4.160, p 38; submission 3.4.181, p 32; claim 1.1.272(c), pp 13–15; claim 1.2.102, pp 35–41.

38. Claim 1.5.4, p 38.

39. Claim 1.5.4, pp 23, 38; submission 3.4.119, pp 3, 27–28, 53–54; submission 3.4.250, p 17; submission 3.4.295, p 11; submission 3.4.220, pp 20–21; submission 3.4.171, pp 13–15; submission 3.4.169, para 40; submission 3.4.174, pp 12–15.

actions fell short of the standards of good faith, fair dealing, and active protection required of it in performing its duties under the Treaty.<sup>40</sup> In addition, previous chapters have discussed the Crown's concessions that it breached the Treaty by requiring landowners to give up unreasonably large amounts of land to pay for survey costs,<sup>41</sup> and by failing to provide for a form of title that enabled communities to manage land collectively.<sup>42</sup> The Crown has therefore conceded that several of its key purchasing methods were in breach of Treaty principles.

However, the Crown did not accept the claimant view that its entire purchasing programme was coercive. It submitted that Māori landowners sold for a range of reasons, including to clear debts, and to raise funds for land development. It also submitted that others were able to retain their lands or hold out for higher prices.<sup>43</sup> The Crown also submitted that there was no direct evidence of Crown purchasing before title had been determined.<sup>44</sup> It submitted that purchases from minors were not in themselves evidence of sharp practices or bad faith.<sup>45</sup> And it submitted that the number and area of reserves meant it had assessed whether Māori were retaining sufficient lands, as required under the Native Land Court Act 1894.<sup>46</sup>

We will consider land purchasing methods, and the purchasing programme as a whole, in section 11.4.

### 11.2.3.3 *The Crown's purchasing prices*

Claimants submitted that the Crown denied Māori landowners opportunities to determine the value of their lands on an open market, and that the Crown misused its privileged market position to acquire land at below-market prices.<sup>47</sup> Claimants submitted that the Crown's methods for determining prices were unfair and that market prices were on average 5.7 times higher than the Crown paid.<sup>48</sup>

The Crown acknowledged that it had 'misused its monopoly' by '[o]ften paying prices which Māori and other observers considered unreasonably low', and that some landowners had been left with little option but to accept those prices. The Crown therefore conceded it had breached the Treaty and its principles.<sup>49</sup>

While this concession is welcome, we note that the Crown did not explicitly acknowledge that the prices it paid were below market; nor did it concede that its method for determining prices was unfair.<sup>50</sup> On the contrary, the Crown submit-

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40. Submission 3.4.307, pp 1, 25–26.

41. Submission 3.4.11, p 4; submission 3.4.307, pp 25–26, 37.

42. Submission 3.4.305, p 9.

43. Submission 3.4.307, pp 35–36.

44. Submission 3.4.307, pp 37–38.

45. Submission 3.4.307, p 9.

46. Submission 3.4.307, p 39.

47. Submission 3.4.119, pp 6–7, 37–45, 53–54; claim 1.5.4, pp 23–24, 27–33; submission 3.4.119, pp 3, 51–52; submission 3.4.204, p 35; submission 3.4.170(a), pp 119, 120, 124; submission 3.4.151, pp 36–38; submission 3.4.251, pp 20–21; submission 3.4.199, pp 41–42; submission 3.4.107, pp 16, 59–60; submission 3.4.135(c), p 32.

48. Submission 3.4.119, pp 53–54; also see pp 39–45.

49. Submission 3.4.307, pp 1, 25–26.

50. Submission 3.4.307, pp 1, 11–12.

ted that in its 1890–1905 land purchases it had operated in a fiscally responsible manner, and that the Government at the time had believed it was fair for Māori to contribute to the costs of development.<sup>51</sup> It therefore remains to be determined whether the prices were in fact below market rate, and if so by what magnitude. We will consider those issues in section 11.5.

#### **11.2.3.4 Claimant and Crown arguments about the Jones lease**

Several claims in the this inquiry contained grievances in relation to the Joshua Jones lease.<sup>52</sup> The claimants did not think the Crown's concessions over the Jones lease went far enough. They argued that the Crown had also breached the Treaty by legislating in 1885 to allow Jones to complete negotiations for his lease and failing to ensure that the lands that were subject to the transaction were properly identified. They argued that a commission of inquiry established to consider claims made by Jones against the Government had refused to consider evidence that supported the Māori understanding of their arrangement with Jones. And they argued that the Crown's failings reflected its determination to break down the aukati at all costs.<sup>53</sup>

The Crown did not specifically answer the claim that the 1885 legislation had breached the Treaty.<sup>54</sup> Crown counsel did disagree with the claimants' view that its handling of the Jones lease had been motivated by a 'relentless pursuit of breaking the aukati.'<sup>55</sup> 'Rather', counsel submitted, 'there were cautious overtures on both sides towards rebuilding relationships.'<sup>56</sup>

#### **11.2.4 Issues for discussion**

Having reviewed the Tribunal Statement of Issues for this inquiry<sup>57</sup> and briefly summarised the parties' arguments, three substantive issues remain for us to determine with respect to the Crown's purchasing programme:

- Why did the Crown restrict the property rights of Te Rohe Pōtae Māori during this period? More specifically, were the laws granting the Crown exclusive purchasing rights a Treaty-compliant use of the Crown's lawmaking powers?
- How did the Crown buy Te Rohe Pōtae Māori land? More specifically, was the entire purchasing programme coercive?
- Did the Crown pay fair prices for Te Rohe Pōtae Māori land?

With respect to the Jones lease, we will address a number of issues, as further set out at section 11.6.

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51. Submission 3.4.11, pp 15–16; submission 3.4.307, pp 41–42.

52. Wai 535 (submission 3.4.243); Wai 691, Wai 788, Wai 2349 (submission 3.4.246).

53. Submission 3.4.122, p 4; submission 3.4.366, p 5.

54. Submission 3.4.296, pp 14–21.

55. Document 3.4.296, p 4.

56. Document 3.4.296, p 4.

57. Statement 1.4.3.

### 11.3 WHY DID THE CROWN RESTRICT THE PROPERTY RIGHTS OF TE ROHE PŌTAE MĀORI?

#### 11.3.1 Introduction

Between 1888 and 1894, the Crown enacted a series of laws restricting the property rights of Māori landowners, either within specific areas surrounding the railway route or in New Zealand as a whole. Local restrictions applied between 30 August 1888 and 1 January 1894. At that point, nationwide restrictions came into force, and remained in place until 1910. The specific provisions are explained in table 11.1. In all, five separate statutes were enacted between 1888 and 1894, each applying to different territories (as shown in map 11.1) but covering most of the land in this district. These were: the Native Land Court Act 1886 Amendment Act 1888; the North Island Main Trunk Railway Loan Application Act Amendment Act 1889; the North Island Main Trunk Railway Loan Application Acts Amendment Act 1892; the Native Land Purchases Act 1892; and the Native Land Court Act 1894. At times, two sets of restrictions were in force at once.<sup>58</sup>

The effect of these laws was that Māori living within the restriction zones could not sell or lease their lands privately, or raise mortgages, or undertake any other private dealings. They could, however, sell or lease to the Crown. This gave the Crown a highly privileged market position. As it pursued its goal of buying land along the railway route and in surrounding territories, it faced no competition from other buyers or lessees. The only obstacle to its purchasing goals was resistance from landowners, who had very limited options for raising money from their lands by means other than sales to the Crown. Between 1890 and 1905, the Crown made use of its exclusive purchasing right to acquire just under 640,000 acres of Māori land in this district.<sup>59</sup>

In Treaty terms, the broad question claimants have asked us to consider is whether these laws were legitimate uses of the Crown's power of *kāwanatanga* and, in particular, its lawmaking power. As discussed in section 11.2, the claimants saw the Acts that granted the Crown exclusive purchasing rights, and the purchasing that occurred under them, as fundamental betrayals of Te Ōhākī Tapu. In their view, Te Rohe Pōtae leaders agreed to open their territory on the condition that they would retain control of their lands, allowing them to determine the pace and nature of any settlement and to benefit from it.<sup>60</sup> Claimants said the Crown imposed statutory restrictions on their rights to sell and lease land privately in breach of promises that Māori would be able to sell or lease on an open market as they wished. Claimants saw the statutory restrictions as being intended

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58. In addition, as discussed in chapter 8, between November 1884 and December 1886, restrictions were applied to a 4.5 million acre zone covering almost all of the inquiry district (with the exception of the area north of and including the Wharaurua block), and significant parts of Whanganui and Taupō areas: Native Land Alienation Restriction Act 1884, ss3–4, sch; Waitangi Tribunal, *Te Kāhui Maunga: The National Park Inquiry District Report*, 3 vols (Wellington: Legislation Direct, 2013), vol 2, p385; doc A67, pp64–65.

59. Document A21, p131, table B5. According to Douglas, Innes, and Mitchell, Crown purchases totalled 639,815 acres during the calendar years 1890–1905.

60. Submission 3.4.119, p49.

to coerce sales at below-market prices, and as an attack on the sovereignty of Te Rohe Pōtae communities. They submitted that the restrictions were in breach of the Treaty principles of autonomy, partnership, active protection, equity, and equal treatment.<sup>61</sup>

The Crown did not claim that Te Rohe Pōtae Māori consented to these laws, nor to the land purchasing programme they served. Nor has it denied that it broke its promises. Nor, furthermore, did it claim that its intention during this period was to protect Māori land interests.<sup>62</sup> Rather, it acknowledged that its purpose was to acquire land for settlement along the railway route and to fund the railway and other infrastructure by developing and onselling that land at a profit.<sup>63</sup> It sought to achieve that purpose ‘by directly intervening in the market for land and imposing regulatory controls’ that would ‘exclude speculative behaviour that might be destructive to . . . development.’<sup>64</sup>

In the Crown’s view, imposing these laws was not in itself a breach of the Treaty. It presented the laws as a reimposition of the previously abandoned pre-emptive right contained in article 2 of the Treaty’s English text,<sup>65</sup> and argued that it ‘had a legitimate role to play in minimising the risk to Māori and the colony that land speculators posed and in controlling and regulating settlement for the benefit of the colony as a whole.’<sup>66</sup> More generally, the Crown submitted that Crown purchasing of Māori land for settlement was ‘inherent in the Treaty relationship.’<sup>67</sup> The Crown did not address the findings of previous Tribunals (section 11.2.1) that it could not reimpose pre-emption without consent.

Notwithstanding the Crown’s view that the statutory restrictions on Māori landowners’ rights to engage in private land dealings were not in breach of the Treaty, the Crown did concede that it had breached the Treaty by preventing Māori landowners from paying survey costs by leasing their land.<sup>68</sup> We will consider each Act of Parliament in turn.

### 11.3.2 The 1888–91 restrictions

#### 11.3.2.1 *The Stout–Vogel Government’s land-buying policy up to September 1887*

During their 1883–85 negotiations with the Crown, Te Rohe Pōtae Māori had sought to preserve Māori communal control over Māori lands. They had asked

61. Submission 3.4.119, pp 3–4, 6, 11, 14–15, 52–53; claim 1.5.4, pp 6–8; submission 3.4.119, pp 3–4, 6, 11, 14–15, 53; submission 3.4.170(a), p 118; submission 3.4.251, pp 16, 18–20; submission 3.4.174, pp 11–12; submission 3.4.250, p 7.

62. The exception is mentioned briefly in submission 3.4.307, pp 7–8. The Crown submitted that the 1888–91 restrictions imposed by the Native Land Court Act 1886 Amendment Act 1888 were partly motivated by a request from Māori landowners for protection against harassment while their lands were before the court, though it acknowledged that its main objective in imposing the restrictions had been to protect its purchasing position.

63. Submission 3.4.307, pp 22–23, 27–28. Also see pp 13–20, 33–34.

64. Submission 3.4.307, p 28.

65. Submission 3.4.307, pp 2–4, 21–22, 32–33.

66. Submission 3.4.307, p 21; submission 3.4.11, pp 2–3.

67. Submission 3.4.11, p 2.

68. Submission 3.4.307, pp 25–26.

Laws granting the Crown exclusive or privileged purchasing rights in Te Rohe Pōtae inquiry district 1888 to 1910

### **1888–1891 RESTRICTION AREA**

#### **Native Land Court Act 1886 Amendment Act 1888**

*Dates of application: 30 August 1888–29 August 1891*

On 30 August 1888, the Crown re-established free trade in Māori land throughout New Zealand. However, the Native Land Court Act 1886 Amendment Act 1888 made an exception for ‘Rohe-Potae’ – that is, the 1886 Rohe Potae block, which the court had awarded to the five tribes in 1886 and was, in 1888, in the process of subdividing. The Act prohibited all private dealings in Māori land within ‘Rohe–Potae’ for the period from 30 August 1888 to 30 August 1891, granting the Crown an exclusive right to purchase, lease, or negotiate to occupy land within that block.<sup>1</sup>

### **1890–1892 NORTHERN TARGET AREA**

#### **North Island Main Trunk Railway Loan Application Act Amendment Act 1889**

*Dates of application: 1 January 1890–11 October 1892*

This Act prohibited all private dealings in Māori land within two land purchasing target areas, one covering the northern part of the inquiry district and the other to the south of Lake Taupō. The provision meant that the Crown had an exclusive right to enter arrangements for the ‘purchase, conveyance, transfer, lease, exchange, or occupation’ of any Māori land within these areas. The prohibition on private land alienation was originally to apply from 1 January 1890 to 1 January 1892. However, subsequent Acts extended the ban and, from 11 October 1892, enlarged the restriction area (as explained below).<sup>2</sup>

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1. Native Land Act 1888, ss 3–5; Native Land Court Act 1886 Amendment Act 1888, ss 3, 15; Native Lands Frauds Prevention Act 1881 Amendment Act 1888, ss 5, 7. Though the restrictions expired on 29 August 1891, the Native Land Court Amendment Act 1886 Amendment Act 1888 continued in force until 23 October 1894, when it was repealed by the Native Land Court Act 1894. Also see doc A68, pp 90–93; doc A67, pp 79–80; doc A146, p 60; submission 3.4.307, pp 7–8, submission 3.4.119, p 9.

2. North Island Main Trunk Railway Loan Application Act Amendment Act 1889, s 5, sch 2; Native Lands Frauds Prevention Act 1881, s 5; Native Land Frauds Prevention Act 1881 Amendment Act 1888, s 5; North Island Main Trunk Railway Loan Application Acts Amendment Act 1891, s 2; North Island Main Trunk Railway Loan Application Acts Amendment Act 1892, s 3. Also see doc A67, pp 140–141; doc A68, pp 93–94; submission 3.4.307, pp 9, 27.



**1892–1893 RESTRICTION AREA****North Island Main Trunk Railway Loan Application Acts Amendment Act 1892***Dates of application: 11 October 1892–1 January 1894*

This Act greatly expanded the restriction zone created by the North Island Main Trunk Railway Loan Application Act 1889, making it almost as large as the original 1884 restriction zone. The Act also provided that the restrictions would remain in place until 1 January 1894.<sup>3</sup>

**1893–1894 RESTRICTIONS ON SPECIFIED LAND BLOCKS****Native Land Purchases Act 1892***8 October 1892–31 March 1910*

This Act allowed the Crown to prohibit private dealings in any block of Māori land in New Zealand that it was negotiating to purchase. In those blocks, no one but the Crown could ‘purchase or acquire . . . any right, title, share or interest’ in that land. During 1893 and 1894, the Crown proclaimed substantial areas of Te Rohe Pōtae subject to this provision, thereby preventing private dealings.<sup>4</sup>

**1894–1910 NATIONWIDE RESTRICTIONS****Native Land Court Act 1894***23 October 1894–31 March 1910*

This Act prohibited all private purchases of Māori land throughout New Zealand, except in limited circumstances. It also prohibited private leases in the North Island, while allowing them in the South Island.<sup>5</sup>

The Native Land Court Act 1894 was amended in 1895 to allow private purchasing or leasing of blocks up to 500 acres, but this provision did not apply to the area covered by the 1884–1886 restrictions. In 1896, the law was further amended to allow private purchasing or leasing of blocks up to 640 acres of first class land or 2,000 acres of second class land. Again, the 1884–1886 restriction area was excluded.<sup>6</sup>

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3. North Island Main Trunk Railway Loan Application Acts Amendment Act 1892, ss 2, 3, sch; North Island Main Trunk Railway Loan Application Act Amendment Act 1889, s 5.

4. Native Land Purchase Act 1892, s 16. Also see doc A79, pp 231–232, 423, 478, 488; doc A67, pp 149–150; doc A68, p 197 n; submission 3.4.307, pp 15–16, 24, 29; submission 3.4.119, pp 7, 35; Native Land Act 1909, s 431, sch.

5. Native Land Court Act 1894, ss 117–120. Also see doc A67, pp 153–154; submission 3.4.307, pp 9, 17; Native Land Act 1909, s 431, sch.

6. Native Land Laws Amendment Act 1895, ss 3–4; Native Land Laws Amendment Act 1896, s 27.

From 24 October 1899 to 31 October 1900, the Native Land Laws Amendment Act 1899 prohibited all sales of Māori land to the Crown, but allowed the Crown to complete purchases it had already begun.<sup>7</sup> The Native Land Laws Amendment Act 1899 was repealed on 20 October 1900 by the Maori Lands Administration Act 1900, which prohibited new Crown and private purchases while allowing the Crown to complete purchases that were already under way.<sup>8</sup> For purchases that were already under negotiation, the Crown's exclusive right to purchase Māori land remained in force until 31 March 1910, when the Native Land Court Act 1894 was repealed.

7. Native Land Laws Amendment Act 1899, ss 3, 5. Also see submission 3.4.307, pp 9–10, 18 n, 28; doc A67, p166; doc A55, p127.

8. Maori Lands Administration Act 1900, ss 22, 34. Also see doc A73, pp 59–60; submission 3.4.307, pp 9–10, 19, 24, 28; Native Land Act 1909, ss 1, 431, sch.

that the Native Land Court be kept out of the district, that Māori be empowered to determine land titles among themselves, and that Māori communities retain control decisions about land management and alienation. As discussed in chapter 8, the Crown failed to empower Māori to determine land titles or to manage communal lands as they wished. With respect to land administration, the Native Land Administration Act 1886 fell well short of what Te Rohe Pōtae Māori had sought, providing for a very limited form of communal decision-making about land sales and leases, and placing the sale and leasing process in the hands of a Crown-appointed commissioner. Māori who did not place their lands under the Act were effectively prevented from dealing in their land by any means other than sale or lease to the Crown.<sup>69</sup>

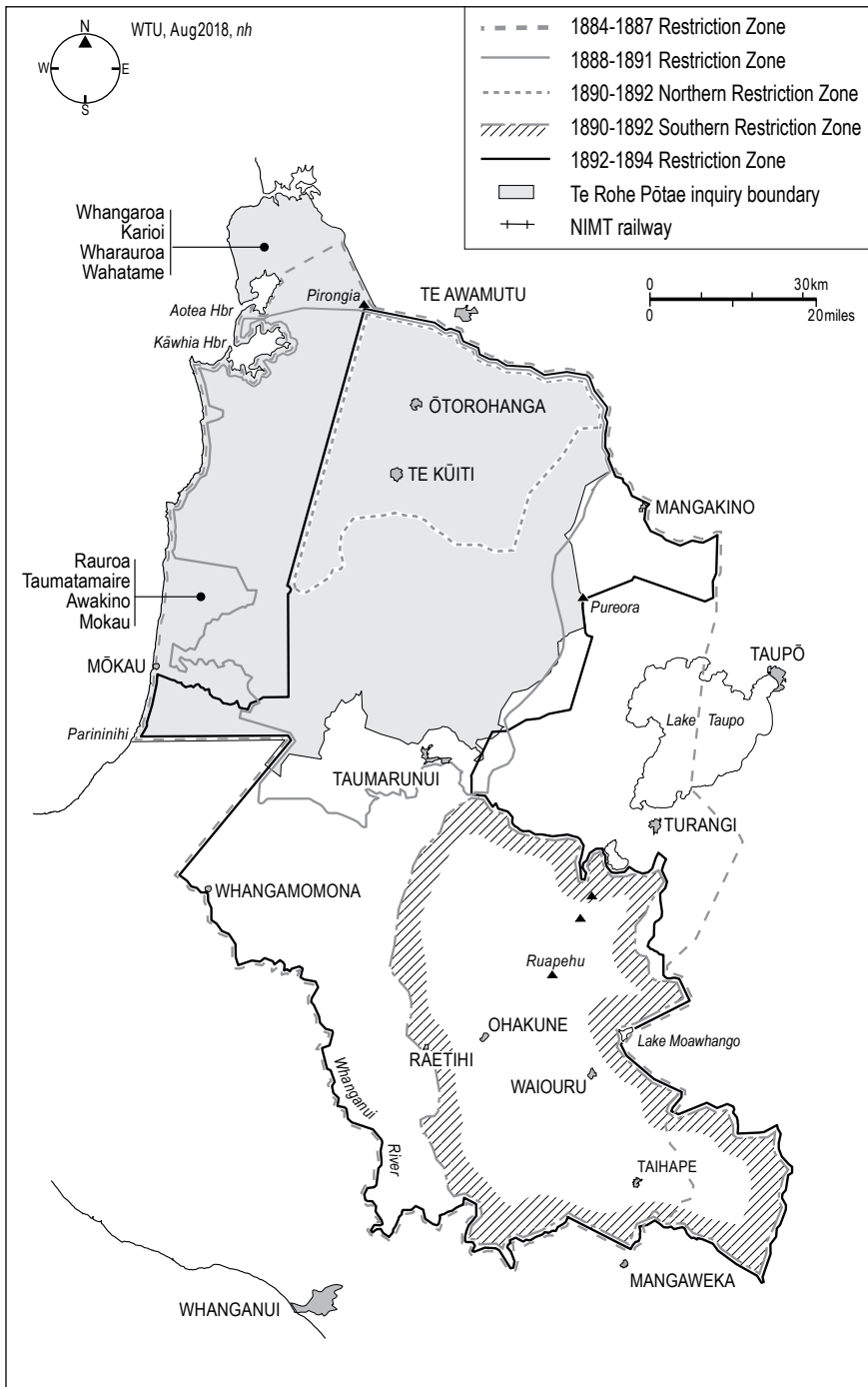
In spite of Ballance's high hopes,<sup>70</sup> Māori throughout the North Island refused to make their land available for sale or lease under the Act.<sup>71</sup> Previous Tribunals have given two possible reasons for this. One was that Māori communities simply did not want to sell their land.<sup>72</sup> The other was that they were unwilling to trust a

69. Native Land Administration Act 1886, ss 4–5, 16–20, 32–33; doc A67, p75; doc A41, pp 197–202; doc A68 (Loveridge), pp 42–43, 181; doc A20 (Cleaver and Sarich), p90; submission 3.4.119, p 8; submission 3.4.307, pp 4, 7. Also see 'Report of the Commission Appointed to Inquire into the Subject of the Native Land Laws', AJHR, 1891, G–1, pp xvi–xvii.

70. 'Native Land Administration Bill', 8 June 1886, NZPD, vol 54, pp 327–329; doc A41, pp 198–199.

71. Document A67, pp 77–79; doc A68, pp 85, 90; submission 3.4.307, pp 4–6. The Act was in effect from 1 January 1887 to 30 August 1888.

72. Waitangi Tribunal, *The Hauraki Report*, vol 2, pp 786–787.



Map 11.1: Restriction zones affecting land in the inquiry district, 1884-1910

system that placed authority in the hands of a Crown-appointed commissioner, with few safeguards for landowners.<sup>73</sup>

In this district, individual block titles had not yet been determined, so land could not be placed under the Act. Even if it could have been, Wahanui was implacably opposed to any Māori land being placed under the Act, which he and other Māori leaders regarded as ‘working solely for the benefit of the Government against the interests & very independence of the Maori race’, and as ‘professing to put an end to Land Sharking’ while ‘virtually creat[ing] the Native Department into the most dangerous and greatest Land Shark that ever existed in New Zealand.’<sup>74</sup> Not only had the Act granted the Crown a privileged market position, but the Crown had publicly expressed its intention to use that advantage. In August 1885, Ballance had said he wanted to buy two million acres out of the 4.5 million acres in which private purchasing was prohibited,<sup>75</sup> and the Crown had set aside purchasing funds.

The Stout–Vogel Government did not have a clear policy on who should benefit from rising land prices along the railway area. The treasurer, Julius Vogel, wanted the Government to open up the land along the railway route, with the proceeds from onsale of land ‘specifically tied down for the proper purposes of the railway’. In other words, he wanted the railway to be funded through the profits from the purchase and onsale of Māori land.<sup>76</sup> But Ballance had argued for Māori to retain the profits, in return for their agreement to open their district. He had promised Te Rohe Pōtae leaders at Kihikihi in February 1885 that their communities would benefit ‘enormously’ from growth in land prices along the railway route.<sup>77</sup> And he had consistently told his Parliamentary colleagues that Te Rohe Pōtae Māori would make land available for settlement if they were treated fairly with respect to land prices. As discussed in chapter 8, his Native Land Administration Act 1886 prohibited direct private transactions in Māori land. The Act provided for the election of owner committees (known as block committees) which could sell land directly to the Crown or direct that it be placed before a Crown-appointed commissioner for private sale or lease.<sup>78</sup>

By 1887, title to the Aotea-Rohe Potae block had been determined, and the court was beginning to turn its attention to subdivision. Te Rohe Pōtae leaders met Ballance at Ōtorohanga in January (he travelled there by train) and once again raised their concerns about the Crown’s failure to honour the terms of their

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73. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 286, 348, 352–353; Waitangi Tribunal, *Te Kāhui Maunga*, vol 1, pp 232–233. Also see ‘Report of the Commission Appointed to Inquire into the Subject of the Native Land Laws’, AJHR, 1891, G–1, pp xvi–xvii.

74. Richard Duncan to Sir George Grey, 15 March 1887 (doc A67, p 78; doc A67(a) (Boulton document bank), vol 1, p 24).

75. ‘Want of Confidence’, 28 August 1885, NZPD, vol 53, pp 354–355; doc A90 (Loveridge), pp 54–57, 69–71; doc A68, pp 31–32, 210–211; doc A41 (Loveridge), p 170 n; doc A78 (Marr), pp 1183–1187; doc A146 (Hearn), pp 54–55.

76. ‘North Island Main Trunk Railway Loan Bill’, 28 July 1886, NZPD, vol 56, p 314; doc A67, p 121. Also see doc A20, p 91.

77. ‘Notes of a Meeting between the Hon Mr Ballance and the Natives at the Public Hall at Kihikihi, on the 4th February 1885’, AJHR, 1885, G–1, p 24.

78. Native Land Administration Act 1886, ss 6, 19, 20.

1883 petition or the February 1885 Kihikihi agreement. Several of their concerns were about breaches of previous agreements about railway construction (chapter 9) and the operation of the land court (chapter 10). They also raised concerns about the Crown's failure to complete its survey of the Rohe Pōtae boundary (due to its decision to carve off the Tauponuiatia block), and about the Native Land Administration Act, which they said took mana over land transactions from them and gave it to the Government. Their specific concern was that the Government could bypass hapū committees and buy land directly from individuals or groups of owners.<sup>79</sup> Ballance said the law provided that no Crown purchase could take place unless a meeting of owners was first called.<sup>80</sup> This was true, although the Act did not specifically provide that the meeting had to take place, or that owners had to consent to the transaction; so long as it was called, that appeared to be sufficient.<sup>81</sup>

The Kawhia Committee chairman, John Ormsby, told Ballance that the Aotea-Rohe Pōtae block had passed through the court and the next step was to have it subdivided, 'first amongst the tribes and then amongst the hapus' (he made no mention of subdivision or award of shares to individuals).<sup>82</sup> Ormsby said the law allowed the Government to 'send an agent to buy the land before it was subdivided'.<sup>83</sup> Ballance promised that '[t]he Government would not purchase any land until the sub-divisions had been made'. But he advised Te Rohe Pōtae Māori 'in their own interest, to set aside blocks of land for European settlements, and thus advance the value of the remainder'.<sup>84</sup>

### 11.3.2.2 *The Atkinson Government's land-buying policy for Te Rohe Pōtae, 1887–90*

In September 1887, following a general election, a new government was formed under the leadership of Premier Harry Atkinson, with Edwin Mitchelson as Native Minister. The new Government inherited a rapidly deteriorating economy, and the Government's finances had been a major election issue. Revenue was falling, and the previous Government had cut spending in many areas – but railway costs were spiralling far beyond the £1 million originally budgeted.<sup>85</sup>

Another major election issue was settler demand for Māori land, which the new Government was determined to meet.<sup>86</sup> The Atkinson Government saw these

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79. 'The Native Minister at Otorohanga', *Waikato Times*, 27 January 1887, p 3; 'Mr Ballance at Otorohanga', *Waikato Times*, 29 January 1887, p 3.

80. 'Mr Ballance at Otorohanga', *Waikato Times*, 29 January 1887, p 3.

81. Native Land Administration Act 1886, s 20.

82. 'The Native Minister at Otorohanga', *Waikato Times*, 27 January 1887, p 3.

83. 'Mr Ballance at Otorohanga', *Waikato Times*, 29 January 1887, p 3.

84. 'Mr Ballance at Otorohanga', *Waikato Times*, 29 January 1887, p 3.

85. 'Financial Statement', *New Zealand Herald*, 23 May 1887, p 12; Editorial, *Waikato Times*, 22 September 1887, p 2; 'The Budget', *Evening Post*, 30 May 1888, p 2; 'Public Works Statement', *Waikato Times*, 13 December 1887, p 2. Also see 'The Acting Premier', *New Zealand Herald*, 8 November 1890, p 5; 'The Financial Statement', *Waikato Times*, 15 November 1887, p 2; see also Brian Easton, 'Economic History – Boom and Bust, 1870–1895', *Te Ara – the Encyclopedia of New Zealand*, <http://www.TeAra.govt.nz/en/economic-history/page-5>, accessed 28 November 2017.

86. Alan Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand* (Auckland: Auckland University Press, 1973), p 298.

issues as two parts of a whole. In general, it favoured individualisation of Māori land titles, and free trade once title had been determined, as the best and quickest means of making Māori land available for settlement.<sup>87</sup> Te Rohe Pōtae, however, was to be treated as a special case, due to the Crown's investment in the railway. Whereas the previous government had been divided on the extent to which Māori should retain the benefit of rising land prices along the railway route, this government was not. It intended to buy Te Rohe Pōtae Māori land and onsell it at a profit, using the proceeds to repay its railway borrowings. From its point of view, the Crown, not Māori landowners or private Europeans, should benefit from rising land prices.<sup>88</sup>

One of the new Government's first acts, therefore, was to announce that it was halting all new construction of the railway 'until the lands along the route . . . are purchased.'<sup>89</sup> Construction was to continue for a few more years on sections that had already begun, but, according to Cleaver and Sarich, was 'almost at a standstill' by 1889.<sup>90</sup> The decision to halt new construction remained Government policy throughout the rest of the 1880s and much of the 1890s.<sup>91</sup> The Government also introduced legislation (the Native Land Act 1888) to repeal the Native Land Administration Act 1886, though it did not pass during 1887.<sup>92</sup> When it was enacted in 1888, the legislation also re-established free trade in Māori land – but not for Te Rohe Pōtae, as we will discuss below in section 11.3.2(6).<sup>93</sup>

### 11.3.2.3 *The local economic context*

Te Rohe Pōtae Māori were in no way opposed to land development. On the contrary, the district's leaders were eager to pursue development opportunities in a manner that was consistent with their mana whakahaere. This meant ensuring that hapū retained control over their own lands and received the benefits from any development.

Even while the aukati remained in force, Te Rohe Pōtae communities in the late 1870s and early 1880s had begun to acquire sheep and cattle, along with farm machinery and new crops such as hops. These were added to the pre-war trading staples pork, potatoes, and flax, and supported a flourishing cross-border trade with European settlements in the Waikato and Taranaki. The district's Māori also began to take cash jobs as farm labourers and gum diggers, and (in Mōkau) to develop agreements to exploit coal and timber resources, including the Jones lease discussed in section 11.6.<sup>94</sup>

87. Document A68, pp 88–89.

88. 'Native Land Bill', 11 July 1888, NZPD, vol 61, pp 668–671; doc A68, p 90.

89. 'The Trunk Railway', *Auckland Star*, 7 November 1887, p 5; doc A68, p 85.

90. According to Cleaver and Sarich, construction was 'almost at a standstill' between 1889 (when the line was completed as far as Puketutu) and 1897, though some work was done: doc A20, pp 93, 116–117, 291.

91. Document A68, pp 85, 153. Construction of the line resumed in 1897: doc A20, pp 93, 116, 291.

92. Document A68, p 86.

93. Native Land Act 1888, s 4.

94. Document A146, pp 34, 36, 37–38; doc A67, pp 227–230; doc A60, p 1139.

According to the historian Andrew Francis, the aukati protected the autonomy of Te Rohe Pōtae Māori, but was ‘porous’ in respect of economic opportunities, with rangatira ‘moving their cultivations and their bases up close to the confiscation line to take full advantage of rejuvenated trading opportunities’. Francis concluded that Te Rohe Pōtae Māori during the 1860s and 1870s were ‘among the healthiest and most economically successful’ in New Zealand, principally because they ‘[c]ontrolled engagement with Europeans’ and had retained their traditional lands.<sup>95</sup> Other historians have reached similar conclusions.<sup>96</sup> Francis also noted that the success of Te Rohe Pōtae Māori during this time was ‘all the more remarkable’ because of the district’s greatly increased population after the war, the impact of which we explored in section 7.3.1(2).<sup>97</sup>

This economic success depended on Te Rohe Pōtae communities retaining possession of and control of their lands, and investing what cash they could acquire into development. The acquisition of farm machinery such as ploughs suggested considerable confidence in future success.<sup>98</sup> As discussed in chapter 10, that confidence was not well placed: once the court became active in the district, individualisation of title made land susceptible to alienation, and other court processes such as partitioning left owners with uneconomic blocks, further contributing to land alienation and economic marginalisation. We will return to these points later in the chapter.

#### 11.3.2.4 April 1888 negotiations

Notwithstanding the Crown’s 1885 promises that Te Rohe Pōtae Māori would share in the benefits of the railway (through all of construction contracts, resource payments, and rising land prices) the Government by this time was expressing very little interest in Māori economic aspirations. It wanted to control the district’s land for its own purposes. In April 1888, the Native Minister Edwin Mitchelson travelled to Ōtorohanga as part of a tour of several central North Island towns. One of his purposes was to discuss proposals for new Māori land laws. He met Rewi Maniapoto, Wahanui, Taonui, Wetere, Te Ranganini, Hauāuru, Herekieke, John Ormsby, and other leaders.<sup>99</sup>

By that time, the Crown had purchased significant amounts of land from individuals in the Waimarino and Tauponuiatia blocks, including lands within the 1883 petition area,<sup>100</sup> and Te Rohe Pōtae leaders were well aware of the Crown’s

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95. Document A26 (Francis), p122.

96. Document A146, p35; doc A26, p122. Francis noted that the historians Keith Sorrenson and Keith Sinclair, and the demographer Ian Pool, had previously come to the conclusion that Te Rohe Pōtae Māori were healthier and more economically successful than Māori in other areas affected by loss of land and authority.

97. Document A26, pp108–109.

98. Document A146, p35.

99. For accounts of the meeting, see: ‘Mr Mitchelson’s Visit’, *Waikato Times*, 12 April 1888, p2; ‘The Native Meeting – Mr Mitchelson at Otorohanga’, *New Zealand Herald*, 12 April 1888, p6; doc A67, p96; doc A68, pp87–89. Also see *Waikato Times*, 10 April 1888, p2.

100. Document A90, pp60–61; doc A41, p202. Also see doc A119 (Massey), plates 7–9, 38.

land purchasing intentions, as well as its core tactics: exploiting survey liens; buying from individuals; and denying owners the right to sell or lease on an open market.<sup>101</sup> Te Rohe Pōtae leaders were clearly aware that such tactics were likely to visit their district soon. In March, the Native Land Court had begun the process of subdividing the Rohe–Pōtae land block, which had been awarded to the five tribes in 1886. As Mitchelson arrived, the district's leaders had been negotiating among themselves over subdivision of the block into iwi and hapū blocks.<sup>102</sup>

Whereas previously Te Rohe Pōtae leaders had presented clear demands in their negotiations with Ministers, at this meeting they appeared uncertain about how to respond to the circumstances they now faced as a result of the harmful impacts of the court on their internal cohesion, and the likelihood that Crown purchasing would soon begin. Wahanui opened the hui by telling Mitchelson that he had six things to discuss: the Native Land Administration Act; the rating of Māori land; Crown purchasing; a request for a telegraph line to Ōtorohanga; the appointment of a Māori stationmaster for the railway; and the correction of railway station names.<sup>103</sup> He then handed over to Ormsby, who presented a series of requests for amendments to court processes and land laws. Ormsby said that previous Ministers had come to persuade Te Rohe Pōtae leaders to accept the railway and the court. With the Government having succeeded in introducing those things, he now asked that it protect Te Rohe Pōtae Māori 'from some of the workings of the law.'<sup>104</sup>

He said the Native Land Administration Act 1886 had been passed at the request of Māori from other districts (as discussed in chapter 8, Wahanui had opposed it), but that times had since changed. He was quoted as saying that Te Rohe Pōtae Māori had previously asked for title to be awarded to hapū, but now 'we wish our land [to be] individualised.'<sup>105</sup> At first glance, this appears to be a significant departure from the previous preference for hapū title. However, as we will see below, Ormsby appears to have been acknowledging that individualisation was now inevitable and that Te Rohe Pōtae Māori needed to make the best of it, rather than expressing a preference. As we will see, other leaders continued to favour hapū title. Ormsby's essential point, in any case, was that any new law should 'bear lightly on all,'<sup>106</sup> by removing the negative elements of the Native Land Court and by restoring the right of Māori landowners to deal with their lands as they wished.

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101. 'Mr Mitchelson's Visit: Meeting with Wahanui and the Ngatimaniapoto Chiefs', *Waikato Times*, 12 April 1888, p 2; 'The Native Meeting – Mr Mitchelson at Otorohanga', *New Zealand Herald*, 12 April 1888, p 6.

102. Document A79 (Husbands and Mitchell), pp 161–165.

103. 'Mr Mitchelson's Visit: Meeting with Wahanui and the Ngatimaniapoto Chiefs', *Waikato Times*, 12 April 1888, p 2; 'The Native Meeting – Mr Mitchelson at Otorohanga', *New Zealand Herald*, 12 April 1888, p 6.

104. 'Mr Mitchelson's Visit: Meeting with Wahanui and the Ngatimaniapoto Chiefs', *Waikato Times*, 12 April 1888, p 2; 'The Native Meeting – Mr Mitchelson at Otorohanga', *New Zealand Herald*, 12 April 1888, p 6.

105. 'Mr Mitchelson's Visit', *Waikato Times*, 12 April 1888, p 2.

106. 'Mr Mitchelson's Visit', *Waikato Times*, 12 April 1888, p 2.



He said that the new Government was proposing changes to Māori land laws but had not yet consulted Māori.<sup>107</sup> He then described the Act he would like. First, he asked that ‘the Native Land Court Act should be adjusted so that we can easily bring our claims before the court, so that each shall know his piece’. Previously, ‘after the court the case was worse than before’. Secondly, he asked that ‘no one should be allowed to sell till he knew his piece to a certainty’. But ‘when that has been done, let each do as he likes with his own’. Thirdly, he asked that ‘no lawyers be allowed in court’, adding that ‘we are very strong on this point.’<sup>108</sup>

Ormsby continued:

The only troubles about land before the court is among ourselves, but immediately it is adjudicated on, the Government get liens on it. Some lands so done are still in a state of trouble, and the natives do not know how to extricate them. From the first the law seems to be the same till now. The whole cause of the trouble is by Europeans trying to buy the land and they make laws to suit themselves; that is the cause of the difficulty.<sup>109</sup>

Other speakers expressed concern about court processes, objecting to the Native Land Court’s refusal to allow rehearings of Maraeroa, Hurakia, and other Taupouiatia blocks on which Ngāti Maniapoto claims had been excluded (see chapters 8 and 10). Whereas Ormsby had spoken about individualisation of title, Te Herekiekie made a fresh call for the Crown to provide for hapū to have full control over their lands:

What I said to Ballance was, do things properly between the two races, Now there is a fresh Minister, and I tell him the same. Let buying cease from one or two persons. If all the people agree it will be good[.] Taupo and Waimarino are dead (purchased by Government) owing to sales by single individuals. That is how that place has suffered. The lists of names were not conducted properly, neither the subdivisions. I wish all these matters rectified.<sup>110</sup>

Ormsby said he had called for individualisation not because Ngāti Maniapoto wanted it, but because others did. According to the *Waikato Times* report:

Mr Ormsby, in stating that it was desirable to alter the old state of affairs, wished it understood that the alteration from hapu titles to individual ones was because the ideas of the natives had changed on the matter, and however much the natives round here were satisfied with the hapu titles, if the majority outside desired it, it would be better to bow to their wishes and have them individualised.<sup>111</sup>

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107. ‘Mr Mitchelson’s Visit’, *Waikato Times*, 12 April 1888, p 2.

108. ‘Mr Mitchelson’s Visit’, *Waikato Times*, 12 April 1888, p 2.

109. ‘Mr Mitchelson’s Visit’, *Waikato Times*, 12 April 1888, p 2.

110. ‘Mr Mitchelson’s Visit’, *Waikato Times*, 12 April 1888, p 2.

111. ‘Mr Mitchelson’s Visit’, *Waikato Times*, 12 April 1888, p 2.

But Ormsby also said that ‘trouble’ would follow if title was awarded with ‘a number of names’ on it. The difficulty Ormsby appeared to be grappling with was that the Native Land Court awarded title not to hapū as a whole, or to their acknowledged leaders in accordance with tikanga, and nor did it grant individuals their own plots of land which they could use as they wished. Rather, it awarded individuals shares in jointly owned land. As we will see, this hybrid form of title meant neither hapū nor individual owners had full authority, and neither could therefore make use of the land.

What he urged, essentially, was that owners have their own plots, and be able to deal with those as they wished, without the Crown having an exclusive purchasing right. This was not a preferred position, as Ormsby himself indicated. Nor was it a unanimous position among Te Rohe Pōtae Māori. Rather, it was Ormsby’s response to the prospect of the Crown individualising title and then buying individual shares in circumstances where there was no market. In other words, it was his response to the difficulties that had arisen for Te Rohe Pōtae Māori because of the Crown’s failure to honour previous promises.

Responding to Ormsby and other Te Rohe Pōtae leaders, Mitchelson said the Native Land Administration Act 1886 had to be repealed because of Māori opposition. The Government, Mitchelson said, ‘intend giving the Natives the control of their own lands, for the time has arrived for it’. By this, he appears to have meant that Māori as individuals would have control over their own individual shares, as we will see below.<sup>112</sup>

Mitchelson also said that no Māori would be permitted to sell land until three months after ownership was determined, but at that point ‘anyone wishing to sell can do so’ as long as they retained enough land for their ongoing support, ‘and those who don’t want to sell can keep their land.’<sup>113</sup> There was, however, one caveat: the Crown would retain an exclusive purchasing right during the three months after ownership was determined; after that, land could be offered for sale to others. Ormsby responded that ‘the Government preemptive right should be altogether done away with’ – his clear wish was for an open market, as Ballance had promised.<sup>114</sup> As Mitchelson was unwilling to meet this condition, no agreement was reached.

### 11.3.2.5 *Wahanui’s objection to the Government’s plans*

About two months after that meeting, Mitchelson introduced a Bill repealing the Native Land Administration Act 1886 and instead granting all Māori landowners the right to alienate land or shares in land in the same manner as other New Zealanders. The Bill also proposed that Māori lands be subject to taxes, rates, and other charges applying to freehold land.<sup>115</sup> While it granted Māori landowners the same rights as Europeans, the effect of this Bill would have been to allow any

112. ‘Mr Mitchelson’s Visit’, *Waikato Times*, 12 April 1888, p 2; doc A68, pp 89–90.

113. ‘Mr Mitchelson’s Visit’, *Waikato Times*, 12 April 1888, p 2; doc A68, pp 89–90.

114. ‘The Native Meeting’, *New Zealand Herald*, 12 April 1888, p 6; doc A68, p 89.

115. ‘Native Lands Bill’, *Poverty Bay Herald*, 2 June 1888, p 2; doc A68, pp 89–91.

individual to sell shares in Māori land, irrespective of the wishes of other members of the hapū or other owners in a block. Prior to the April 1888 negotiations, Te Rohe Pōtae leaders had sought to preserve the rights of Māori communities to make collective decisions about land. They had initially opposed individualisation of title and continued to oppose sales by individual shareholders, as well as opposing any privileged market position for the Crown.

In June 1888, Wahanui wrote to Ballance, then an opposition member of the House of Representatives, asking him to convey the opposition of Te Rohe Pōtae leaders to the new Bill. Wahanui explained that Te Rohe Pōtae leaders wanted to retain the parts of the Native Land Administration Act 1886 which ‘nearly correspond with what we would like ourselves’. Here, he seems to have been referring to the provisions empowering block committees, which were elected from among owners, to make decisions about land. The Act, as currently worded, ‘serves now as a check on these corrupt practices’, since individual owners could not be manipulated into selling their shares.<sup>116</sup>

Wahanui said he had previously expressed his concern about some parts of the Act, and continued to want amendments. He singled out section 19, which provided for commissioners to administer sales and leases on owners’ behalf; section 20, which allowed the Crown to bypass block committees and purchase directly from individual owners; and section 37, which provided for expenses to be deducted before owners were paid rent or purchase money.<sup>117</sup> But, since the Act had come into force, he had not asked for its repeal. If the Government now pressed ahead with its free trade plans, Wahanui wrote, Māori would be subjected to the ‘old corrupt practices’ which had been raised in the 1883 petition (that is, that land laws failed to protect Māori rights under articles 2 and 3, and instead enabled private land speculators to exploit court processes and debt to gain possession of Māori land).<sup>118</sup>

Te Rohe Pōtae leaders, Wahanui wrote, had only consented to the survey of their land in 1883 because Native Minister John Bryce had promised that ‘he would give due respect to our land, and . . . would prevent all evil practices from being done in our district’. And they had only consented to the railway because they had relied on Crown promises that it ‘would give due respect to our land’, and ‘would prevent all evil practices from being done in our district’. They would not have placed their lands before the court if they had known of the free trade in individual interests the Crown now intended to introduce.<sup>119</sup>

### 11.3.2.6 1888–91 restrictions enacted

On 30 August 1888, two new laws came into effect. The Native Land Act 1888 repealed the Native Land Administration Act 1886 and restored free trade in Māori land for most of New Zealand. Under the Act, Māori were able to

116. ‘Letter from Wahanui’, *Wanganui Herald*, 11 June 1888, p 2. Also see submission 3.4.307, p 7.

117. ‘Letter from Wahanui’, *Wanganui Herald*, 11 June 1888, p 2.

118. ‘Letter from Wahanui’, *Wanganui Herald*, 11 June 1888, p 2.

119. ‘Letter from Wahanui’, *Wanganui Herald*, 11 June 1888, p 2.

‘alienate and dispose of land or of any share or interest therein as they think fit’<sup>120</sup> Mitchelson, explaining this legislation in the House of Representatives, echoed Ormsby’s words. Māori, he said, ‘thought the time had now arrived when they should be permitted to take charge of their own affairs’. They were ‘no longer children’ and ‘ought to be placed in exactly the same position as Europeans’, that is, ‘they should be allowed to sell and lease their own land without the intervention of Government’.<sup>121</sup>

Also on 30 August 1888, the Native Land Court Act 1886 Amendment Act 1888 came into effect. The Act’s effect was that no one other than the Crown could negotiate to buy, lease, or otherwise deal with any part of ‘Rohe-Pōtae’ until 30 August 1891.<sup>122</sup>

The Act did not define the boundaries of ‘Rohe-Potae’, and witnesses gave a range of views about what was intended.<sup>123</sup> In our view, the Act was plainly referring to the 1886 Rohe Potae block, which the Native Land Court had awarded to the five tribes in October 1886, and which remained before the court in 1888 as subdivisions were completed. As well as prohibiting private purchasing within that block, section 15 also referred to the court’s interlocutory orders and decisions regarding ownership of the block and provided that they would have the effect of orders under the Native Land Court Act 1886.

The 1886 Rohe Potae block, to which restrictions were now being applied, covered a much smaller area than the 1884–86 restriction zone. It comprised most of the 1.6 million-acre Aotea-Rohe Potae block, with the removal of five small blocks (Korakonui, Taharoa, Awaroa, Kawhia, Kaipiha) which the court had awarded in 1886 to other claimants.<sup>124</sup>

The premier, Harry Atkinson, told the House that the restrictions had been put in place at the urging of Wahanui and the Western Maori Member of the House of Representatives Hoani Taipua. He claimed they had sought a five-year restriction, but the Government had decided on a shorter period which would ‘give [it] time

120. Native Land Act 1888, ss 3–5.

121. ‘Native Land Bill’, 11 July 1888, NZPD, vol 61, p 669 (doc A41, p 201).

122. Native Land Court Act 1886 Amendment Act 1888, s15; Native Lands Frauds Prevention Act 1881 Amendment Act 1888, s5.

123. Boulton’s view was that ‘Rohe-Potae’ under the Native Land Court 1886 Amendment Act 1888, referred to the Aotea-Rohe Potae block. Husbands and Mitchell said it referred to the smaller Rohe Potae block as defined in October 1886. Hearn’s view was that it referred to the 1884 restriction zone. Loveridge’s view was also that it was ‘almost certainly a reference to the 1884 restriction area’, albeit with some amendments. Loveridge’s view was based on the definition of ‘Rohe Potae’ given in the Native Land Bill 1888. In that Bill, ‘Rohe-Potae’ was defined as being the restriction area defined in the Native Land Alienation Restriction Act 1884, with the addition of ‘Mokau Riding’ and some Rotorua land. However, the House removed all references to ‘Rohe Potae’ from that Bill before it was enacted, and the definition was not included in the Native Land Court 1886 Amendment Act 1888. Loveridge, however, said elsewhere that he was ‘fairly certain that the reference was meant to be to the Aotea block alone’: see doc A67, pp 14 n, 79, 150–151, 301, 397; doc A79, pp 25, 478; doc A146, p 60; doc A68, pp 92 n, 190–192, 202 n

124. Document A79, pp 25, 478; doc A60, pp 82–86, 87–89. Specifically, according to Husbands and Mitchell, the ‘Rohe Potae’ block in 1888 referred to the 1.6 million-acre Aotea-Rohe Potae block excluding the Korakonui, Te Taharoa, Te Awaroa, Kawhia, and Kaipiha blocks: doc A79, p 25.

to deal with the land for the railway'.<sup>125</sup> In fact, as discussed above, what Wahanui had sought was amendments to the existing law to provide for Māori to exercise communal control over their land, and to remove any privileged Crown purchasing rights, so that Te Rohe Pōtae communities could avoid the harm that would inevitably arise from free trade in or Crown purchasing of individual interests. Wahanui had explicitly opposed any exclusive purchasing right for the Crown, as he had on previous occasions.<sup>126</sup> Other Te Rohe Pōtae leaders had sought a prohibition on all land dealings before title was determined, but had likewise opposed any exclusive purchasing right for the Crown.<sup>127</sup> As Ballance had in 1885, Atkinson was reinterpreting Māori leaders' requests for protection from settlers' predatory buying tactics as support for the Crown to keep the market to itself.<sup>128</sup>

While claiming Māori support for this measure, Atkinson and other Ministers also acknowledged that the Crown's true purpose was to exclude competition along the railway until it could achieve its land buying objectives. As Mitchelson told the House, his preference was for the Crown to buy and settle all Te Rohe Pōtae land 'other than what would be sufficient for . . . [Māori] use and occupation', and his intention was therefore to protect the land from private sale until the court could complete its work and the Crown could acquire what it needed.<sup>129</sup> Mitchelson had not discussed this ambition with Te Rohe Pōtae Māori during his visit in April. It was a marked departure from anything Crown representatives had discussed with Te Rohe Pōtae leaders at any time, though not so different from what Bryce had been telling Pākehā audiences and politicians years earlier (see chapter 8). In January 1887, Ballance had recommended that Te Rohe Pōtae leaders 'set aside blocks of land for European settlements', without specifying how much. As noted earlier, Te Rohe Pōtae leaders showed no sign of consenting to that proposal. We cannot see that they would have consented to Mitchelson's new proposal, under which they were expected to give up almost all of their land.<sup>130</sup>

### 11.3.3 The 1890–1910 restrictions

#### 11.3.3.1 *The Crown decides to begin purchasing*

Even with the restrictions in place, Te Rohe Pōtae Māori continued to pursue economic development opportunities. The amount of land devoted to traditional cultivation appears to have declined during the 1880s as more Māori engaged in wage labour on the railway (chapter 9) and other government projects such as road

125. 'Native Land Court Bill', 27 August 1888, NZPD, vol 63, p 456 (doc A68, p 93).

126. Loveridge was also of this view: doc A68, p 93.

127. 'The Native Meeting', *New Zealand Herald*, 12 April 1888, p 6.

128. Hoani Taipua also sought protection from predatory buying practises. See Angela Ballara, 'Hoani Taipua Te Puna-i-rangiriri' in 1870–1900, vol 2 of *The Dictionary of New Zealand Biography*, ed Claudia Orange (Wellington: Bridget Williams Books / The Department of Internal Affairs, 1994), pp 496–497.

129. 'Native Land Bill', 11 July 1888, NZPD, vol 61, p 670 (doc A68, p 90).

130. 'Mr Ballance at Otorohanga', *Waikato Times*, 29 January 1887, p 3.

building and rabbit culling,<sup>131</sup> and as they pursued entrepreneurial activities. The number of Māori engaging in sheep farming grew rapidly from the late 1880s, led by people such as the Ormsby brothers and Wahanui. By 1890, Wilkinson estimated there were 6,000 sheep in the district, most of them owned by Māori.<sup>132</sup> Māori in Ōtorohanga, Rangitoto Tuhua, and elsewhere entered arrangements allowing Europeans to cut and mill timber, taking advantage of the railway and its capacity to carry timber to markets outside the district.<sup>133</sup> Similarly, limestone was quarried at Te Kumi from 1888 on.<sup>134</sup> In some areas, such as Te Kopua, extensive cultivation continued.<sup>135</sup>

But the restrictions nonetheless affected the district's economy. The district's leaders had consistently expressed a desire to make land available for settlement by leasing, thereby bringing incomes to their communities without placing the land itself at risk. The general effect of the restrictions was to prevent such arrangements and potentially deny incomes to Te Rohe Pōtae communities. Māori did occasionally enter agreements allowing Europeans to run stock on their land, to lease land for sheep farming, and to take flax for milling, but such arrangements were not sanctioned by the law and carried ongoing risks that the Crown might step in and terminate them – as it began to do in the early 1890s.<sup>136</sup>

While Māori communities continued to pursue development opportunities, they also became increasingly drawn into Native Land Court processes. By mid-1889, the court had identified tribal boundaries within the Rohe-Pōtae block, and had gone a considerable way towards creating subdivisions and identifying owners (although it did not begin to define owners' relative interests for most blocks until 1892 or later).<sup>137</sup>

The district's leaders were also aware that survey costs would have to be paid. As discussed in chapter 10, they explored various options to avoid or minimise these costs, and in particular to avoid liens which would force them to give up land to repay survey charges. This appears to have been one of the reasons for the increase in sheep farming in the late 1880s – leaders were hoping to be able to earn sufficient income from that and other economic activities to pay off their liens when they fell due.<sup>138</sup>

Wilkinson attended the court hearings, gathering detailed information about land blocks, owners, survey status, and desirability, and reporting it back to the

131. 'Reports from Officers in Native Districts', AJHR, 1890, G-2, p 3; doc A67, pp 227–228, 230; doc A35 (Ward), p 92; doc A146, pp 37–38; doc A20, p 92.

132. 'Reports from Officers in Native Districts', AJHR, 1890, G-2, pp 4–5; doc A67, pp 228–229.

133. Document A146, pp 229–232; doc A67, pp 311–314.

134. Document A146, pp 498–499; doc A67, pp 314–315, 318–322.

135. Document A26, pp 47–48, 54, 58, 103, 109; doc A146, p 35.

136. Document A79, pp 512–513; doc A146, pp 126, 185; doc A67, pp 225, 227, 309–310, 324; doc A55 (Marr), p 91.

137. Document A79, pp 162–167.

138. Document A55, p 102. Also see doc A67, pp 229, 231–232, 253–254; 'Reports from Officers in Native Districts', AJHR, 1890, G-2, p 5. Ngāti Maniapoto leaders had reached an agreement with the Crown under which it would initially cover survey costs, which owners would repay two years after survey had been completed: doc A79, pp 300–302, 309; doc A55, p 51.

Native Department.<sup>139</sup> By June 1889, court processes were sufficiently far advanced for the Government to decide it would soon begin purchasing.<sup>140</sup> It is not clear whether there was any consultation over this decision – according to Boulton, the Native Under-Secretary did visit Kihikihi in early June, where he had a long meeting with Wilkinson and also saw Wahanui and others, but there is no record of what was said.<sup>141</sup>

On 19 June, Wilkinson wrote to the Native Department that ‘[in] view of the proposed commencement of purchase’ he was sending details of which blocks were close to the railway line and had title and survey processes complete.<sup>142</sup> Then, on 24 June the Native Minister (Mitchelson) wrote to Wahanui, Taonui, and Hauāuru giving them ‘early information’ of the Crown’s intention to begin purchasing as soon as titles were determined. Mitchelson promised to set aside reserves and expressed hope that Māori would not be ‘denuded of their lands’, but he also urged the rangatira to help the Crown as much as possible.<sup>143</sup> Ignoring Māori attempts to develop their lands, and the effects of restrictions that were designed to prevent any private sale or lease, Mitchelson argued that it was not in their interests to leave land ‘waste and unoccupied’. Like Ballance before him, he claimed that any land Māori did retain ‘will be greatly increased in value by the progress of settlement.’<sup>144</sup>

Over the next few months, the Crown turned its attention to practical questions: which blocks to buy, how to buy them, and how much to buy and sell for. Wilkinson continued to prepare and update lists of blocks which were close to the railway line, of sufficient quality to be attractive to settlers, and for which boundaries and titles had been determined and were unlikely to be relitigated. All of the blocks Wilkinson identified were in the highly fertile Waipā Valley, close to the railway route in the north of the district.<sup>145</sup> By any estimation, these were prized lands. All had been identified in an 1885 Crown survey as first-class agricultural land (whereas much of the district was second-class pastoral land or broken country). And most were already heavily used for Māori agriculture and horticultural activities. Indeed, the Waipā Valley had first become a significant agricul-

139. Document A67, pp 182–184.

140. Document A67, p185.

141. Document A67, p185.

142. Wilkinson to Under-Secretary, Native Department, 19 June 1889 (doc A67, p185; doc A67(a), vol 1, p90).

143. Lewis for Mitchelson, draft letter to Wahanui, Taonui, and Hauāuru, 24 June 1889 (doc A67(a), vol 1, p103; doc A67, pp185–186, 216).

144. Lewis for Mitchelson, draft letter to Wahanui, Taonui, and Hauāuru, 24 June 1889 (doc A67(a), vol 1, p104; doc A67, pp185–186, 216).

145. Document A67, pp186–199, 209–210, 219, 493. By October, a shortlist of 10 blocks had been identified for immediate purchase. They included Mangauika, Kaipiha, Whakairoiro, Ngamahanga, Te Kopua 1, Parihoru 1, Takotokoraha, Waiwhakaata, and Maungarangi. Several other blocks in the north of the district were considered attractive but were not included because of outstanding surveys or legal claims. They included Kakepuku, Tokanui, Ouruwhero, Puketarata, Otorohanga, Orahiri, Hauturu, and Kinohaku East. Also see doc A67(a), vol 1, p128; doc A91 (Waitangi Tribunal document bank), vol 2, pp313–314; doc A95(q)(i) (Parker appendixes).

tural centre in the late 1830s, and one of the reasons Te Rohe Pōtae leaders signed the Treaty was to increase access to European technology so they could further develop these lands for the benefit of their people.<sup>146</sup>

If Crown officials paid little heed to Māori economic aspirations, they paid even less heed to ancestral relationships, recent or distant. The preferred blocks included lands that Ngāti Maniapoto had, several decades earlier, defended from Ngāpuhi and Ngāti Raukawa incursions, where leaders such as Peehi Tūkorehu and Te Wherowhero had lived. They were rich in traditional food sources – one of them, Ouruwhero, included Te Kawa Swamp. And they were of deep importance to Tainui and Ngāti Maniapoto identity. The early *Tainui* explorers Rakataura and Kahurere had traversed some of the targeted blocks and named their maunga. Tūrongo and Mahinārangi had settled lands near Ōtorohanga, which had become the cradle from which Ngāti Maniapoto and Ngāti Raukawa emerged; these, too, were on Wilkinson's lists.

### 11.3.3.2 *Early discussions about purchasing tactics*

Just as the Crown had to determine what to buy, it had to determine how. On this, Wilkinson and other Europeans advised that Māori communities would be very unlikely to sell, having little need of money and a considerable motivation to develop land on their own account. Therefore, the only method that was likely to succeed was to target individual owners in the hope that communal resistance could eventually be broken down.<sup>147</sup>

In October 1889, Wilkinson advised the Under-Secretary for the Native Department, T W Lewis, that it would be best to target owners across a wide range of land blocks. Such a strategy would be unlikely to yield the whole of any block, but it might allow the Crown to acquire a substantial portion. The Crown could then go to court, forcing non-sellers to agree to partition the blocks they had interests in. The process could then begin again, with Wilkinson targeting the remaining non-sellers' individual shares.<sup>148</sup>

In December, Lewis wrote to Mitchelson recommending that the Crown immediately begin to buy individual shares in all of the blocks for which titles were secure. Lewis stressed that the intent behind the policy was to break down communal resistance. If individuals in one block would not sell, he said, those in another might; and once non-sellers saw that others had cash, they would be more likely to part with their shares.<sup>149</sup>

On the question of price, the surveyor-general had recommended the Crown pay prices ranging from 2 shillings to 3 shillings per acre (for hillier blocks to the west of the railway) up to 10 shillings an acre (for prime land close to the railway). He advised that land in most blocks could be onsold for at least 2.5 times the purchase price, yielding a profit (once development costs were taken into account)

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146. Document A67, pp 196–198.

147. Document A67, pp 187–188, 206–207 doc A67(a), vol 1, pp 121–132; doc A55, p 53.

148. Document A67, pp 206–207; doc A67(a), vol 1, pp 121–132; doc A55, p 53.

149. Document A67, p 211; doc A67(a), vol 1, pp 133–141.



of seven-eighths of the purchase price.<sup>150</sup> Lewis's advice to Mitchelson was that the Crown should never pay more than 5 shillings per acre, along with a 10 per cent reserve as 'an incentive to sell', and should begin by offering 3 to 4 shillings per acre. Lewis said that Māori owners would probably expect prices five or six times these amounts, and it would probably take some time to break down their resistance and get them to sell, 'but . . . once the ice is broken they will come in, especially when they learn that their unreasonable expectations are not likely to be met.'<sup>151</sup> Mitchelson responded with an instruction to start purchasing, with 5 shillings per acre as the outer limit.<sup>152</sup> The Crown's explicit policy, in other words, was to deliberately break down communal resistance to land selling, with the goal of persuading individuals to sell at prices that were considerably less than the Crown's own experts said the land was worth.

The policy of individual purchasing, furthermore, was in breach of an earlier promise. Throughout the 1880s, Ministers had consistently told Te Rohe Pōtae leaders that it intended to purchase only 'surplus' land.<sup>153</sup> According to Boulton, the Crown regarded land as 'surplus' if it was unoccupied and uncultivated, a definition that Māori were unlikely to have shared.<sup>154</sup> Even allowing for the differing views of the Crown and Māori over what might be considered surplus or unused, it is clear that the Crown had by this time abandoned any idea of negotiating with communities over what they might consider surplus, and had instead determined to acquire whatever it could within the targeted blocks.

### 11.3.3.3 1890–92 restrictions enacted

For the Crown's purchasing policy to work as intended, the Crown had to control the land market; it could not allow Māori to sell land to anyone other than itself. When the Crown instructed Wilkinson to begin purchasing in December 1889, the 1888–91 restrictions remained in effect, and covered most of the district (as

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150. Document A67, pp 209–210, 219, 493; doc A91, vol 2, pp 313, 340–341; doc A67(a), p 128; doc A95(q)(i); doc A95(q) (Parker), p 4; doc A95(h)(1) (Parker), pp 6–7; doc A95(h) (Parker), pp 2–3; doc A95(q), p 4. The surveyor-general recommended that Hauturu West be sold for 3.5 times the maximum purchase price, and Wharepuhunga be sold for twice the maximum purchase price. For Wharepuhunga, the estimated profit was 50 per cent of the purchase price, and for Hauturu West the estimated profit was 181.25 per cent of the purchase price: doc A95(h)(1), pp 6–7; doc A67, p 210 tbl 14, 493.

151. Lewis, Under-Secretary, Native Department, to Native Minister, 18 December 1889 (doc A67(a), vol 1, pp 133–141; doc A67, p 211). In 1890, Lewis reported to the Native Minister that sales were slow, both because Māori did not want to sell and because of 'the exaggerated idea' they had of the value of their land: doc A67, p 226. The Crown had also asked the merchant JW Ellis, who was operating in Te Rohe Pōtae, for information on land prices and preferred blocks. His view was that Māori had 'very extravagant ideas of the value of their lands close to the [railway] line'. He therefore recommended purchasing elsewhere at lower prices, to lower price expectations: Ellis to Mitchelson, 26 September 1889 (doc A67(a), vol 1, p 110; doc A67, pp 203–204).

152. Document A91, vol 2, p 327.

153. Lewis, draft letter to Wahanui, Taonui, and Hauauru, 24 June 1889 (doc A67(a), vol 1, pp 103–104); doc A67, pp 185–185, 216–217, 403–404; doc A68, pp 82–83, 101, 148. Also see doc A41, p 184 n

154. Document A67, pp 185–186.

shown in map 11.1). Nonetheless, as part of legislation funding the land purchase programme, the Crown also imposed new restrictions.

The North Island Main Trunk Railway Loan Application Act Amendment Act 1889 was enacted on 16 September 1889 and came into effect on 1 January 1890.<sup>155</sup> It established two new restriction zones. One covered a substantial area in the north and centre of the inquiry district surrounding the railway route and Waipā Valley. This is hereafter referred to as the ‘northern target area’.<sup>156</sup> According to Boulton, it coincided almost exactly with the area described in Wilkinson’s land purchasing recommendations.<sup>157</sup> The other new restriction zone (the ‘southern target area’) covered a substantial area outside this inquiry district, broadly from the Tongararo area south to just beyond Taihape.<sup>158</sup>

Within these two target areas, the Crown was granted exclusive rights to enter arrangements for the ‘purchase, conveyance, transfer, lease, exchange, or occupation’ of any Māori land, for a period of two years, from 1 January 1890 to 1 January 1892.<sup>159</sup> For the period from 1 January 1890 to 30 August 1891, therefore, two sets of restrictions were in place – one covering the 1886 Rohe Potae block and its subdivisions,<sup>160</sup> and another covering the northern and southern target areas.<sup>161</sup>

These new restrictions were the initiative of the Native Minister, Mitchelson, and were inserted during the legislative process without any prior public announcement or consultation. Initially, Mitchelson wanted them to apply for five years, but accepted a reduction to two years under pressure from other members of the House.<sup>162</sup> The target areas defined locations where the Crown wanted to purchase land, as distinct from the broader area that it wanted to protect from private speculation. It is not clear, however, why Mitchelson felt the need to impose new restrictions on the northern target area, when the entire 1886 Rohe Potae block was already covered by the 1888–91 restrictions.<sup>163</sup> He gave no explanation when the Bill was introduced to the House, saying only that the areas defined in the le-

155. North Island Main Trunk Railway Loan Application Act Amendment Act 1889, s 5.

156. Document A68, p 94. According to Loveridge, this area included ‘most of the land within the Waipa Valley lying between the mountain ranges to the east and west, from a point south of Te Kuiti northwards to the Punui River’.

157. Document A67, pp 140, 189–193, 195–198, 203–206, 211.

158. North Island Main Trunk Railway Loan Application Act Amendment Act 1889, sch 2.

159. North Island Main Trunk Railway Loan Application Act Amendment Act 1889, s 5, sch 2; Native Lands Frauds Prevention Act 1881 Amendment Act 1888, s 5. Also see doc A67, pp 140–141; doc A68, pp 93–94; submission 3.4.307, pp 9, 27.

160. Native Land Court Act 1886 Amendment Act 1888, s 15.

161. North Island Main Trunk Railway Loan Application Act 1886 Amendment Act 1889, s 5, sch 2; North Island Main Trunk Railway Loan Application Amendment Act 1891, s 2; North Island Main Trunk Railway Loan Application Acts Amendment Act 1892, ss 2–3, sch.

162. Document A68, pp 93–95; doc A67, pp 140–142, 300–301.

163. None of the witnesses in this inquiry addressed Mitchelson’s reasons for imposing new restrictions on land where restrictions already applied. According to Boulton, the main focus of the House of Representatives debate was on ensuring that money was not spent in the Taranaki land district, since it was feared that the New Plymouth Harbour Board would claim 25 per cent of the revenue from sales: doc A67, pp 460–461. This explains why funding was allocated to purchasing in the northern target area, but not why new restrictions were also imposed. Also see doc A68, pp 93–95.

gislation 'comprise for the most part first-class land, which, when acquired, will be made available for settlement purposes as rapidly as possible'.<sup>164</sup> Nor was there any debate on the matter, except that Ballance noted the proposed areas differed from the much broader area defined in the Native Land Alienation Restriction Act and asked the Government to provide a map.<sup>165</sup>

By the time the Act was passed, the Native Land Court had completed the subdivision of much of the 1886 Rohe Potae block (though, for most blocks, surveys were still to be completed).<sup>166</sup> The Crown had already made a decision in principle to begin purchasing, and had received advice from its agent in the King Country, George Wilkinson, about which blocks to prioritise.<sup>167</sup>

As well as defining new restriction zones, the Act authorised the use of £120,285 for land purchasing within the two new restriction zones.<sup>168</sup> This was in addition to the £100,000 authorised in 1886,<sup>169</sup> much of which had been spent on Waimarino and Tauponuiatia block purchases outside this district.<sup>170</sup> Of the remaining lands that the Crown saw as important to its settlement plans, the northern target area was one of the highest priorities.<sup>171</sup> Not only did the Crown intend to use these new restrictions to support its land purchasing programme, it also explicitly intended to control land prices. Mitchelson told a delegation from Auckland that the Crown would offer between 3 and 7 shillings per acre for land in the Aotea-Rohe Potae block and hoped to sell to settlers at 15 shillings. It was necessary for the Crown to control the market, he argued, because settlers would not be able to obtain land so cheaply from private speculators.<sup>172</sup> In respect of the Crown profiting from these transactions:

[It] had already spent large sums on the central line of railway, and it had opened up a good deal of country. As this had advanced the value of the land, the Government considered that whatever value had been given to the land ought to belong to the State, and not to any private persons who now wished to acquire the land.<sup>173</sup>

Mitchelson did not remind his audience that Te Rohe Pōtae Māori had only consented to the railway on the basis of Crown promises that they would retain possession and control of their land and would benefit from rising land values.

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164. 'North Island Main Trunk Railway Bill', 27 August 1889, NZPD, vol 66, p 119.

165. 'North Island Main Trunk Railway Bill', 27 August 1889, NZPD, vol 66, p 120.

166. Document A60, pp 87–89; doc A79, p 166.

167. Document A67, pp 185–189, 206.

168. North Island Main Trunk Railway Loan Application Act Amendment Act 1889, ss 2–4.

169. North Island Main Trunk Railway Loan Application Act 1886, s 4.

170. Document A90, pp 60–61; doc A67, p 170.

171. Document A67, pp 167, 460–461.

172. Document A68, pp 98–99.

173. 'The Acting Premier', *New Zealand Herald*, 8 November 1890 (doc A68, p 98).

**11.3.3.4 The Crown's initial frustration**

In spite of Wilkinson's determined efforts, land sales were initially very slow. Early in 1890, he wrote to the Native Department pointing out that Māori landowners saw little point in selling at the prices the Crown was willing to pay.<sup>174</sup> According to the land purchase officer William Grace, some Māori landowners said they could 'get more money for a pig' than the Crown was willing to pay for a share in their land.<sup>175</sup> Others were reported to be 'highly amused' by the Crown's offers, and one old man reportedly told the assistant land purchasing officer: 'The Govt don't wish to buy or else they would not offer such a price.'<sup>176</sup>

In April 1890, Wilkinson was granted discretion to offer 5 shillings an acre for the best land, though it was made clear he should offer no more than was needed to get Māori to sell.<sup>177</sup> His first individual share purchases occurred that month, and were a source of considerable shame for the sellers. As Wilkinson described it, two (out of 110) owners in the Mangauika block rode for 12 miles under cover of darkness to meet him and complete the transaction; they then banked the proceeds in Te Awamutu rather than cashing them at the local store.<sup>178</sup> These were 'the first shares within any of the Rohepotae blocks that have yet been sold by the Natives.'<sup>179</sup>

No further progress was made before June 1890, when Wilkinson reported to the House of Representatives on his land purchasing activities. Wilkinson gave five reasons for Māori refusing to sell. First, Te Rohe Pōtae Māori had other sources of income (such as flax sales, roading and rabbit culling contracts, sheep farming, and grazing and timber contracts, as discussed above). Secondly, they saw little benefit in encouraging settlement. Thirdly, they did not trust the Crown's intentions, regarding it as acting from self-interest. Fourthly, they believed the prices the Crown was offering were too low. Fifthly, they believed they should have access to a competitive market.<sup>180</sup>

Wilkinson did not recommend that the Crown further increase its purchase prices, let alone that it remove the restrictions. Rather, he echoed the Native Department view that resistance must be broken down, just as the Crown had previously broken communal resistance to the Native Land Court and to surveys.<sup>181</sup> The fundamental problem, Wilkinson reported, was that the district's Māori did not yet need money. That would change if their labour contracts dried up and their sheep farming operations failed – which Wilkinson saw as inevitable. Another factor in the Crown's favour was that attempts at sheep farming would in

174. Document A67, pp 210–211, 223–224; doc A91, vol 2, pp 298–302.

175. Wilkinson to Lewis, 10 March 1890 (doc A67, p 225; doc A67(a), vol 1, p 167).

176. Grace to Wilkinson, not dated, attached to Wilkinson to Lewis, 10 March 1890 (doc A67, p 225; doc A67(a), vol 1, p 169). Also see doc A68, pp 96–97.

177. Document A67, pp 226, 228, 252; doc A67(a), vol 1, p 188.

178. Document A67, p 222.

179. George Wilkinson to T W Lewis, 7 April 1890 (doc A67, p 222).

180. 'Reports from Officers in Native Districts', AJHR, 1890, G-2, pp 3–6; doc A67, pp 227–228; doc A20, p 92. Also see Wilkinson to Lewis, 27 March 1890 (doc A67(a), vol 1, pp 174–177).

181. 'Reports from Officers in Native Districts', AJHR, 1890, G-2, p 5; doc A67, p 230; doc A55, p 47.

Wilkinson's view inevitably lead to conflict between those who owned the stock and other landowners.<sup>182</sup> Together, jealousy and want of money would 'bring about a complete disintegration of their policy of anti-land-selling'.<sup>183</sup> As that occurred, those in need of cash could be induced to sell 'at almost any price'.<sup>184</sup>

Wilkinson characterised resistance to Crown purchasing as the last of several stages in which Te Rohe Pōtae Māori had attempted to protect their territories and authority from Crown attempts to secure those lands for European settlement.<sup>185</sup> In the first stage, Wilkinson wrote, the five tribes had defined their territories and proclaimed their ownership, believing that this alone was sufficient to have their ownership acknowledged by the Government and the law.

In the second stage, they had submitted to the Native Land Court 'much against their wish' to have the external boundary defined, so they could be awarded legal title. They did this only because the Crown refused to recognise and respect their ownership of their territories without this step. In the third stage, they had consented to the railway, 'most likely' because 'they could see that Government were determined to put it through'.<sup>186</sup>

In the fourth stage, they had named the individual owners of the Aotea-Rohe Potae block. They objected to this 'for a long time', preferring that title be awarded to tribes and hapū, not to individuals. This, Wilkinson wrote, 'was for the purpose of preventing sales, &c, and to keep the power in the hands of the chiefs.' But because the court had no power to award iwi or hapū titles, they were forced to name individuals. In the fifth stage, the naming of individuals caused 'jealousy, ill-feeling, bickerings, and quarrelling' which led to the subdivision of the Aotea-Rohe Potae block into smaller blocks with separate lists of owners.<sup>187</sup>

The sixth stage was the surveying of the boundaries of each block. Te Rohe Pōtae leaders objected to this step, 'as they saw plainly that, as soon as that was done and the area known, there was nothing to prevent those of the owners from selling who wanted to do so, a proceeding that it was almost unanimously considered should not be allowed if it could possibly be avoided'. During this stage, Te Rohe Pōtae leaders did everything in their power to prevent the Government from obtaining survey liens, first by attempting to avoid surveys altogether, then by attempting to arrange for private surveys which they hoped to pay for in cash, before they gave in after being told that Crown surveys would be as cheap and more accurate (and also after being promised that no charges would be made against their land for two years after survey).<sup>188</sup>

Wilkinson had been intimately involved in each of these stages, interpreting at meetings between Cabinet ministers and Te Rohe Pōtae leaders and communicating with Te Rohe Pōtae leaders directly between Ministerial visits. In essence, his

182. 'Reports from Officers in Native Districts', AJHR, 1890, G-2, p 5; doc A67, p 230; doc A55, p 47.

183. 'Reports from Officers in Native Districts', AJHR, 1890, G-2, p 5 (doc A67, p 230)

184. 'Reports from Officers in Native Districts', AJHR, 1890, G-2, p 5; doc A67, p 228; doc A55, p 47.

185. 'Reports from Officers in Native Districts', AJHR, 1890, G-2, p 5.

186. 'Reports from Officers in Native Districts', AJHR, 1890, G-2, p 5.

187. 'Reports from Officers in Native Districts', AJHR, 1890, G-2, p 5.

188. 'Reports from Officers in Native Districts', AJHR, 1890, G-2, p 5.

report amounts to a clear admission by the Crown's agent in the district that the Crown had never intended to meet the demands made by Te Rohe Pōtae Māori in their 1883 petition or honour the pledges that Ministers made during their 1883–85 visits to the district.

With the completion of the first six stages, Wilkinson wrote, 'the seventh or last stage is now being entered upon—namely, parting with their land by sale.'<sup>189</sup> By describing the strategy in these terms, Wilkinson was acknowledging that this was not merely a land purchasing operation – it was part of a larger and highly deliberate assault on communal control of Te Rohe Pōtae Māori land and on Te Rohe Pōtae Māori territorial authority and economic aspirations, using tactics that had served the Crown in other districts<sup>190</sup> and, in this district, had been endorsed by the Native Department and the Native Minister.<sup>191</sup> This was exactly what Te Rohe Pōtae leaders had sought to avoid when they protested over the Crown's exclusive purchasing right.

### 11.3.3.5 Early sales to cover survey costs: Te Kopua and Waiaraia

Over the rest of 1890, Wilkinson's progress remained very slow. After his initial purchase of two shares in Mangauika he succeeded in acquiring only a small number of shares in the fertile northern parts of the district.<sup>192</sup> The district's leaders were, however, aware that survey costs would sooner or later have to be repaid. As discussed earlier, they had known that survey liens could open the door to land alienation and had sought to avoid that outcome. Some had sought to raise funds by other means, including sheep farming, but had also been hampered in those efforts by restrictions on leasing, which prevented them from forming arrangements with Europeans of their choosing. In discussions with Wilkinson, Wahanui, Taonui, and Ormsby indicated that they might be willing to sell some of their lands in order to pay those costs, in the hope that this would mean they could retain and develop other lands. In particular, Ormsby indicated a willingness to sell a small part of Te Kopua 1 in the north of the district, so long as he and his whānau could determine the subdivision boundaries.<sup>193</sup>

In December, Wahanui indicated to Wilkinson that he would be willing to sell land in the Waiaraia and Taorua blocks in the south of the district, also to cover survey liens. He had not sold earlier, he said, because title had not been awarded.<sup>194</sup>

189. 'Reports from Officers in Native Districts', AJHR, 1890, G-2, p 5.

190. Alan Ward, *National Overview*, Waitangi Tribunal Rangahau Whānui Series, 3 vols (Wellington: GP Publications, 1997), vol 1, pp 8–10, 18–21, vol 3, pp 4–15, 22–28, 41–45, 122–127, 154–158, 172–175, 227–233, 250–252, 267–269.

191. Lewis to Native Minister, 18 December 1889 (doc A67(a), vol 1, pp 133–141); Mitchelson to Lewis, 20 December 1889 (doc A91, vol 2, p 327). Also see doc A55, pp 53, 73.

192. Wilkinson's reports on 1890 and early 1891 share purchases are in doc A67(a), vol 1, pp 192–215, 239–253. Also see doc A67, pp 227–228, 395–396; doc A20, p 92; doc A21, p 131; doc A95(i) (Parker spreadsheet), 'Crown Purchases'; 'Reports from Officers in Native Districts', AJHR, 1890, G-2, pp 3–6.

193. Document A67, pp 232–233, 240; doc A55, pp 89, 103–104; doc A79, pp 169, 228, 315–316. Also see doc A67(a), pp 212–215.

194. Document A67, pp 393, 395–396, 403–404; doc A67(a), vol 1, pp 265–269; doc A60, pp 1079–1080, 1157–1159, 1167.

This offer appears to have been an assertion of mana: Whanganui Māori had also laid claim to these blocks, and in August – while the blocks remained before the court – had offered to sell them to the Crown.<sup>195</sup> The fact that Wahanui and Whanganui leaders were now competing over these blocks was an indication of how much things had changed since 1885, when the Government encouraged Whanganui Māori to break the five tribes alliance and instead take their Waimarino claims to court.<sup>196</sup>

In January 1891, a new Liberal Government was sworn in, with Ballance as Premier and Alfred Cadman as Native Minister. As we saw in chapter 8 and in earlier parts of this chapter, Ballance's stance on Māori land had hardened during the course of his 1884–87 tenure as Native Minister. Before Te Rohe Pōtae Māori had consented to the railway, he had sought their agreement on land laws and had expressed the view that the Crown need not buy land so long as Māori were prepared to lease some for settlers.

As discussed earlier, during his previous term in government Ballance had committed to a policy of large-scale Crown purchasing and, in order to further the Government's land settlement goals, had become far less responsive to Māori demands and far more willing to leverage divisions among the five tribes to encourage them into court. But he nonetheless continued to promise that Māori would benefit from rising land prices on the lands they did not sell. When Ballance returned to office in 1891 as Premier, his stance had hardened further. He had seen his 1886 legislation fail to meet its settlement objectives and began his new term in office determined to take a much more aggressive approach. As we will see, his new government considered that the Crown should control the pace and cost of settlement, and should use profits from Crown purchases of Māori land to fund the railway.<sup>197</sup>

In the Government's view, Māori were positively obliged to make land available for settlement in the interests of the colony's economic development. As Richard Boast wrote in 2008, 'All politicians, save the four Maori members of Parliament, agreed that Maori had far more land than they needed and that the decent and progressive thing for them to do was to part with most of it.'<sup>198</sup> Underlying this view was a cultural assumption that people who did not use the land (that is, farm it using European methods) had little or no moral right to it. The Liberals opposed large-scale landholding, instead favouring 'close settlement', in which rural areas

195. In August 1890, while the Taorua parent block (from which Waiaraia and several other blocks were subdivided) was still before the court, the Whanganui rangatira Paiaka Te Pīkikōtuku wrote to Wilkinson offering to sell land there. Paiaka subsequently offered to sell land at Umukaimata, north of Waiaraia, also while it remained before the court. The block was subsequently awarded to hapū of Ngāti Maniapoto: doc A67, pp 395–396, 401; doc A60, pp 1149–1159; doc A67(a), vol 1, pp 220–223, 228–232.

196. Document A78, pp 1247–1249.

197. Document A68, pp 101, 109, 119. Also see Ward, *A Show of Justice*, p 304; Richard Boast, *Buying the Land, Selling the Land: Governments and Maori Land in the North Island 1865–1921* (Wellington: Victoria University Press, 2008), ch 3.

198. Boast, *Buying the Land, Selling the Land*, p 124

would be farmed by numerous smallholders. The view that land rights were contingent on close settlement ran directly counter to Treaty guarantees and to the English common law concept of customary title.<sup>199</sup>

The new Government was formed on 24 January. A week later, Wahanui wrote with an offer to sell 10,000 acres in the Waiaraia and Taorua blocks. The offer was addressed to the Native Minister, but it appeared to be intended for Ballance. Wahanui wrote that the Government had been saying he was delaying land sales, but that could not be true – he was offering land for sale and was doing so because the Minister had been a friend during his previous term of office. Here, Wahanui was reminding the Government of the promises made at Kihikihi: that Te Rohe Pōtae Māori would control their own lands, and would be able to sell or lease in a free market.<sup>200</sup>

The land Wahanui offered lay outside the northern target area, which meant the Crown had no purchasing budget and could not therefore make any immediate offer. But Crown officials nonetheless regarded Wahanui's gesture as an important opportunity to break the general resistance to land sales.<sup>201</sup> Wilkinson advised that Māori continued to sell only as individuals and 'as secretly as possible'. The Waiaraia purchase was important, he said, to take away the 'shame or dread of being known as land sellers'. Turning it down, on the other hand, would make the Crown seem as if it did not really want to settle the district.<sup>202</sup> The Government agreed. Money was found from the public works budget, and Wilkinson was given approval to negotiate.<sup>203</sup> The surveyor-general had valued the land at 3s 6d per acre, and that was what Wahanui sought; the Crown resolved to pay no more than 2s 6d.<sup>204</sup>

### 11.3.3.6 *Te Rohe Pōtae Māori appeal for the restrictions to be lifted*

In April, before any negotiations over Waiaraia were concluded, Cadman visited the district to discuss the Crown's land purchasing objectives. He met representatives of Ngāti Maniapoto, Ngāti Hikairo, Ngāti Raukawa, and Ngāti Tuwharetoa

199. The Liberals' land policies have been discussed in many publications. See: Tom Brooking, "Busting Up" the Greatest Estate of All: Liberal Maori Land Policy, 1891–1911, in *New Zealand Journal of History*, vol 26, no 1 (1992), pp 78–98; Tom Brooking, 'Use it or Lose it. Unravelling the Land Debate in Late Nineteenth-Century New Zealand', in *New Zealand Journal of History*, vol 30, no 2 (1996), pp 141–162; Boast, *Buying the Land, Selling the Land*, chs 3–4; Ward, *A Show of Justice*, p 304; Tom Brooking, *Richard Seddon: King of God's Own: The Life and Times of New Zealand's Longest-serving Prime Minister* (Auckland: Penguin Books, 2014), ch 9.

200. Document A67(a), vol 1, pp 253–258; doc A67, pp 392–401.

201. Document A67, pp 392–399; doc A67(a), vol 1, pp 253–290, vol 2, pp 371–374; doc A55, pp 107–109, 111.

202. Wilkinson to Under-Secretary, Native Department, 27 February 1891 (doc A67(a), vol 1, pp 371–374).

203. Document A67, p 399; doc A55, pp 107–109, 111.

204. Document A55, pp 109–110; doc A67, p 399; doc A79, p 228.



at Ōtorohanga.<sup>205</sup> During this meeting, Ormsby, according to a newspaper report, ‘strongly urged the removal of all restrictions’ on Te Rohe Pōtae Māori land that had passed through the court. This, the report pointed out, ‘means the Government’s withdrawal from pre-emptive right to purchase, and practical reversion to free trade’. Other leaders present were reported to have ‘entirely’ endorsed Ormsby’s views on this point.<sup>206</sup> As discussed in section 11.3.2(4), Ormsby had in April 1888 urged the removal of all restrictions, including those on sale – his principal concern by this time was that Te Rohe Pōtae Māori be able to sell or lease to the highest bidder.

Wahanui also wanted the Crown’s exclusive purchasing right removed:

He did not object to protection [of the] native interest, but the horse was his, also the rope, and he wanted to tie the horse himself. If he tied the horse himself with his own rope he would know how to untie him.<sup>207</sup>

Cadman, in response, was unwilling to remove the Crown’s exclusive purchasing rights. From his point of view, their purpose was not to protect Māori land interests, but to protect the Crown’s fiscal position. As he explained, it was Crown spending on public works that made Te Rohe Pōtae lands valuable, and it was unfair for ‘favoured individuals’ (that is, Māori landowners) to profit when the interest on public works debt ‘was paid by all’. He did, however, make a general commitment that the existing laws would be repealed and ‘a new start’ made.<sup>208</sup>

Soon afterwards, to the 1891 Native Land Laws Commission, Ngāti Maniapoto leaders again expressed their opposition to the Crown’s exclusive purchasing right. Pepene Eketone told the commission:

The evil in that law is this: that the Government will not allow the Natives to lease or sell or deal with land with private parties. The Government assume the absolute control of those lands. The evil to the Natives in that is that the Government will offer but small sums of money for that land. The Government will not allow private individuals to lease any portion of that land.<sup>209</sup>

Whitinui Hohepa said the restrictions should be lifted so that Te Rohe Pōtae Māori could lease land in a competitive market. ‘To a man like myself, who does

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205. Document A68, pp108–109.

206. ‘The Native Minister at Ōtorohanga’, *New Zealand Herald*, 2 April 1891, p 5.

207. ‘The Native Minister at Ōtorohanga’, *New Zealand Herald*, 4 April 1891, p 5; doc A68, pp108–110; doc A67, p 261. Those present, according to the report, included Wahanui, Taonui, Te Kanawa, Te Aroa, and Te Naunau of Ngāti Maniapoto; Hone Kaore Ta[?]nua of Ngāti Hikairo; Hitiri Te Paerata, Hauraki Hapapa, and Kerekeha of Ngāti Raukawa; and Te Heuheu of Ngāti Tūwharetoa.

208. ‘The Native Minister at Ōtorohanga’, *New Zealand Herald*, 3 April 1891 (doc A68, pp109–110).

209. ‘Report of the Commission Appointed to Inquire into the Subject of Native Land Laws: Minutes of Meetings with Natives and Others’, 24 March 1891, AJHR, 1891, G-1, p 3 (doc A68, p 112).

not sell,' he said, 'it is simply a waste of time attending the Court, for no benefit results.' To further clarify his position, Whitinui said that Ngāti Maniapoto would not have objected to restrictions that prevented selling but allowed leasing in an open market; their concern was 'that we cannot lease or sell, except we sell to the Government.'<sup>210</sup>

Taonui told the commission that Ngāti Maniapoto 'wish the restrictions removed from that land,' as Māori could not manage their land as they wished while the restrictions were in place.

Should the restrictions be taken off, I am not one who is in favour of land-selling, but I am in favour of leasing the land. If the restrictions of the Government are removed, I should be in favour of leasing; but I ought to have in my own hands the making of the arrangements with respect to the leasing of my land . . .<sup>211</sup>

Taonui also argued that, if individuals were to be allowed to sell land, 'the hapu or the tribe should consent.'<sup>212</sup> Once again, the clearly expressed wish was for communal control, coupled with the right to lease in a free market.

Henry Edwards told the commission that individual ownership was 'a rather new thing to us.' His tentative position was that, if an individual wanted to sell land, he should be allowed to, but the principal owners of a land block should determine where his estate lay. In general, however: 'With regard to individual or collective sales, our fixed opinion is that we do not approve of them. We have no desire for individual or collective sales.'<sup>213</sup>

The commission, in turn, reported that Māori throughout the country were unanimous in their desire for laws that allowed them to determine land titles among themselves; in their opposition to individuals having any rights to deal in hapū and tribal lands; in their opposition to selling in general; and in their desire for hapū and iwi to be able to lease their lands.<sup>214</sup>

### 11.3.3.7 *Limited purchasing, 1891*

The Crown did not respond to these requests by removing restrictions, but rather by increasing pressure on Te Rohe Pōtae leaders to make land available for sale. As Cadman left the district, Wilkinson resumed negotiations over the Waiaraia

210. 'Report of the Commission Appointed to Inquire into the Subject of Native Land Laws: Minutes of Meetings with Natives and Others,' 15 April 1891, AJHR, 1891, G-1, p 34; doc A79, p 479; doc A67, p 269.

211. 'Report of the Commission Appointed to Inquire into the Subject of Native Land Laws: Minutes of Meetings with Natives and Others,' 15 April 1891, AJHR, 1891, G-1, p 31 (doc A68, pp 112–113).

212. 'Report of the Commission Appointed to Inquire into the Subject of Native Land Laws: Minutes of Meetings with Natives and Others,' 15 April 1891, AJHR, 1891, G-1, p 31 (doc A53, vol 2, p 1466).

213. 'Report of the Commission Appointed to Inquire into the Subject of Native Land Laws: Minutes of Meetings with Natives and Others,' 15 April 1891, AJHR, 1891, G-1, pp 32–33 (doc A67, p 268).

214. 'Report of the Commission Appointed to Inquire into the Subject of Native Land Laws,' AJHR, 1891, G-1, p xix.

purchase. Rather than accepting the 10,000 ‘or more’ acres Wahanui had offered, Wilkinson pressured him and other leaders to also offer the entire 12,360-acre Waiaraia block, along with all of Taorua (10,500 acres) and several other southern blocks.<sup>215</sup> Wilkinson noted in his report to the Native Department that this accorded with his instructions. But he said that Wahanui ‘seemed rather astonished’ at this proposal, which he said would leave some owners with nowhere to live.<sup>216</sup> Nonetheless, Wilkinson pressed Wahanui to accept, and said that if he did not the Crown would reject the offer outright, and leave the owners with outstanding survey liens.<sup>217</sup> Wahanui said he could offer some Taurangi land and parts of the Ratatomokia block, but no more.<sup>218</sup>

In his annual report to the House of Representatives, Wilkinson indicated that some progress was being made, with a little over 10,000 acres acquired and negotiations under way for a further 30,000 acres, much of it in these southern blocks. Nonetheless, progress was still slow, not only because most landowners remained reluctant to sell, but also because of incomplete titles and surveys.<sup>219</sup> One of the reasons for incomplete titles was that owners had continued to delay court processes where they could – and, in particular, some had delayed the naming of owners, or the definition of individual owners’ relative interests, in order to prevent purchasing.<sup>220</sup> The court, in turn, had not pressed this issue, tending to respect the owners’ wishes. As discussed in chapter 10, Wilkinson complained to the Native Minister, and the department then pressed the court to speed up the process of naming owners and defining their relative interests, which the chief judge committed to doing.<sup>221</sup> Wilkinson also proposed that the Crown begin to call in survey liens. This, he wrote to Lewis in June 1891, would be ‘very likely’ to cause owners to sell part or all of the blocks under lien or to sell other blocks in order to pay the costs.<sup>222</sup> The Native Department, following the Minister’s instructions, also took immediate steps to follow this recommendation, beginning with a schedule of surveys completed and money owed.<sup>223</sup>

By August, Wilkinson had completed the negotiation for the Waiaraia block,<sup>224</sup> with an estimated area of 12,360 acres.<sup>225</sup> Over the next few months, he continued to press for further sales, both from tribal leaders selling land to cover survey costs

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215. Document A67, pp 400–401; doc A60, p1080.

216. Wilkinson to Lewis, ‘Re proposed purchase of Taorua sub divisions and Waiaraia block’, 10 April 1891 (doc A67, p 400).

217. Document A67, pp 401, 442; doc A55, p109.

218. Document A67, pp 401, 442; doc A55, p109.

219. ‘Reports from Officers in Native Districts’, AJHR, 1891, G–5, p 4.

220. Document A67, pp 234–242, 259.

221. Document A79, p 219.

222. Wilkinson to Under-Secretary, Native Department, 23 June 1891 (doc A67(a), vol 1, p 311; doc A67, p 232).

223. Document A67(a), vol 1, pp 308–311.

224. Document A60, p 1157.

225. This was a slight underestimate. The GIS area of the block was 12,532 acres: doc A67, p 393; doc A21, p 131.

and from individuals. The Government continued to increase pressure on Te Rohe Pōtae leaders.

While Wilkinson was negotiating in Te Rohe Pōtae, the Government was settling its policy towards Māori land. Under Cadman's watch, the Government was willing to continue free trade in most of the country, but with two caveats. First, it wanted land laws amended so that no individual could buy large tracts of land. Secondly, it did not want any private trade until three months after title was determined. These measures, it reasoned, would provide for a functioning land market that served its close settlement policy, while also protecting Māori and the Crown from aggressive or speculative purchasing activity.<sup>226</sup>

Te Rohe Pōtae, however, was to remain a special case. In September, Cadman took steps to secure the Crown's purchasing position by introducing legislation to keep the North Island Main Trunk Railway Loan Application Act 1886 Amendment Act 1889 in force for an additional year. This meant that the restrictions would now expire on 1 January 1893.<sup>227</sup> Māori members of the House of Representatives opposed the measure on the grounds that Ngāti Maniapoto wished to lease their lands and were being prevented from developing land and joining the modern economy.<sup>228</sup> The member for Western Maori, Hoani Taipua, described the Bill as 'A Bill to steal the Natives' Land from them.'<sup>229</sup> Cadman's response was that the Crown was doing Māori 'a very good turn', since Māori land was 'utterly valueless' until it could be settled, at which point it would increase in value by '400 or 500 per cent.'<sup>230</sup> His one compromise was to shorten the period the restrictions would apply for. His original intention was to keep them in place for two more years, until 1 January 1894, but he settled on a one-year extension.<sup>231</sup>

### 11.3.3.8 *Cadman and Ballance raise the threat of compulsory purchasing*

Late in 1891, the Crown reopened negotiations with Te Rohe Pōtae leaders. By this time, almost all of the western half of the 1886 Rohe Potae block had been subdivided, and most of the ownership lists had been completed, though relative interests had not yet been defined for most blocks.<sup>232</sup> Most Te Rohe Pōtae Māori remained reluctant to sell, and the Crown's acquisitions were limited to blocks that hapū sold to pay off survey debts and the fairly small amounts it had been able to acquire from individuals.<sup>233</sup> Construction of the railway remained at a halt,<sup>234</sup> with

226. Document A68, pp 120–121. In July 1891, the Government introduced a Bill to Parliament to enact these measures, but it did not pass.

227. North Island Main Trunk Railway Loan Application Amendment Act 1891, s2; doc A68, pp 120–121.

228. Document A68, pp 122–125.

229. 'North Island Main Trunk Railway Loan Application Bill', 18 September 1891, NZPD, vol 74, p 771 (doc A68, p 122).

230. 'North Island Main Trunk Railway Loan Application Bill', 18 September 1891, NZPD, vol 74, p 774 (doc A68, p 125).

231. Document A68, pp 122, 125.

232. Document A79, pp 219–220, 283–284; also see doc A60, pp 87–89; doc A67, pp 234–242.

233. Document A67, pp 221–230; doc A68, pp 202–203; doc A21, p 131, tbl B5.

234. Document A20, p 116.

the Ballance Government continuing its predecessor's policy of not completing the line until sufficient land had been obtained.<sup>235</sup>

In December, as Cadman was due to go to Ōtorohanga for a meeting with Te Rohe Pōtae leaders, more than 1,000 people attended a hui at Te Kumi (Te Kūiti), where they expressed their displeasure at the Crown's actions 'in first inducing them to put their lands through the Court, and afterwards refusing to allow them to deal with their property as they liked, and only allowing them to sell to the Government at the price the Government chose to pay'.<sup>236</sup> The meeting reportedly resolved to boycott the court, oppose all surveys, and place their lands under Tāwhiao's authority.<sup>237</sup>

Cadman arrived at Ōtorohanga on 18 December and met Wahanui, Taonui, Ormsby, and other Ngāti Maniapoto leaders the following day, making it clear that the Crown would not be content to limit itself to blocks in the south of the district. Newspapers did not record whether Cadman was told the results of the Te Kūiti hui. Wahanui opened the hui, asking that Cadman inform those gathered about the Government's intentions, particularly with respect to laws 'which press heavily on the people'. Cadman observed that Te Rohe Pōtae appeared to have a healthy economy, with sawmills, stores, and other businesses operating in apparent violation of the restrictions. He said that Europeans objected to their money being spent on public works such as roads and railways on Māori land, and also objected to competing with Māori producers whose lands were untaxed.<sup>238</sup>

These settler 'grievances' had to be addressed, he said, which meant that 'land must be made to contribute towards the interest and cost' of the railway. The solution, he argued, was for Te Rohe Pōtae leaders to 'hand to the Government' sufficient land for settlement purposes. Restrictions could then be removed on remaining land that had passed through the court, subject to reasonable limits on the amount of land that any individual settler could buy.<sup>239</sup> If Māori did not agree to his proposals, Cadman said, consequences were 'inevitable'. First, Parliament would legislate to impose property taxes on unimproved land owned by both Māori and Europeans, thereby forcing the owners to bring the land into production. Secondly, the Government would act to close down businesses that had been established in the district, including sawmilling and other arrangements that made use of Māori land.<sup>240</sup>

Very soon afterwards, Ballance gave an interview in which he made the same threats: if Te Rohe Pōtae Māori did not make land available, the restrictions would

235. Document A68, p153.

236. 'The Ngatimaniapoto Lands – The Ngatimaniapoto return to Tawhiao', *New Zealand Herald*, 19 December 1891 (doc A68, p129).

237. Document A68, p129.

238. 'The King Country: Mr Cadman and the Natives: An Important Proposal', *New Zealand Herald*, 21 December 1891, p5 (doc A68, pp127–128, 131–134).

239. 'The King Country: Mr Cadman and the Natives: An Important Proposal', *New Zealand Herald*, 21 December 1891, p5 (doc A68, pp131–134).

240. 'The King Country: Mr Cadman and the Natives: An Important Proposal', *New Zealand Herald*, 21 December 1891, p5 (doc A68, pp131–134).

continue and their lands would be taxed. 'It will not be permitted,' Ballance told the *New Zealand Herald*, 'that the natives should continue to hold the keys of the country, and block settlement – waiting till their lands were enhanced enormously in value by the labour and the exertions of the colonists.' The Government, he continued, 'would see that the rights of the public in these lands in the King Country were duly conserved.'<sup>241</sup> This was not the bargain Ballance had put to Te Rohe Pōtae Māori at Kihikihi: that had included free trade, a considerable degree of communal control over Māori land, and the right to profit from rising prices.

Two days later, the *Herald* carried another report of Cadman's meeting, recording that he had made it 'unmistakably clear' that land adjacent to the railway 'must . . . be handed over for settlement' and 'must also be made to contribute towards the taxation of the country'. If the district's Māori could not agree, they would be forced to comply by legislation. This, Cadman said, was what the European population wanted and 'was determined to force the Government to do'. Māori, he said, should 'accept the inevitable.'<sup>242</sup> It is worth reiterating that Te Rohe Pōtae Māori had not asked for the railway. As Wahanui had said in his 1885 appearance before the House's Native Affairs Committee: 'If the railway is being made for the benefit of the Maoris, then, I say, it is better to stop it.'<sup>243</sup>

After the December 1891 meeting with Cadman, Wahanui and Taonui responded to the Crown's proposals by offering to sell land for settlement: (i) if the price was determined by arbitration; (ii) if all restrictions were removed from land the Crown did not purchase, allowing Māori to sell to the highest bidder if they chose to; (iii) if all restrictions on leasing were removed; and (iv) if Native Land Court processes were made simpler and less expensive.<sup>244</sup>

There was no immediate agreement, however, and Cadman returned to Ōtorohanga in May 1892 to continue negotiations.<sup>245</sup> There, he met Wahanui, Henry Edwards, possibly Taonui, and also some other Ngāti Maniapoto and Ngāti Raukawa leaders.<sup>246</sup> The meeting, according to one report, was 'not largely attended', with about 100 people present.<sup>247</sup> At that meeting, the Crown's bottom line remained that land must be made available for settlement, in order that it contribute to the tax base and the cost of the railway. Cadman appeared to accept most of what Wahanui and Taonui had proposed, with two caveats: first, the restrictions on leasing would not be removed until the Crown had purchased the land it wanted; and, second, before any agreement could be reached, Te Rohe Pōtae leaders would be required to identify the lands they would sell.<sup>248</sup>

241. 'Native Land Proposals. – Interview with the Premier', *New Zealand Herald*, 21 December 1891 (doc A68, pp 133–134).

242. 'The Opening of the King Country', *New Zealand Herald*, 23 December 1891 (doc A68, p 133).

243. Native Affairs Committee, 'Report on the Native Land Disposition Bill, Together with Minutes of Evidence and Appendix', 9 September 1885, AJHR, 1885, I-2b, p 8; doc A78, pp 1174–1175.

244. Document A68, p 137. Also see pp 134–135.

245. Document A68, pp 134–135, 137, 141.

246. Document A68, p 141 n

247. 'Native Meeting at Otorohanga', *New Zealand Herald*, 4 May 1892; doc A68, p 141.

248. Document A68, pp 141–142.

The Te Rohe Pōtae leaders responded with two caveats of their own. First, they continued to press for the removal of all restrictions on leasing. Secondly, they pointed out that they no longer had power to alienate particular blocks of land, 'as the owners were so numerous, and interests so diversified'. The best they could do was to 'assist' the Crown to buy individual shares.<sup>249</sup> As the Crown's purchasing officer, Wilkinson, put it, they promised to 'use their influence' to persuade others to sell, and to 'do away with the stigma and public condemnation' that inevitably befell those who did sell their shares.<sup>250</sup>

At that point, negotiations broke down. Cadman flatly refused to allow private leasing, and furthermore made it clear that the Crown's proposal had to be taken as a whole – it could not be negotiated part by part.<sup>251</sup> He warned that, if the Te Rohe Pōtae leaders did not agree to the Crown's proposals, 'the question of taking their lands would have to be faced'.<sup>252</sup> In other words, compulsory acquisition was now potentially on the table.

In evidence to this inquiry, the historian Donald Loveridge expressed the view that Te Rohe Pōtae leaders had made a realistic and practical proposal, and that Cadman's refusal to accept it was neither: he was asking Te Rohe Pōtae leaders to guarantee the sale of lands they did not own. He was threatening confiscation unless they met an impossible condition.<sup>253</sup>

In respect of the statements by Cadman and Ballance during these 1891–92 negotiations, the Crown conceded:

The Crown considers that these statements amounted to aggressive tactics that placed undue pressure on those negotiations. The statements left Rohe Pōtae Māori in no doubt as to the Crown's determination to put the main trunk railway through the Rohe Pōtae district. However, the Crown acknowledges the option of possible compulsion may have remained an element in Rohe Pōtae Māori decision-making. The Crown has conceded that this was a factor in the Crown's land purchase negotiations breaching the Treaty of Waitangi and its principles.<sup>254</sup>

### 11.3.3.9 *The impact of Ministers' threats*

The threats appear to have had the desired effect. From early 1892, sales of land blocks and individual shares began to increase, albeit from a very low base. Wilkinson, in his annual report to the House of Representatives in June, wrote that he had acquired a total of 52,000 acres. Of that, just under half was in 'sale' blocks offered by tribal leaders to cover survey costs, and the rest was in individual shares which had not yet been partitioned out. Of the 'sale' blocks, it was common for tribal leaders to arrange that only a small number of people were named

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249. 'The Native Meeting at Otorohanga – The Reply of the Maoris', *New Zealand Herald*, 5 May 1892 (doc A68, p 142).

250. 'Reports from Officers in Native Districts', AJHR, 1892, G-3, p 5 (doc A68, p 143).

251. Document A68, pp 142–143.

252. 'Interesting Native Meeting', *Poverty Bay Herald*, 4 May 1892 (doc A68, p 142).

253. Document A68, p 145.

254. Submission 3.4.307, p 1.

on the title, in order to facilitate sale; this was done at Wilkinson's suggestion.<sup>255</sup> Wilkinson also referred to various obstacles which prevented further purchasing. These included continued delays in completing surveys, awarding titles, and defining relative interests, some of which were caused by officials' errors. Nonetheless, the threats had had their intended effect. Indeed, Wilkinson reported:

Since the last meeting that the Hon. Mr Cadman had with the Natives here there has been a decided impetus given to land-purchase proceedings in the King-country, and I have every reason to believe that it will increase; and that, although it may be, for a time, of an intermittent nature, I am of opinion that we have now 'turned the corner', and that, so far as the Natives are concerned, the worst of our difficulties have been overcome.<sup>256</sup>

Te Rohe Pōtae leaders certainly recognised the gravity of the threat, and, according to Wilkinson, were willing to make some concessions. He reported that considerably more land might have been acquired up to that point if the Crown had not 'almost entirely destroyed' rangatira influence by individualising land titles.<sup>257</sup> The district's leaders presumably hoped that if some land could be made available, Cadman would honour his commitment – and that of previous Native Ministers – to lift the restrictions and allow them to develop their land.

The restrictions were having an undoubted effect on their economic fortunes. Where it could, the Crown had enforced the restrictions and warned off Europeans who sought to enter economic arrangements with Māori.<sup>258</sup> It was not always successful. It could shut down land leases but not grazing arrangements.<sup>259</sup> Nor could it close sawmilling operations, so long as they applied to the timber and not the land.<sup>260</sup> These loopholes created limited and isolated opportunities for Te Rohe Pōtae Māori to obtain some cash from their land. But, without access to capital from leasing or mortgage, both of which were prohibited, Māori landowners could not develop their own lands, and nor could they take shares in the businesses that exploited their resources.<sup>261</sup> Timber production continued to grow during the 1890s,<sup>262</sup> but horticulture was already declining by the late 1880s, and sheep farming by Māori landowners reached its peak in 1892; thereafter, the industry was gradually transferred into European hands.<sup>263</sup> One of the effects was that most Māori landowners had no way to pay survey liens except through sale of land.<sup>264</sup>

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255. 'Reports from Officers in Native Districts', AJHR, 1892, G-3, pp 5-6.

256. 'Reports from Officers in Native Districts', AJHR, 1892, G-3, p 6.

257. 'Reports from Officers in Native Districts', AJHR, 1892, G-3, p 5.

258. Document A67, pp 303-315, 317-350 (especially pp 317, 324); doc A146, pp 126-129; doc A55, p 91. Also see doc s21(b) (Jensen), pp 31-32.

259. Document A67, pp 309-310, 324; doc A55, p 91.

260. Document A146, pp 229-232. Also see doc A67, pp 311-314.

261. Document A67, pp 254, 279, 306, 310; doc A146, pp 177, 186, 337, 363-364.

262. Document A25 (Clever), pp 38-44; doc A146, pp 229-236.

263. Document A79, pp 512-514; doc A67, p 229.

264. Document A67, pp 306, 428.



Crown officials were perfectly open about the intended effects: they did not want competition that would raise land prices and prevent the Crown from acquiring the land it wanted. As Lewis had told Wilkinson before purchasing began, competition from private lessees would ‘much hamper our land purchase operations and tend to increase price beyond what is reasonable.’<sup>265</sup> As Wilkinson’s report indicated, the combination of Ministerial threats and economic pressure were, by mid-1892, having the effect desired by the Crown. Māori, in need of cash, were beginning to sell. To use Lewis’s metaphor, the ice was beginning to break.<sup>266</sup>

### 11.3.3.10 Further restrictions and increased funds for purchasing, 1892–93

Sensing that a decisive breakthrough was close, the Crown continued to increase the pressure on Te Rohe Pōtae Māori landowners. On the ground, its principal means of securing sales were survey liens and the targeting of individual owners, including absentees and others with little relationship to the land. Wilkinson was beginning to acquire individual shares in greater quantities, though he did not yet have enough in most blocks to justify applications to partition out the Crown’s interests. His purchasing ambitions were assisted by the Native Land Court, which from mid-1892 turned its attention from subdividing the Aotea-Rohe Potae block to defining owners’ relative interests, allowing Wilkinson to target individual owners with confidence that he was paying what he considered to be the right price; between July and the end of October, the court defined relative interests in more than 100 blocks.<sup>267</sup>

The success of the purchasing programme continued to depend on Māori landowners not having other sources of ready income – which meant that restrictions had to remain in force. The 1888–91 restrictions which covered the entire Aotea-Rohe Potae block had expired on 1 January 1892. The 1890–92 restrictions remained in force, but (within this district) covered only the ‘northern target area’ – the fertile Waipā Valley plains in the north of the district, and were due to expire at the end of the year. The Government addressed this by introducing new legislation, which would not only extend the restrictions for a further period, but also greatly expand the area covered.

The North Island Main Trunk Railway Loan Application Acts Amendment Act 1892 was introduced to the House in August of that year,<sup>268</sup> and came into effect on 11 October. Its restriction zone included all of this district with the exception of – in Boulton’s words – ‘a slice . . . west of a line from Pirongia to the northern tip of the Mokau Mohakatino block.’<sup>269</sup> The Crown had already purchased some parts of the excluded area prior to 1865, including the Mokau, Awakino, Taumatamaire,

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265. Lewis to Wilkinson, 14 October 1889 (doc A67, p324). Also see doc A55, p91. Where private competition existed, it did tend to drive up prices, leaving the Crown unwilling to buy. For example, see doc A146, pp 229–230.

266. Document A55, p111.

267. Document A79, pp 238–239.

268. Document A68, p149.

269. Document A67, pp 146, 300.

and Rauroa blocks.<sup>270</sup> The Act provided for the restrictions to remain in place until 1 January 1894.<sup>271</sup> In the House, many members – Māori and European – questioned the need for restrictions over such a large area, and the Western Maori member Hoani Taipua argued that these new restrictions were ‘tantamount to confiscation.’<sup>272</sup>

According to Cadman, the restriction area was being expanded both to accelerate the Crown’s land purchasing, and to ensure that it got the best land. He told the House that the land close to the railway line was of ‘inferior’ quality and the expanded restriction zone would give the Crown ‘an opportunity of getting good land as an endowment for this line.’<sup>273</sup>

The measure appeared to signal the end of any serious attempt by the Crown to negotiate with Te Rohe Pōtae leaders collectively over the district’s settlement or to offer any kind of bargain in which the restrictions might be lifted. It appears that the Crown now believed that its purchasing goals could be accomplished without further engagement – and so long as its purchasing goals were achieved there was nothing left to talk about. In August, at a meeting in Wellington called by Cadman, a ‘large number of chiefs’ from different parts of the country passed resolutions opposing Cadman’s proposal to extend the restrictions<sup>274</sup> and ‘urging that the Maoris should have full control over their own land’ and that the court be abolished. The Crown disregarded these protests and passed the measure nonetheless.<sup>275</sup>

The Native Land Purchases Act 1892 also came into effect on 8 October. Its short title described it as an Act ‘for facilitating the Acquisition of [Māori] Lands by or on behalf of Her Majesty the Queen.’ It authorised the Government to borrow up to £50,000 each year (or more if appropriated by Parliament) for that purpose.<sup>276</sup> The Act also allowed the Government to make proclamations unilaterally granting itself exclusive purchasing rights over any block of Māori land it was negotiating to purchase. Such proclamations would remain in effect for a maximum of two

270. Document A95(i), Crown purchases.

271. North Island Main Trunk Railway Loan Application Acts Amendment Act 1892, ss 2, 3, sch.

272. ‘North Island Main Trunk Railway Loan Application Acts Amendment Act 1892’, 24 August 1892, NZPD, vol 77, pp 344, 346; doc A68, pp 149–150; doc A67, p 148.

273. ‘North Island Main Trunk Railway Loan Application Bill’, 24 August 1892, NZPD, vol 77, p 358. Douglas, Innes, and Mitchell (doc A21, p 131) listed 310.5 acres as having been purchased in 1889: Kahakaharoa A, and Hauturu East 1A1, 1A2, and 1A3. However, Parker (doc A95(i)) and Berghan (doc A60, p 144) both recorded the Crown purchasing these blocks a decade later in 1899. Wilkinson recorded that his first purchases did not occur until 1890 (doc A67, p 222). The 1899 figures have been adjusted accordingly.

274. North Island Main Trunk Railway Loan Application Acts Amendment Act 1892, ss 2, 3, sch.

275. ‘The Views of the Maori – Meeting of Native Minister and Leading Chiefs’, *Poverty Bay Herald*, 3 August 1892; doc A68, p 155 n

276. Native Land Purchases Act 1892, s 3.

years, unless withdrawn earlier.<sup>277</sup> These were used extensively in Te Rohe Pōtae during 1893 and 1894, as we will see below.<sup>278</sup>

Soon afterwards, the Government abolished the Native Department, which – in spite of its principal role as a land purchasing agency – was regarded by settlers as hampering settlement. Responsibility for purchasing of Māori land was instead given to the Department of Lands and Survey.<sup>279</sup> As Loveridge explained to this inquiry, by the end of 1892 ‘there was little reason for anyone to think that Ballance’s Government had any intentions for the King Country other than an accelerated programme of purchasing under the impenetrable shield of pre-emption.’<sup>280</sup>

### 11.3.4 The Crown grants itself exclusive purchasing rights nationwide

#### 11.3.4.1 Purchasing accelerates during 1893

Despite the abolition of the Native Department, George Wilkinson continued in his role as land purchase officer for the district. By the end of March 1893, he was beginning to experience some success. Returns of land purchasing for that year show that Wilkinson and other purchase officers had completed purchases in just seven blocks, with areas acquired ranging from a single acre to just over 400 acres. He had acquired individual shares in another 26 blocks, with areas ranging from almost 30,000 acres in the Wharepuhunga block to two acres in Puketarata 14.<sup>281</sup>

Ballance died in April 1893, and was replaced as premier by Richard Seddon. Seddon regarded the settlement of ‘unoccupied’ Māori lands as one of the most important issues facing the country. He took on the Native Affairs portfolio himself.<sup>282</sup> His Government’s first attempt to resolve this issue came in the form of the Native Land Purchase and Acquisition Act 1893. The Act’s preamble left no doubt about the Government’s intentions: it said that millions of acres of Māori land were ‘lying waste and unproductive’, slowing the progress of colonisation and causing ‘great injury’ to the colony and its settlers.<sup>283</sup> In the House, the Minister of

277. Native Land Purchases Act 1892, s16; submission 3.4.119, pp 7, 35; submission 3.4.307, pp 15–16; doc A68, pp 151–152, 197.

278. These were restrictions applied by proclamation under the Native Land Purchases Act 1892: ‘Notice of Entry into Negotiations for Acquisition of Native Lands by Her Majesty’, 7 March 1893, *New Zealand Gazette*, no 17, p 304; ‘Negotiations for acquiring Native Lands entered into by Her Majesty’, 2 January 1894, *New Zealand Gazette*, no 4, p 57; ‘Notice of Entry into Negotiations for Acquisition of Native Lands by Her Majesty’, 9 February 1894, *New Zealand Gazette*, no 12, pp 265–266; ‘Notice of Entry into Negotiations for Acquisition of Native Lands by Her Majesty’, 12 March 1894, *New Zealand Gazette*, no 23, p 457; ‘Notice of Entry into Negotiations for Acquisition of Native Lands by Her Majesty’, 6 September 1894, *New Zealand Gazette*, no 67, pp 1422–1423; ‘Notice of Entry into Negotiations for Acquisition of Native Lands by Her Majesty’, 1 October 1894, *New Zealand Gazette*, no 72, p 1511.

279. Ward, *A Show of Justice*, p 302; Brooking, “‘Busting Up” the Greatest Estate of All”, p 84.

280. Document A68, p 153.

281. ‘Lands Purchased and Leased from Natives in North Island: to 31st March 1893’, AJHR, 1893, G–4, pp 2, 4–5.

282. Document A68, p 179.

283. Document A68, p 169 n

Lands, John McKenzie, referred to Māori land 'lying idle, useless to the Europeans, and yielding nothing to the Natives themselves'.<sup>284</sup>

The Act provided for a form of compulsory negotiation over Māori land, though it stopped short of compulsory acquisition. It allowed the Crown to select areas of land it wanted for settlement and require Māori landowners to vote on whether to sell to the Crown or lease under Crown management, or refuse either option. A simple majority could decide to sell or lease, irrespective of the wishes of remaining owners. If the owners refused to sell to the Crown or lease under Crown management, the Act provided no mechanism by which they could lawfully deal with their land. The Act did make one concession to Māori land rights by providing for owners and the Crown to jointly appoint valuers who would determine any purchase price.<sup>285</sup>

Almost as soon as the Act was passed, the Government turned its attention to the forthcoming election. By this time many politicians and settler newspapers were pressing for compulsory acquisition of Māori land, and the Government soon adopted a new policy, as we will see below. As a result, the Native Land Purchase and Acquisition Act was never applied in Te Rohe Pōtae or elsewhere.<sup>286</sup>

In spite of the Government's concerns, it is clear that by 1893 the Crown's tactics were working. As Wilkinson had explained in 1890, each element of the Crown's purchasing tactics was important. The individual, geographically undefined shares awarded by the Native Land Court had undermined traditional relationships and made it very difficult for Māori landowners to manage their lands, either individually or collectively, since no individual had his or her own plot of land, but collective effort required agreement among tens or even hundreds of individual owners.<sup>287</sup> The restrictions further impeded landowners' attempts to develop land and made it almost impossible for them to raise capital. Survey liens then created the 'want of money' that Wilkinson saw as a necessary precondition to sale.<sup>288</sup> Wilkinson was then able to negotiate with the few hapū leaders who were willing to voluntarily sell land to repay survey debts,<sup>289</sup> while also targeting vulnerable individuals and persuading them to sell their shares.

In some land blocks, Wilkinson was ready by 1893 to start applying to the court for partition of the Crown's interests. In all, the Crown was awarded title to just over 27,000 acres of Te Rohe Pōtae Māori land during the 1893 calendar year.<sup>290</sup> Purchasing of individual shares was continuing. The annual return of Māori land purchases for the year to 31 March 1894 shows Wilkinson acquiring shares in more

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284. 'Native Land Purchase and Acquisition Bill', NZPD, 31 August 1893, vol 81, p 512 (doc A68, pp 171–172).

285. Document A68, pp 169–173, 175–176, 186; doc A67, pp 151–153. Also see Native Land Purchase and Acquisition Act 1893, ss 4, 5–9, 26, 35.

286. Document A68, pp 179–186.

287. Document A79, pp 241–242.

288. 'Reports from Officers in Native Districts', AJHR, 1890, G-2, p 4; doc A67, p 228; doc A55, p 47.

289. Document A67, pp 221–231, 384–386, 392, 405–407; doc A20, p 92; doc A95(i), Crown purchases.

290. Document A21, p 131, tbl B5.

than 50 subdivisions. The vast majority of these purchases amounted to just a few hundred acres, but each gave the Crown a foothold which could be used to leverage further sales.<sup>291</sup> As Husbands and Mitchell described it, Wilkinson ‘criss-crossed’ the district, acquiring signatures ‘in ones or twos’, until gradually, over months or even years, he had acquired enough shares to justify an application to the court to partition out the Crown’s interests.<sup>292</sup> That was the final stage in acquisition, and it explains the sudden major lift in Crown purchasing in the district during 1894, as we will discuss below.

#### 11.3.4.2 *Seddon raises the prospect of compulsory purchasing*

In November 1893, a general election was held. During the campaign, Seddon and other Ministers emphasised the Government’s intention to satisfy settler demand for land, both by purchasing more from Māori and by breaking up the large South Island estates. Opposition parties were generally supportive of these goals, and the Liberals won the election comfortably.<sup>293</sup> During the election, Seddon argued that the Native Land Purchase and Acquisition Act 1893 would solve the problem of Māori land settlement, but early in 1894 – as he faced considerable pressure from settlers and settler media – he began to speak openly about the possibility of acquiring Māori land by compulsion.<sup>294</sup>

By that time the Liberal Government was already making plans to grant itself power to purchase large South Island estates by compulsion. Seddon told reporters he would tour Te Rohe Pōtae and other areas where Māori retained significant amounts of land and attempt to persuade them to sell or lease land using the provisions of the Native Land Purchase and Acquisition Act 1893.<sup>295</sup> Seddon was reported as saying that if he found Māori ‘inaccessible to reason’ he would explain that European landowners would soon be required to compulsorily give up land for settlement ‘and . . . the Maoris cannot complain if by refusing to part with the surplus lands they cannot use they are placed in the position of European land holders.’ Seddon expressed his intention to press his case by meeting with Māori leaders, ‘and if his efforts fail he must perforce be driven to further legislative powers.’<sup>296</sup>

During March and April 1894, Seddon toured the North Island, meeting Māori leaders and seeking to persuade them to offer land for sale.<sup>297</sup> During this tour, Seddon informed an audience of Waikato Māori at Hukanui that there were by then 600,000 settlers in New Zealand, and only 40,000 Māori. Settlers were demanding that land not remain ‘unpeopled’, and it was of no use for Māori to

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291. ‘Lands Purchased and Leased from Natives in the North Island: to 31st March 1894’, AJHR, 1894, G-3, pp 2-3, 5-6.

292. Document A79, pp 248, 249–250.

293. Document A68, pp 179–180.

294. Document A68, pp 179–180.

295. Document A68, pp 180–182.

296. ‘Maori Lands: Policy of the Government’, *Auckland Star*, 10 February 1894, p 2; doc A68, p 181. The same report was carried in several other newspapers.

297. Document A68, p 182.

think that things could remain as they were. He likened the settlers to a rising lake and Māori to the banks of that lake. If nothing was done, the banks would inevitably burst and Māori would be swept away.<sup>298</sup> Here, Seddon was signalling to Māori leaders that they had no choice but to offer land for settlement, but he was not specifically threatening to take it through compulsory acquisition. In this district, Seddon met Māori communities at Taumarunui, Mōkau, Te Kūiti, Ōtorohanga, Kihikihi, and Te Awamutu. According to one newspaper account, Seddon told Te Rohe Pōtae Māori that ‘he was determined to have the native country opened’:

It must no more be locked up from settlement than must the large runs of the South, and while recognising their rights to the land, and to a fair price for it, still the time had arrived when they [the Government] could not allow settlement to be retarded, and they must deal with the natives’ land the same as with that of the Europeans.<sup>299</sup>

Again, Seddon did not explicitly threaten to take land by compulsion, but his comment that the Government ‘could not allow’ land to remain closed to settlement suggested as much.<sup>300</sup>

There is no evidence that Seddon gave any serious consideration to concerns raised by Te Rohe Pōtae leaders about land laws. By this time, they had long since given up hope that they would be granted any of the rights sought in their 1883 petition; now, all they wanted was free trade, so owners could make use of their lands as they wished. According to the Ōhaupo-based real estate agent Hungerford Roche, Ormsby and other Te Rohe Pōtae Māori leaders at Ōtorohanga had asked Seddon to lift the restrictions so Māori landowners would have the same rights as Europeans to sell or lease. Ormsby, Roche said, told Seddon that the railway was ‘of little or no benefit’ to Te Rohe Pōtae Māori. Instead of increasing the value of their lands, the railway had decreased the value, because the Government compelled Māori to sell only to the Crown at prices that were far below the market value.<sup>301</sup> Roche said that, in order to prevent speculation and monopolistic behaviour, the district’s leaders were happy for limits to be placed on the amount of land any individual could acquire. They were willing to make land available for settlement, but not under the Crown’s system, in which it excluded competition and paid 6 shillings an acre for land that its own valuers regarded as being worth 20 to 50 shillings per acre. If anyone was to blame for the lack of settlement in Te Rohe Pōtae, Roche opined, it was the Crown.<sup>302</sup>

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298. ‘Mr Seddon and the Natives’, *New Zealand Herald*, 13 March 1894, p 5. Also see ‘Pakeha and Maori: A Narrative of the Premier’s Trip through the Native Districts of the North Island’, AJHR, 1895, G-1, p 12.

299. ‘The Premier’s Tour’, *New Zealand Herald*, 14 March 1894, p 5; doc A68, pp 182–183.

300. ‘The Premier’s Tour’, *New Zealand Herald*, 14 March 1894, p 5; doc A68, pp 182–183. Also see ‘The Premier: His Visit to Waikato’, *Waikato Times*, 13 March 1894, p 7.

301. ‘The Native Lands in the Waikato’, letter to the editor, *New Zealand Herald*, 26 March 1894, p 3 (doc A68, p 183).

302. ‘The Native Lands in the Waikato’, letter to the editor, *New Zealand Herald*, 26 March 1894, p 3 (doc A68, p 183).

**11.3.4.3 Selective restrictions and further acceleration in land purchasing, 1894**

While Seddon was attempting to pressure Te Rohe Pōtae Māori to part with their lands, he also acknowledged that they were already beginning to do so in much larger quantities than previously. He told Pākehā in Te Awamutu that Wilkinson had just acquired a 10,000-acre block and soon hoped to complete the purchase of another 26,000 acres.<sup>303</sup>

Whereas the 1891–93 restrictions had expired, the Crown had continued to protect its purchasing position in the district by selectively applying restrictions on individual blocks, using the mechanisms provided in the Native Land Purchases Act 1892. On 7 March 1893, it had prohibited private alienation of 48 Te Rohe Pōtae subdivisions (as shown in map 11.2), mostly in the Hauturu and Kinohaku blocks. These orders were to last for two years, giving the Crown protection until March 1895.<sup>304</sup> Between January and October 1894, it imposed restrictions on more than 70 other subdivisions or land blocks, thereby prohibiting private dealings in extensive areas of the district's north (including all remaining Māori lands in the Wharepuhunga block and most of the land from Ōtorohanga north to Kakepuku and west to Pirongia) and south (including all of Mohakatino Parininihi 1, and all or most of the Umukaimata, Taurangi, Ratatomokia, Mangakahikatea, Taorua, and Te Karu o te Whenua blocks).<sup>305</sup> According to the *Waikato Times*, by August 1894 'most of the King Country is now thus proclaimed', and this was essentially true for the entire district other than the Rangitoto and Rangitoto Tuhua blocks for which title determination had not yet been completed.<sup>306</sup>

Up to 1894, most of Wilkinson's purchasing had been in the form of geographically undefined individual shares. Although the Crown had acquired shares, ownership was not formally transferred until Wilkinson applied to the court to have the Crown's interests partitioned out. In 1894, Wilkinson began this process. During March and April 1894, he brought 40 land blocks before the court, where Crown interests were partitioned out.<sup>307</sup> Through a combination of partitioning and ongoing purchase, 1894 became by far the Crown's most successful year for land purchasing. Altogether, it completed the acquisition of 122,640 acres – 6.3 per cent of the district's land area – during the calendar year.<sup>308</sup>

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303. 'The Premier: His Visit to Waikato', *Waikato Times*, 13 March 1894, p 7; doc A68, pp 182–183.

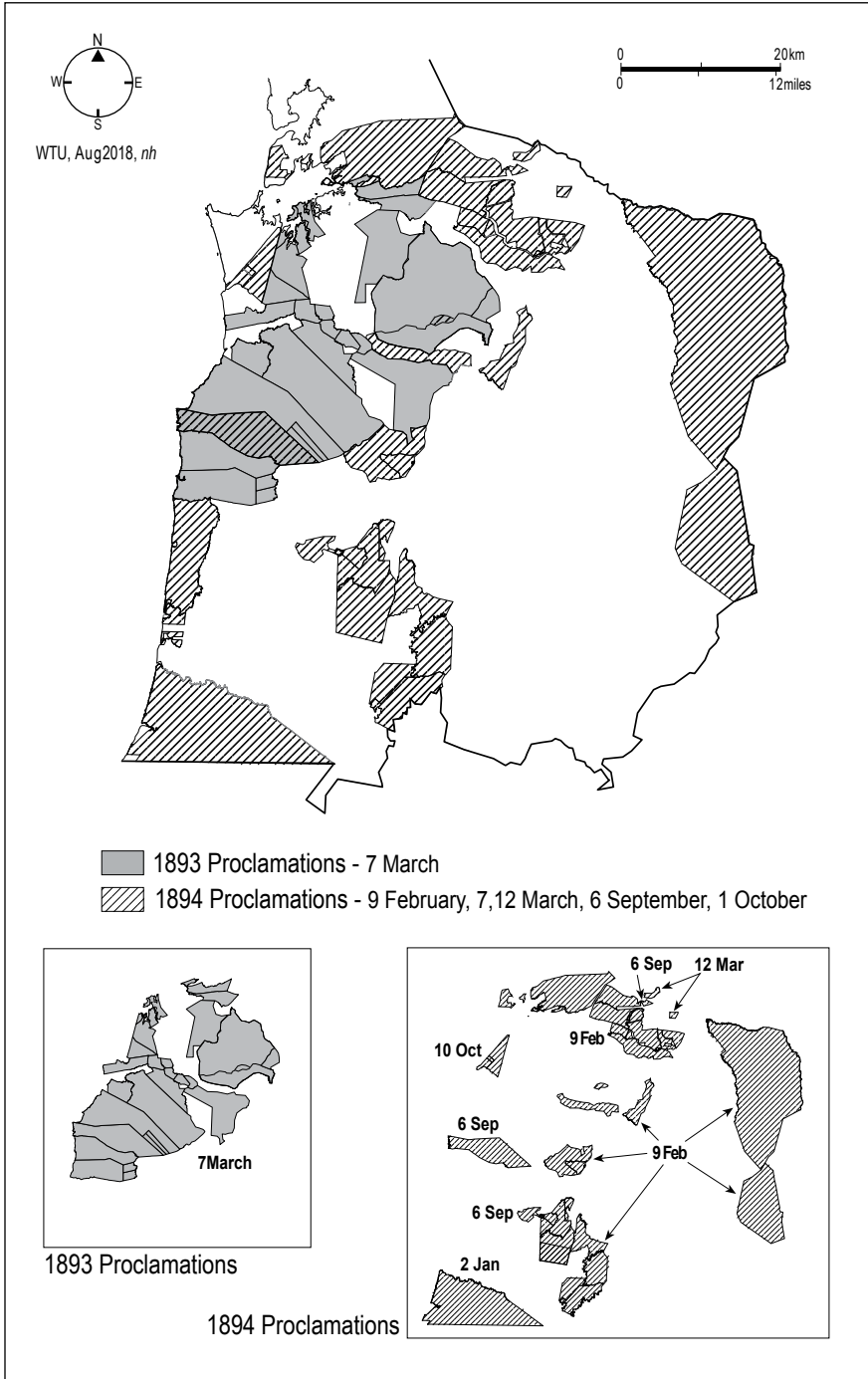
304. 'Notice of Entry into Negotiations for Acquisition of Native Lands by Her Majesty', 7 March 1893, *New Zealand Gazette*, no 17, p 304.

305. 'Negotiations for acquiring Native Lands entered into by Her Majesty', 2 January 1894, *New Zealand Gazette*, no 4, p 57; 'Notice of Entry into Negotiations for Acquisition of Native Lands by Her Majesty', 9 February 1894, *New Zealand Gazette*, no 12, pp 265–266; 'Notice of Entry into Negotiations for Acquisition of Native Lands by Her Majesty', 12 March 1894, *New Zealand Gazette*, no 23, p 457; 'Notice of Entry into Negotiations for Acquisition of Native Lands by Her Majesty', 6 September 1894, *New Zealand Gazette*, no 67, pp 1422–1423; 'Notice of Entry into Negotiations for Acquisition of Native Lands by Her Majesty', 1 October 1894, *New Zealand Gazette*, no 72, p 1511. Also see doc A79, pp 232–233, 423, 478, 488; doc A67, pp 149–150; doc A68, p 197 n; submission 3.4.307, pp 15–16, 24, 29.

306. 'Native Lands', *Waikato Times*, 21 August 1894, p 6 (doc A68, p 197 n).

307. Document A79, p 251; doc A67, p 218; doc A55, p 120.

308. Document A21, p 131.



Map 11.2: Land blocks subjected to purchasing restrictions under the Native Land Purchases Act 1892



**11.3.4.4 Restrictions are applied to the whole country**

Nonetheless, Seddon returned from his tour determined to bring the question of ‘surplus’ Māori lands to a definite conclusion. Though acquiring Māori land by compulsion was clearly one of the options he considered, it was not the route he took. Instead, Seddon’s approach was to extend the Crown’s exclusive purchasing rights to ultimately cover the whole country, while also dramatically increasing funds for land purchasing.

After the House resumed in June 1894, the Government introduced three major pieces of land legislation. The Land for Settlements Act 1894 was aimed at large South Island landowners, and allowed the Crown to compulsorily acquire private land, if attempts to negotiate with the owners did not lead to sale. It provided that any land taken by the Crown must be independently valued. The Act did not give the Crown powers over Māori land.<sup>309</sup> In October 1894, the Lands Improvement and Native Land Acquisition Act 1894 authorised the Government to raise up to £250,000 for purchasing Māori land. This replaced the £50,000 annual borrowing authorised by the Native Land Purchases Act 1892 and greatly increased the resources available for land purchasing.<sup>310</sup>

Also in October, the Native Land Court Act 1894 made it illegal for anyone other than the Crown to ‘acquire any estate or interest in any land owned or held by a Native or Natives’. There were three exceptions. First, leasing would be allowed in the South Island. Secondly, the Act allowed pre-existing contracts for lease or sale to be completed with the approval of the chief judge, though this exception did not apply in the 1884–86 Te Rohe Pōtae restriction zone.<sup>311</sup> Thirdly, the Act allowed Māori landowners to incorporate, and nominate a committee which could alienate land – but only with Crown consent, and only if the proceeds were paid to the Public Trustee.<sup>312</sup> In the view of Husbands and Mitchell, the Act anticipated that owners would incorporate only for the purpose of alienating their land: there was no provision for ongoing land management or development.<sup>313</sup>

The Act also weakened Māori landowners’ property rights in other ways. The Native Land Court Act 1886 Amendment Act 1888 had allowed the court to declare subdivisions inalienable if they were needed for the owners’ ongoing support.<sup>314</sup> In this district, the entire 1886 Rohe Pōtae block had been declared inalienable when it was created. This was done at Wahanui’s request, apparently in response to fears about the Crown’s purchasing intentions. Not only had the Crown been purchasing in neighbouring districts, but, according to Wahanui, Wilkinson had

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309. Land for Settlements Act 1894, ss 4–18; doc A68, p188; Boast, *Buying the Land, Selling the Land*, p182.

310. Lands Improvement and Native Land Acquisition Act 1894, ss 12, 18; doc A68, p188.

311. Native Land Court Act 1894, ss 117–121, sch 2; Native Land Alienation Restriction Act 1884, sch; doc A68, p189.

312. Native Land Court Act 1894, ss 122–128; doc A68, p189.

313. Document A79, pp 492–493.

314. Native Land Court 1886 Amendment Act 1888, ss 6, 13.

been asking owners if they might be willing to sell.<sup>315</sup> Court minutes record that the block would be subject to ‘restrictions against sales, mortgages etc’, leaving it unclear as to whether leasing would be permitted.<sup>316</sup> Wahanui’s intention appears to have been that leasing would be permitted, consistent with Ballance’s February 1885 commitment that the Crown would be content if land was made available for settlement by leasing. In a private letter, Judge Mair explained: ‘These people will not be hurried. They wish to get their land questions all settled and then they will set apart some for sale some for lease and make permanent reserves for their own use.’<sup>317</sup> Subsequently, the court made case-by-case decisions. In all, 50 Te Rohe Pōtae land blocks or subdivisions were declared inalienable, with a total area of 148,407 acres. These blocks (and subsequent Crown purchasing in them) are listed in table 11.4.

These provisions had been progressively weakened as the Crown pursued its land purchasing agenda. The Native Land Laws Act Amendment Act 1890 allowed the court to remove restrictions if a simple majority of owners agreed; previously, the consent of all affected owners had been needed.<sup>318</sup> The Native Land Purchases Act 1892 then allowed the governor to unilaterally remove restrictions on any land the Crown wanted to buy.<sup>319</sup> The Native Land Court Act 1894 allowed the court to remove restrictions with the consent of just one-third of the owners. But, more importantly, the Act provided that no court-ordered restrictions would apply to Crown purchases.<sup>320</sup>

The *Central North Island* Tribunal concluded that the Act’s incorporation provisions were similar to those in Ballance’s 1886 legislation (discussed in chapter 8), but with even fewer safeguards for Māori. In theory, they provided for hapū to manage land collectively, but in practice the ‘heavy and controlling role of the Government . . . and especially the Public Trustee’ made them deeply unattractive to Māori landowners, and the provisions themselves were ‘so deficient as to render them useless as a vehicle for the collective tribal management of tribal lands.’<sup>321</sup> For these reasons, very few Māori landowners attempted to use the provision. In Te Rohe Pōtae, the provision was used only once, in 1895, by owners of the Mangaora block. On that occasion, the owners had an agreement with a European to lease their land privately, but could not do so as the survey was incomplete and title had not been issued. Neither the Public Trustee nor the Survey Office would advance the cost of the survey, and so the deal fell through.<sup>322</sup>

315. Document A79, pp 151–152; ‘Editorial’, *Waikato Times*, 13 November 1886, p2; doc A35, pp 80–81.

316. Otorohanga Native Land Court, minute book 2, 4 November 1886, fol 80 (doc A79(a), vol 7, p3705); doc A79, pp 151–152.

317. W G Mair to Gilbert Mair, 22 October 1886 (doc A35, pp 80–81).

318. Native Land Laws Amendment Act 1890, s3.

319. Native Land Purchases Act 1892, s14.

320. Native Land Court Act 1894, ss 52, 76.

321. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 380–381. Also see Brooking, “‘Busting Up’ the Greatest Estate of All”, p 83.

322. Document A79, pp 493–494.

In the House, Seddon presented the Native Land Act 1894 as being intended to frustrate ‘the land-grabber’ and ‘protect the Natives against fraud where they have not received fair value, or where improper influence has been brought to bear.’<sup>323</sup> Other members argued that there were better ways to prevent land speculation and that Te Rohe Pōtae would be settled quickly if the Crown did as the district’s leaders asked and granted them power to manage their lands as they wished and sell to the highest bidder. The Northern Maori member Hone Heke also argued that the Crown was breaching the Treaty by unilaterally reimposing an exclusive right to purchase.<sup>324</sup> Much of Te Rohe Pōtae was, of course, already subject to restrictions under the Native Land Purchases Act 1892, as discussed above.<sup>325</sup>

It is not altogether clear why Seddon abandoned his threat to acquire Māori land by compulsion. In this inquiry, the historian Donald Loveridge speculated that the Act was the result of a compromise within Cabinet. According to this theory, James Carroll agreed to support the nationwide imposition of ‘pre-emption’ in return for Seddon abandoning compulsion and granting Māori the right to incorporate. In support of this view, Loveridge noted that the tenor of Carroll’s public statements changed during 1894. He had been an outspoken opponent of previous Crown attempts to grant itself exclusive purchasing rights, but in 1894 began to make public comments in favour of such a measure.<sup>326</sup> Another possible explanation is that the Government realised that compulsory acquisition was not necessary and that existing tactics – purchasing from individuals under cover of restrictions on alienation, while taking advantage of debt – were working. As Seddon had acknowledged during his visit to the Waikato, existing purchasing tactics were by 1894 having the desired effect. A few days after the Act was passed, Seddon boasted that 1894 would be a ‘record’ year for Crown purchasing of Māori land.<sup>327</sup> As we noted above, it was indeed a record year in this district.

Loveridge further observed that the Native Land Court Act 1894 signalled an end to ‘any lingering possibility that the Crown would permit Māori landowners in the Aotea [Rohe Potae] block to sell and lease their lands – or even a portion of their lands – on an open market’. During negotiations in 1891–92, the Crown had at least considered lifting the restrictions if Te Rohe Pōtae Māori opened some of their land for settlement. From 23 October 1894, with restrictions now in place nationwide and Te Rohe Pōtae land purchasing well under way, ‘the Seddon Government showed no further interest in any such arrangement.’<sup>328</sup> In this respect, Seddon’s biographer Tom Brooking has argued that Seddon’s 1894 tour differed from previous ones. It had not been a consultation or negotiation exercise, but ‘a highly calculated exercise in public relations,’ aimed at persuading settlers

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323. ‘Native Land Court Bill’, 28 September 1894, NZPD, vol 86, p 374 (doc A68, p 192).

324. Document A68, pp 193–194.

325. Document A21, p 131. The Crown purchased 122,640.01 acres of Māori land in the inquiry district during the year – approximately 6.3 per cent of the district’s total area (excluding extension areas).

326. Document A68, pp 189–192.

327. Brooking, “‘Busting Up’ the Greatest Estate of All”, p 82.

328. Document A68, p 197.

in North Island electorates that they would soon get their hands on Māori land.<sup>329</sup> In effect, the Crown no longer saw a need to consult or negotiate – it was getting what it wanted.

#### 11.3.4.5 *Māori protest and continued Crown purchasing, 1895–1905*

The Native Land Court Act 1894, and the associated land purchasing programme, aroused strong opposition from Māori throughout the country. In 1895, three of the four Māori members of the House of Representatives began urging Māori to boycott the court and all land sales to the Crown.<sup>330</sup> In Te Rohe Pōtae, Ngāti Maniapoto, Ngāti Hikairo, and Ngāti Mahuta boycotted the court at Ōtorohanga for several months, saying they would not return until satisfactory land laws were passed. They applied to withdraw a total of 336 claims that had been scheduled for hearing, and – though the court declined their applications – returned to their homes and refused to attend.<sup>331</sup>

By this time, the court had awarded title for many of the original Aotea-Rohe Potae subdivisions west of the railway, but had still to complete that process for lands in the east. It was otherwise mainly concerned with further subdivision (at owners' request), applications for partition (at Crown request), and granting survey orders.<sup>332</sup> The boycott was a partial success – the court did little for the rest of the year other than hear applications by the Crown. Similar boycotts occurred in other North Island towns and cities.<sup>333</sup>

Ormsby circulated a petition, yet again asking the Crown to remove all restrictions and allow Māori to deal with their lands as Europeans did. In May and September, meetings were held at which resolutions were passed opposing all land sales, though these bans were impossible to enforce.<sup>334</sup> Attempts to unify Māori politically gained new impetus in response to the restrictions, and for Ngāti Maniapoto this meant a renewed willingness to explore its relationship with the Kīngitanga. Many Ngāti Maniapoto attended a Kīngitanga hui in 1895 which called for the establishment of a federation of Māori people 'to take united action with regard to legislation' affecting Māori and their lands.<sup>335</sup> The Crown did, with the Native Land Laws Amendment Act 1895, relax the restrictions a little, allowing private sales or leases of land blocks smaller than 500 acres and also allowing the governor to make other exceptions. Once again, Te Rohe Pōtae was singled out. The Act specified that the provision allowing private sales or leases of small land

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329. Brooking, *Richard Seddon*, p 198.

330. Document A79, pp 16, 281–282; doc A68, pp 145 n, 196–198; doc A71 (Robinson and Christoffel), p 74; doc A67, pp 157, 170–171; doc A35, pp 94–95.

331. Document A79, pp 482–483; doc A68, pp 198–199.

332. Document A79, pp 282–285, 304–307, 482–483.

333. Document A79, pp 482–483.

334. Document A68, pp 199–200; doc A93 (Loveridge), p 7 n

335. *Hawkes Bay Herald*, 4 May 1895 (doc A79, p 483).

blocks would not apply to the 4.5 million-acre 1884–86 restriction area, which covered all of this district except for Whaingaroa.<sup>336</sup>

For all Māori land in the inquiry district, therefore, the Crown remained the only purchaser unless the governor decided otherwise. Private buyers had acquired 733 acres of land in the district, and acquired a further 12,496 acres in 1894 (including the 7,482-acre Puketiti 1, the 4,000-acre Mahoenui 6, and two Mangapapa blocks). All of these purchases were in the Mōkau area, which was not always subject to restrictions between August 1888 and October 1894.<sup>337</sup> After the Native Land Laws Act 1894, there were no further private purchases until 1898, when private buyers acquired 3,566 acres. A further 1,002 acres was sold privately in 1899, and thereafter private sales accounted for a few hundred acres a year until 1907, when more liberal land laws were in force.<sup>338</sup> We have very little evidence about these transactions. According to Boulton, the vast majority also concerned Mōkau land.<sup>339</sup> It is possible that the sales were to settler farmers who had acquired leases when Mōkau was not covered by restrictions, and had been able to have their transactions ratified under native land fraud prevention legislation.<sup>340</sup>

In this district, the Crown's main response to Māori protests about the Native Land Act was to continue its land purchasing programme. By this time, according to Husbands and Mitchell, the court's main business had shifted 'away from the investigation and definition of tribal and hapu interests' and 'towards the facilitation and administration of the Liberal Government's land purchasing effort'. Wilkinson 'began to increasingly occupy centre stage' as the court's business came to be dominated by applications for partition and award of survey costs.<sup>341</sup>

Crown purchasing was by now following a familiar pattern, in which Wilkinson purchased individual shares over a period of months or years, applied to the court to have the Crown's interests partitioned out, and then – as soon as the process was complete – began to target those who had refused to sell. Over time, Māori landholdings became increasingly fragmented and difficult to manage, making owners more vulnerable to Wilkinson's overtures.<sup>342</sup> During 1895, Wilkinson brought 44 partition applications to the court – forcing owners to break the boycott, lest the court determine the land division without their involvement. A further 122

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336. Native Land Laws Amendment Act 1895, ss 3, 4. The Act was amended again in 1896 to allow private purchasing of blocks not exceeding 640 acres of first-class land and 2,000 acres of second-class land. Again, the provision did not apply to the Rohe Pōtae area: Native Land Laws Amendment Act 1896, s 27.

337. Document A21, pp 46, 131; doc A67, pp 315–317, 335–336; submission 3.4.307, p 44.

338. Document A21, p 131.

339. Document A67, pp 316–317.

340. Wilkinson listed these leases in an 1895 memo to the Native Department: doc A60, pp 1276–1277. Also see submission 3.4.119, p 10; doc A67, pp 338–339.

341. Document A79, pp 252–253.

342. Document A146, pp 406–411; doc A67, pp 356, 424, 478, 490; doc A79, p 251. Also see submission 3.4.305, pp 9, 78.

applications followed in 1897, just over 100 in 1898, and 136 in 1900.<sup>343</sup> Following this pattern, total Crown purchasing fluctuated from year to year, as shown in table 11.2. In all, the Crown completed acquisitions of 368,000 acres of Māori land in the inquiry district during the years 1895–99 (just over 19 per cent of the district).<sup>344</sup> It acquired a further 81,500 acres in 1900 and 1901 before purchasing slowed.<sup>345</sup>

In this way, the Crown's purchasing programme in fact worked against settlement. It prevented Māori leaders from inviting settlers into their lands and establishing farms, while delaying settlement of lands it had purchased because it wanted to benefit from rising land prices. And it turned the district into a patchwork of fragmented properties, some in Crown ownership and some in Māori ownership, many of which were too small to be usable.<sup>346</sup>

Māori protests continued for the rest of the 1890s. In 1897, Eketone and 163 others of Ngāti Maniapoto, Ngāti Hikairo, Ngāti Raukawa, Ngāti Tūwharetoa, and Whanganui petitioned Parliament saying they had 'continually by petition and in other ways' attempted to point out 'the magnitude of the injustice under which we suffer through the Government alone having the right to purchase our lands.' The petitioners were 'entirely certain' that the restrictions were not intended to protect them from 'land grabbers', but instead reflected 'the intense desire of the Government that we should speedily sell to them our land for whatever price they please to give.'<sup>347</sup> The petition – set out in full in Appendix 1 – asked that restrictions be removed from Te Rohe Pōtae Māori lands on which title had been determined and the relative interests of each owner determined. It also asked that Te Rohe Pōtae Māori be permitted to lease or sell their lands to whoever they pleased. The House of Representatives, they said, wanted there to be one law for Māori and Europeans, yet the law that prevented Māori from selling or leasing land in a competitive market was hardly a sign of that equality before the law.<sup>348</sup>

Faced with the loss of much of their land, Te Rohe Pōtae leaders turned back to the Kīngitanga, supporting the Maori Constitution Bill, which was brought before the House in 1898 by the Western Maori member Henare Kaihau, who was the principal advisor to the new Māori King Mahuta Tāwhiao. The Bill proposed a national Māori council to administer Māori lands and granted all Māori the same rights as Europeans to deal with their lands. As with all other efforts to provide

343. Document A79, pp 252–253.

344. Document A21, p 131.

345. Document A21, p 131.

346. These effects were widely discussed in settler media and in the report of the Native Land Commission's 1907 report on Te Rohe Pōtae: 'Native Lands in the Rohe-Potae (King Country) District: An Interim Report', 4 July 1907, AJHR, 1907, G-1B, pp 1–4, 6–7, 8–9.

347. Pepene Eketone and 163 others, petition 217 (doc A67(a), vol 1, pp 33–47; doc A146, p 193); doc A67, pp 157, 299, 374, 479–480; doc A93, p 7. According to Boulton, the other signatories included Taonui and Ormsby: doc A67, p 351.

348. Document A67, p 299; doc A73(a), vol 5, pp 286–290.

Māori with meaningful power over their own lands during this period, the House rejected it.<sup>349</sup>

By the late 1890s, having already acquired a large portion of the district's land, the Crown began to consider alternative policies. One option was a halt to the purchasing of Māori land, to be replaced by a system that would make land available for settlement by leasing. This system was proposed in a Kōtahitanga petition to Queen Victoria in 1897.<sup>350</sup> Witnesses have suggested various possible reasons for the Government's change of heart. Nationwide Māori opposition to the Crown's existing policies was clearly a factor, and, as Richard Boast and others have pointed out, having already acquired vast amounts of Māori land, the Government could afford to consider concessions. Boulton and Marr suggested that the Government may also have become concerned about Māori landlessness and, more particularly, the prospect of landless Māori becoming a burden on the State. And Boulton speculated that the Government may also have been confronting the reality that it could not easily sell all of the land it had bought.<sup>351</sup>

In October 1899, the Native Land Laws Amendment Act 1899 temporarily prohibited all sales of Māori land to the Crown. The following year, the Maori Lands Administration Act 1900 prohibited all sales of Māori land except with the governor's consent. Leasing was allowed, but only when conducted through district Maori councils (which will be discussed in future chapters of our report).<sup>352</sup> Both of these Acts allowed the Crown to complete purchases that were already under negotiation. The exclusive purchasing provisions of the Native Land Court Act 1894 continued to apply to these transactions.<sup>353</sup> That Act was finally repealed on 31 March 1910.<sup>354</sup> By then, just 50 per cent of this district's land remained in Māori possession.<sup>355</sup>

### 11.3.5 Treaty analysis and findings

In their 1883 petition to the Crown, Te Rohe Pōtae leaders had been very clear that they had no interest in the railway, or in roads, or in the Native Land Court, if these things were to become the means by which their land was taken from them.

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349. Document A93, pp 11–12; doc A71, p 126. Also see Dictionary of New Zealand Biography, 'Henare Kaihau', in *1870–1900*, vol 2 of *The Dictionary of New Zealand Biography*, ed Claudia Orange (Wellington: Bridget Williams Books / Department of Internal Affairs, 1993), pp 250–251.

350. Document A71, p 49; doc A67, pp 163–166; Donald Loveridge, *Maori Land Councils and Maori Land Boards: A Historical Overview 1900–1952*, Waitangi Tribunal Rangahau Whānui Series (Wellington, Waitangi Tribunal, 1996), pp 6, 12; Boast, *Buying the Land, Selling the Land*, p 214.

351. Document A71, p 49; doc A67, pp 163–166; Loveridge, *Maori Land Councils and Maori Land Boards*, pp 6, 12; Boast, *Buying the Land, Selling the Land*, p 214.

352. Maori Lands Administration Act 1900, s 22. Also see doc A73 (Hearn), pp 59–60; submission 3.4.307, pp 9, 19, 24, 28.

353. Native Land Laws Amendment Act 1899, s 3; Maori Lands Administration Act 1900, s 34; submission 3.4.307, pp 9–10, 28.

354. It was repealed by the Native Land Act 1909: ss 1, 431, sch.

355. Document A21, p 129.

They had seen how, in other districts, the court's arrival had been a precursor for individualisation of title and large-scale alienation of land.<sup>356</sup>

The fundamental precondition of the Crown's entry into this district was that things would be done differently here, in order that the land be protected. In return for this district being opened for settlement and for their consent to the railway, Te Rohe Pōtae leaders said, the Crown would have to pass laws with two effects. First, all land title decisions would be left to iwi and hapū, with the Crown's only role being to confirm and add legal protection to what Māori had decided among themselves. Secondly, the petition asked that Te Rohe Pōtae lands be protected forever from sale. Leasing would be allowed, but only if the negotiation were a public one.

In the negotiations that followed (discussed in chapter 8), Te Rohe Pōtae leaders modified some of their conditions. They appeared willing to allow for sale under some circumstances, so long as hapū made all decisions about alienation and so long as any sales or leases occurred in an open market. They consistently opposed the Crown having any exclusive purchasing right.

At Kihikihi in February 1885, the Native Minister, John Ballance, assured Te Rohe Pōtae leaders that the Crown did not intend to be a large-scale purchaser of Māori land, and only sought what it needed for railway purposes, for which it would pay a fair price. He said that the Crown wanted Te Rohe Pōtae Māori to make land available for settlement (which they had said they were willing to do), but would be content if they offered land for lease under a system that allowed for prices to be determined by public competition. He also assured them that all decisions about land alienation would be made by hapū representatives.<sup>357</sup> In summary, he assured them:

not a single Native right will be prejudiced . . . greater powers will be placed in the hands of the Natives to deal with their own land, when their land will be enormously increased in value through the construction of this railway and roads.<sup>358</sup>

It was on the basis of these and other assurances given at Kihikihi that Te Rohe Pōtae Māori consented to the railway.

As discussed in chapter 8, the Crown was obliged to respect the wishes of Te Rohe Pōtae leaders and enact laws that they had sought for the protection of their land. It was also obliged to use its lawmaking powers to actively protect Te Rohe Pōtae Māori in possession of their lands. And it was obliged to honour any conditions they imposed in return for their consent to the railway, and to keep its promises, in accordance with its duty to act honourably and in good faith. The Crown did none of these things. Instead, the Māori land laws enacted under Ballance's

356. 'Petition of the Maniapoto, Raukawa, Tuwharetoa and Whanganui Tribes', AJHR, 1883, J-1.

357. 'Notes of a Meeting between the Hon Mr Ballance and the Natives at the Public Hall at Kihikihi, on the 4th February 1885', AJHR, 1885, G-1, pp 14-16, 20.

358. 'Notes of a Meeting between the Hon Mr Ballance and the Natives at the Public Hall at Kihikihi, on the 4th February 1885', AJHR, 1885, G-1, p 24.



stewardship fell short of what was sought and promised; and the Crown was never willing to relinquish the power to determine land titles. Even during Ballance's tenure, the Crown began to make plans for large-scale land purchasing in this district.

Ballance was, however, willing to see Māori enjoy some of the benefits of rising land prices along the railway; in his view, this was fair in return for Te Rohe Pōtae communities consenting to the railway and to the opening of the district to settlement.<sup>359</sup> From 1888, the Crown adopted a new policy. Not only did it intend to purchase large areas of land for on-sale to settlers, it intended to do so before the railway was completed, so that it and not Māori would benefit from rising land prices. It adopted this policy partly in response to settler pressure and partly as a means of addressing its growing financial difficulties. The Crown therefore enacted a series of laws that removed the rights of Te Rohe Pōtae Māori to sell, lease, or mortgage land privately. The Crown had exclusive rights to deal in Māori land. This, and subsequent restrictions, were imposed in order to eliminate private competition, giving the Crown control of the land market, so it could profit from the purchase, development, and onsale of Māori land.

During the next 22 years, Māori land in Te Rohe Pōtae was almost continuously subject to restrictions of one form or another. Aside from one brief period between October 1894 and October 1895 when Māori in the North Island were unable to sell or lease their lands,<sup>360</sup> the severest restrictions applied only to Te Rohe Pōtae Māori, not to other Māori or Europeans. The laws were fundamentally at odds with the Treaty guarantee of tino rangatiratanga, the active protection of land, and with the equality of property rights guaranteed under article 3. In terms of general Treaty principle, the right of tino rangatiratanga fetters the Crown's right of kāwanatanga; the Crown can interfere with that right only with the consent of the affected communities, or otherwise in exceptional circumstances and as a last resort in the national interest. The Crown's right of kāwanatanga, furthermore, must be exercised in a manner that actively protects Māori rights and interests.

The Crown argued that the laws it enacted were a simple reimposition of the pre-emptive right provided for by article 2.<sup>361</sup> But, as the Tribunal found in *He Maunga Rongo*, the Crown 'fully and absolutely' required the consent of affected Māori landowners before granting itself exclusive purchasing rights, and any

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359. Ballance explained his views to the House of Representatives that the Crown intended neither to permit 'land sharks' nor to be one itself: 'Native Lands Settlement Bill, 1 November 1884, NZPD, vol 50, pp 312–317 (doc J25 (Crown document bank), pp 145–147); doc A78, pp 1078–1083, 1105–1106. Also see 'Banquet to the Hon John Ballance', *The Yeoman*, 5 December 1884 (doc A78(a) (Marr document bank), vol 6, pp 2921–2922); doc A41, p 161.

360. From 23 October 1894 to 31 October 1895, section 117 of the Native Land Court Act 1894 prohibited private sales of Māori land throughout the country, and prohibited private leases throughout the North Island. On 31 October 1895, sections 3 and 4 of the Native Land Laws Amendment Act 1895 allowed Māori in other districts but not Te Rohe Pōtae to privately sell or lease up to 500 acres. Section 27 of the Native Land Laws Amendment Act 1896 extended these provisions, allowing Māori in other districts to privately sell or lease up to 640 acres of first class land and 2,000 acres of second class land.

361. Submission 3.4.307, pp 2–4, 21–22, 32–33.

failure to obtain that consent was a breach of the principles of active protection, autonomy, and partnership.<sup>362</sup> The Crown has acknowledged that it did not obtain consent for any of these laws, or even seek it.<sup>363</sup>

By 1888, the Crown had imposed individual titles on most of the land blocks in this district. The effect of the restrictions in combination with the land title regime was that Te Rohe Pōtae Māori possessed neither their full rights over land as guaranteed by article 2, nor the individual rights of British subjects as guaranteed by article 3. In effect, the law treated them as aliens in their own lands, possessing neither full rights as indigenous people nor equal rights as British subjects.

Other inquiries have also found that the Crown was obliged to use the preemptive right in a manner that actively protected Māori interests, consistent with the article 2 guarantee that Māori communities would retain possession of and authority over land for so long as they wished.<sup>364</sup> The Crown acknowledged that, after 1887, it imposed these laws for the purposes of supporting a land purchasing programme and profiting from the purchase, development, and onsale of Māori land.<sup>365</sup> Colonial politicians were quite open about these purposes and about the fact that they were bowing to pressure from settlers who wanted access to Māori land and did not want Māori to benefit from rising land prices. The Crown therefore had no protective intent. On the contrary, its intention was to use these laws to separate Māori from their land, irrespective of their wishes about the timing and manner in which their district would be settled, and irrespective of their legitimate expectation that they would receive economic benefit from the railway. Other Tribunals have found that, where the Crown granted itself exclusive purchasing rights for the purposes of opening up land for settlement, and more specifically for the purposes of controlling land prices so it could profit from land transactions and repay debt, it was in breach of the Treaty principle of active protection.<sup>366</sup> We agree entirely.

We can see no exceptional circumstances that might have justified the enactment of these laws as a last resort. The Crown's view was that it had a legitimate role in controlling settlement, which included restricting speculative behaviour. We acknowledge the Crown's Treaty obligation to control settlement in order to protect Māori interests, and we also acknowledge its legitimate role in controlling speculative behaviour that might impede national development goals. If these were the Crown's only goals, it might have adopted different policy settings that more closely aligned with the express wishes of Te Rohe Pōtae Māori. But these were not the Crown's only goals.

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362. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 578, 580. Also see Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, vol 1, pp 64–65.

363. Submission 3.4.293, p 3; submission 3.4.307, pp 1, 25–26.

364. Waitangi Tribunal, *The Report on the Orakei Claim*, p 137; Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 1, pp 78–79; Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, vol 1, pp 64–65.

365. Submission 3.4.307, p 28.

366. Waitangi Tribunal, *The Pouakani Report*, p 236; Waitangi Tribunal, *Tauranga Moana 1886–2006*, vol 1, p 145; Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 580.

The Crown wanted to advance settlement for the sake of the colony's economy, but that could in no way justify a policy that sought to deny Te Rohe Pōtae Māori their land rights and transfer land into the hands of European farmers. Indeed, the district's leaders were entirely willing to open the district for settlement if the Crown would protect their land, leave the decisions to them, and allow them to benefit from the resulting economic development.

The Crown wanted to prevent private speculation in order to support settlement by European smallholders, but it could have achieved this by allowing Te Rohe Pōtae Māori to make land available for lease as they wished, and also by limiting the areas of land that could be sold or leased as it did in other parts of the country. Honouring the wishes of Te Rohe Pōtae leaders for hapū to make all decisions about land alienation and for negotiations to be conducted on their behalf by iwi leaders might also have mitigated against speculation by giving them greater market power.

The Crown also wanted to address its own financial difficulties, but again, that in no way justified a policy that was aimed at transferring land and wealth from Māori to the Crown. Te Rohe Pōtae Māori had not asked for the railway and were not responsible for the colony's debts. They had very clearly said they did not want the railway if it were to be the means of depriving them of their land. Yet depriving them of their land in order to fund the railway was the exact policy the Crown adopted. These, in any case, were policy preferences, not cases of national emergency. At the heart of the Crown's policy was its decision to advance settler wishes and interests at the expense of Te Rohe Pōtae Māori, in contravention of their clearly expressed wishes and also of the promises the Crown itself had made.

We therefore find that when it enacted the laws imposing the 1898–91 restrictions, the 1890–92 restrictions, the 1892–93 restrictions, and the 1894–1910 restrictions, and when it imposed restrictions on selected land blocks under the Native Land Purchases Act 1892, the Crown breached the Treaty and its principles in the following ways:

1. By enacting these laws and imposing these restrictions without first consulting or obtaining the consent of Te Rohe Pōtae Māori, the Crown failed to fulfil its duty of active protection and breached the Treaty guarantee of tino rangatiratanga and the principles of autonomy and partnership.
2. By enacting these laws and imposing these restrictions in breach of its promises that any sales or leases would occur in an open market, the Crown breached the Treaty guarantee of tino rangatiratanga, the principle of partnership, and its obligation to act honourably, fairly, and in good faith. The Crown conceded this breach.<sup>367</sup>
3. By enacting these laws and imposing these restrictions in a manner that treated Te Rohe Pōtae Māori differently from other Māori landowners and from Europeans, and to their detriment, the Crown breached the principles of equity and equal treatment.

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367. Submission 3.4.307, pp12, 25.

4. By enacting these laws and imposing these restrictions for the express purposes of transferring large areas of Māori land into Crown ownership and ensuring that the Crown benefited from rising land prices along the railway, the Crown failed to fulfil its duty of active protection and breached the Treaty guarantee of tino rangatiratanga.

## 11.4 HOW DID THE CROWN BUY TE ROHE PŌTAE MĀORI LAND?

### 11.4.1 Introduction

As the preceding sections explained, the Crown imposed restrictions on Te Rohe Pōtae Māori land rights in order to support its land purchasing programme. Its objective was to obtain Māori land for development and onsell to settlers at a profit that would be sufficient to cover the costs of the railway and other settlement infrastructure. The Crown's representatives knew that Te Rohe Pōtae Māori leaders and communities wanted to retain control and possession of their land and would therefore resist any large-scale purchasing programme. The Crown adopted a deliberate policy of breaking down that opposition by exploiting indebtedness (including survey debts), targeting individual shares across a wide range of land blocks, forcing owners into court to partition their interests and threatening to take land by compulsion.

Acts of Parliament and the Native Land Court created the preconditions in which these tactics could be effective, by breaking down communal land title, imposing survey costs on Te Rohe Pōtae Māori landowners, and denying them opportunities to raise capital by selling, leasing, or raising mortgages on an open market.

As we described in section 11.3.3, the Crown's purchasing of Te Rohe Pōtae land unfolded in stages, with the Crown adopting different tactics to suit the circumstances. During the initial period (1890–92), while Māori were resisting sale, it focused on creating and leveraging 'want of money', not only by prohibiting private transactions but also by leveraging survey debts. By the end of 1892, George Wilkinson, the Crown's land purchase officer, had succeeded in completing the purchase of land blocks totalling just 13,229 acres, and acquiring shares in a handful of others.<sup>368</sup> By then, however, the 'ice' was beginning to break and Wilkinson's tactic of targeting individuals began to pay off.<sup>369</sup>

From 1893 on, he was essentially free to adopt the approach he would pursue from then until the end of the century: buying individual shares, applying to the court to have them partitioned out, and starting the process all over again. Altogether, during the years 1893–99, the Crown acquired 517,591 acres.<sup>370</sup> New Crown purchasing was prohibited in 1900, but Wilkinson continued to complete the purchase of blocks where he had already acquired shares. During the years

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368. Document A21, p 131.

369. Document A67(a), vol 1, pp 133–141; doc A67, p 211.

370. Document A21, p 131.

### George Wilkinson

George Thomas Wilkinson (1845–1906) was born and raised in India, where his father served as a Baptist missionary. As an adult, he trained as a surveyor and migrated to New Zealand in 1864, working as a surveyor. He learned te reo Māori in the 1870s and served as an interpreter and land purchase officer in Hauraki before moving to Alexandra in 1882 to take up an appointment as native officer. He advised and interpreted for Ministers during their negotiations with Te Rohe Pōtae leaders during the 1880s. In 1889, he moved to Ōtorohanga to take up his position as native land purchase officer. Between 1902 and 1905, Wilkinson was president of the newly established Maniapoto-Tuwharetoa Maori Land Council. As part of that role, in 1903 he was authorised to exercise all the powers of a Native Land Court judge, and occasionally sat on Native Appellate Court cases. Throughout his time in this district Wilkinson lived with a Ngāti Maniapoto woman. A former partner was also of Ngāti Maniapoto. He died in 1906.<sup>1</sup>

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1. 'The Late Mr GT Wilkinson: An Eventful Career', *Taranaki Herald*, 8 February 1906; 'Death of Mr GT Wilkinson: An Interesting Career', *New Zealand Herald*, 6 February 1906; Philip Hart, 'Merea Wikiriwhi and George Thomas Wilkinson', Waikato University Historical Research Unit, Te Aroha Mining District Working Papers 20, 2016, pp 39–131; doc A60 (Berghan), pp 1301–1303; doc A67 (Boulton), pp 178–179; doc A73 (Hearn), p 63 n; Dr Bryan Gilling, 'The Nineteenth-Century Native Land Court Judges: An Introductory Report' (commissioned research report, Wellington: Waitangi Tribunal, 1994) (Wai 64 RO1, doc G5), p 4.

1900–1904, he acquired another 104,682 acres. Table 11.2 and map 11.3 give further detail on the scale and trajectory of Crown purchasing.

Claimants regarded the Crown's purchasing programme as a direct betrayal of the conditions imposed by Māori leaders, and the undertakings given by the Crown, as part of the 1883–85 negotiations and agreements which claimants refer to as Te Ōhākī Tapu. Te Rohe Pōtae Māori had opened their district on the understanding that hapū would retain possession of and authority over their lands, would not be subjected to the destructive land purchasing policies that had affected other districts, and would be left to develop their lands as they wished, and to reap the promised benefits of the railway and of settlement.<sup>371</sup>

Instead of honouring these conditions, the claimants submitted, the Crown coerced Te Rohe Pōtae Māori into selling land. It did so by taking advantage of the lack of competition, exploiting indebtedness, purchasing from individuals to undermine communal decision-making, and using aggressive tactics including threats of compulsory acquisition. We have already discussed some of these

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371. Submission 3.4.119, pp 3–4, 6, 10, 49.

tactics in the previous section.<sup>372</sup> Claimants argued that the Crown took little or no account of Māori interests, instead pursuing an aggressive policy aimed at purchasing as much land as possible, and in particular aimed at separating Māori from the district's best land, while failing to ensure that sufficient land was set aside to meet the needs of Māori communities. They also argued that the Crown purchased land from minors and purchased before title was determined.<sup>373</sup>

By pursuing this programme, the claimants submitted, the Crown not only breached the commitments it had as part of Te Ōhākī Tapu, but also breached subsequent promises to purchase only 'surplus' or 'waste' land, to reserve sufficient land for Māori use, and to purchase only after title was finally determined.<sup>374</sup> Though sales were 'technically voluntary',<sup>375</sup> claimants submitted that they were really forced because the Crown's actions left Māori landowners with no way of developing their lands and no means of clearing court-imposed debts other than by sales to the Crown.<sup>376</sup>

The Crown conceded some of these points. Previous chapters have discussed the Crown's concession that 'in a number of instances' iwi and hapū 'had to give up unreasonably large amounts of land to pay for survey costs', in breach of the Treaty.<sup>377</sup> The Crown also conceded that it breached the Treaty by preventing Māori landowners 'who had expended large sums of money having their lands surveyed and subdivided, from paying these costs by the leasing of their lands'.<sup>378</sup>

Previous chapters have also discussed the Crown's concession that it breached the Treaty by failing to provide for a form of title that enabled communities to manage land collectively.<sup>379</sup> The Crown also conceded that individualisation of

372. Submission 3.4.119, pp 3–4, 21, 25, 27–28, 30–33, 36–37, 38, 53; claim 1.5.4, pp 7, 9–15, 23; submission 3.4.174, p 11; submission 3.4.226, pp 29–31; submission 3.4.154(a), pp 30–35; submission 3.4.181, p 32; submission 3.4.204, pp 34, 37; submission 3.4.147, pp 16, 58; submission 3.4.251, pp 20–21, 27–28; submission 3.4.175, pp 18, 27–30; submission 3.4.167, p 30; submission 3.4.151, pp 5, 34–39; submission 3.4.199, pp 39–41; submission 3.4.171, p 4; submission 3.4.160, p 38; submission 3.4.181, p 32; claim 1.1.272(c), pp 14–15; claim 1.2.102, pp 38–40, 41.

373. Submission 3.4.119, pp 3–4, 21, 25, 27–28, 30–33, 36–37, 38, 53; claim 1.5.4, pp 7, 9–15, 23; submission 3.4.174, p 11; submission 3.4.226, pp 29–31; submission 3.4.154(a), pp 30–35; submission 3.4.181, p 32; submission 3.4.204, pp 34, 37; submission 3.4.147, pp 16, 58; submission 3.4.251, pp 20–21, 27–28; submission 3.4.175, pp 18, 27–30; submission 3.4.167, p 30; submission 3.4.151, pp 5, 34–39; submission 3.4.199, pp 39–41; submission 3.4.171, p 4; submission 3.4.160, p 38; submission 3.4.181, p 32; claim 1.1.272(c), pp 14–15; claim 1.2.102, pp 38–40, 41.

374. Submission 3.4.119, pp 3–4, 21, 25, 27–28, 30–33, 36–37, 38, 53; claim 1.5.4, pp 7, 9–15, 23; submission 3.4.174, p 11; submission 3.4.226, pp 29–31; submission 3.4.154(a), pp 30–35; submission 3.4.181, p 32; submission 3.4.204, pp 34, 37; submission 3.4.147, pp 16, 58; submission 3.4.251, pp 20–21, 27–28; submission 3.4.175, pp 18, 27–30; submission 3.4.167, p 30; submission 3.4.151, pp 5, 34–39; submission 3.4.199, pp 39–41; submission 3.4.171, p 4; submission 3.4.160, p 38; submission 3.4.181, p 32; claim 1.1.272(c), pp 14–15; claim 1.2.102, pp 38–40, 41.

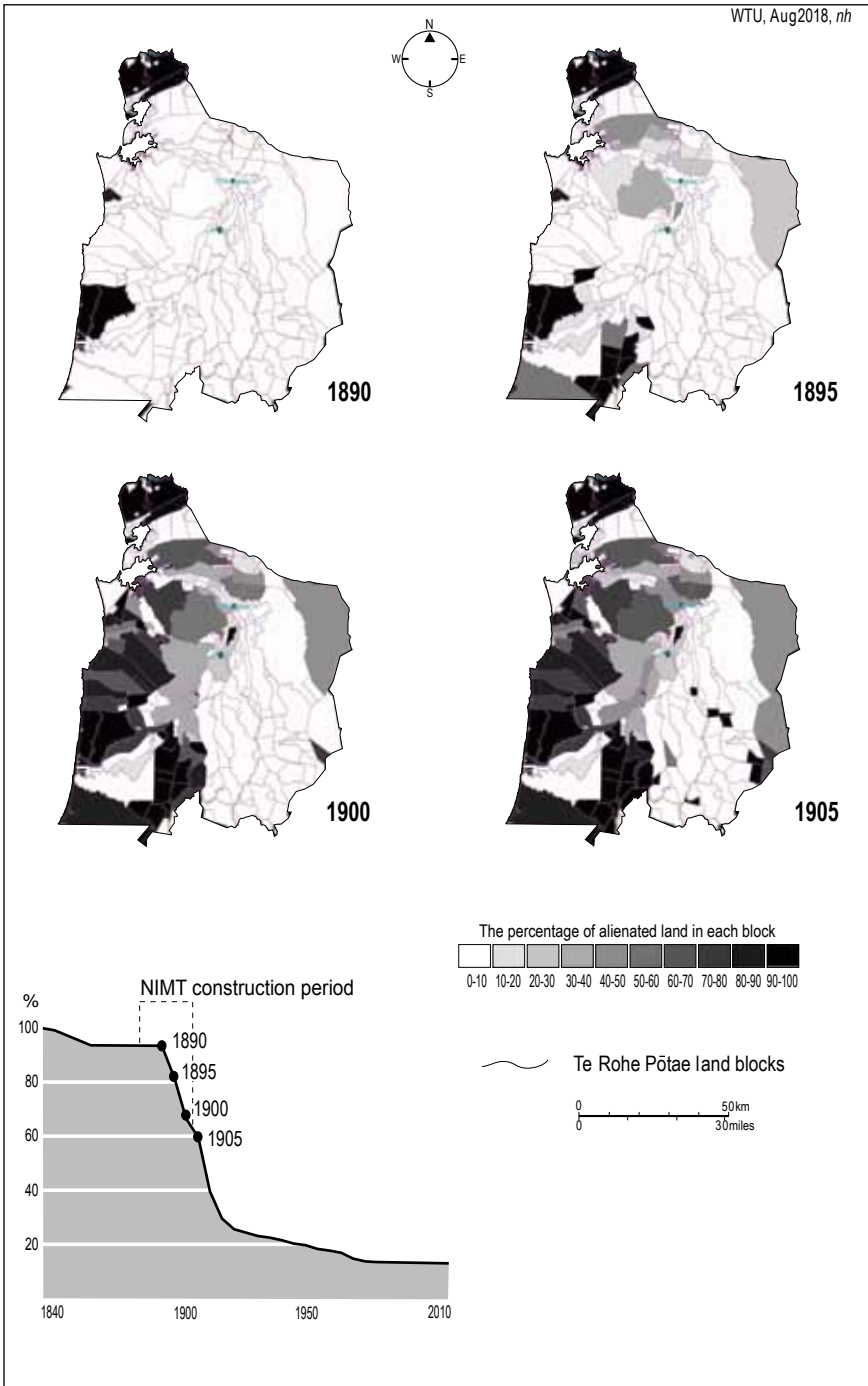
375. Claim 1.5.4, p 38.

376. Claim 1.5.4, pp 23, 38; submission 3.4.119, pp 3, 27–28, 53–54; submission 3.4.250, p 17; submission 3.4.295, p 11; submission 3.4.220, pp 20–21; submission 3.4.171, pp 13–15; submission 3.4.169, para 40; submission 3.4.174, pp 12–15.

377. Submission 3.4.307, pp 25–26, 37; submission 3.4.305, p 9; submission 3.4.11, p 4.

378. Submission 3.4.307, pp 25–26; submission 3.4.11, p 4.

379. Submission 3.4.307, pp 25–26, 37; submission 3.4.305, p 9; submission 3.4.11, p 4.



Map 11.3: Crown purchasing of Māori land in the inquiry district, 1890-1905

land interests had made land ‘more susceptible to fragmentation, alienation and partition’, which undermined tribal structures and was therefore a breach of the Treaty and its principles.<sup>380</sup> These concessions were made in respect of the Native Land Court, and do not directly address the more specific question of whether the Crown took advantage of survey costs and individual titles to advance its purchasing programme.

As discussed in section 11.3.3(2), the Crown’s policy was to break down communal resistance to land sales by taking advantage of survey debt, and by targeting individuals. It remains for us to determine how much these tactics were in fact used. In respect of land purchasing, the Crown acknowledged that it used its privileged market position in a manner that left some landowners with little option but to sell their land or shares in land, and it conceded that it used aggressive tactics to pressure owners to sell. In both respects, it conceded that its actions fell short of the standards of good faith, fair dealing, and active protection required of it under the Treaty.<sup>381</sup> But the Crown did not accept the claimant view that its entire purchasing programme was coercive. It submitted that Māori landowners sold for a range of reasons, including to clear debts, and to raise funds for land development. It also submitted that others were able to retain their lands, or hold out for higher prices.<sup>382</sup>

In respect of the claim that it failed to take account of Māori interests, and failed to set aside reserves, the Crown submitted that it set aside 24 reserves, which together ‘made up ten per cent of the area sold in the 1890s’, and it therefore argued that it had taken steps to ensure that Māori who sold retained sufficient land.<sup>383</sup> The Crown also submitted that there was no direct evidence of Crown purchasing before title had been determined;<sup>384</sup> and it submitted that purchases from minors were not in themselves evidence of sharp practices or bad faith.<sup>385</sup>

We begin by addressing our jurisdiction to consider claims in the Wharepuhunga block in light of the 2014 Raukawa settlement. We then consider each of the Crown’s purchasing methods in turn. First, we will address its use of survey debts to leverage the first significant sales in the district. Secondly, we will consider whether it purchased shares before the process of determining title had been completed. Thirdly, we will consider the methods it used to acquire shares from individuals, including targeting vulnerable and absentee owners. Fourthly, we will consider whether it acquired land that had been set aside for reserves. Fifthly, we will consider the Crown’s approach to the partitioning of its interests.

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380. Submission 3.4.305, p 9.

381. Submission 3.4.307, pp 1, 25–26.

382. Submission 3.4.307, pp 35–36.

383. Submission 3.4.307, pp 39–40.

384. Submission 3.4.307, pp 37–38.

385. Submission 3.4.307, p 39.



Year	Crown	Private	Total
<i>While local restrictions applied</i>			
1891	12,532.58	0	12,532.58
1892	696.03	733.00	1,429.03
1893	27,195.00	0	27,195.00
1894 <sup>1</sup>	122,640.01	12,496.38	135,136.39
<i>While national restrictions applied</i>			
1895	52,160.70	0	52,160.70
1896	4,056.35	0	4,056.35
1897	47,822.18	0	47,822.18
1898	195,226.08	3,565.83	198,791.91
1899	68,801.12	1,002.00	69,803.12 <sup>2</sup>
<i>While new purchasing was prohibited</i>			
1900	14,974.97	552.06	15,527.03
1901	66,528.41	321.47	66,849.88
1902	198.16	300.00	498.16
1903	5,388.00	0	5,388.00
1904	17,592.48	0	17,592.48
1905	4,003.00	192.79	4,195.79
Total	639,815.07	19,163.53	658,978.60

1. National restrictions were imposed from 23 October 1894.

2. Douglas, Innes, and Mitchell (doc A21, p 131) listed 310.5 acres as having been purchased in 1889: Kahakaharoa A, and Hauturu East 1A1, 1A2, and 1A3. However, Parker (doc A95(i)) and Berghan (doc A60, p 144) both record the Crown purchasing these blocks a decade later in 1899. Wilkinson recorded that his first purchases did not occur until 1890 (doc A67, p 222). The 1899 figures have been adjusted accordingly.

Table 11.2: Crown and private land alienation in Te Rohe Pōtae inquiry district 1890–1905

Source: Document A21, p 131, table 85. Douglas, Innes, and Mitchell based their land purchasing data on titles issued by the Native Land Court, and other contemporary sources such as purchase deeds.

### 11.4.2 The Ngāti Raukawa settlement and the Wharepuhunga block

In its 2012 deed of settlement with Ngāti Raukawa, the Crown acknowledged that Ngāti Raukawa territorial interests centred in the Waikato River basin, from Te Pae o Raukawa (Taupō Moana) in the south, to Maungatautari in the north, west into Wharepuhunga in the Rangitoto Ranges and Waipā Valley, and east to Te Kaokaoroa-o-Patetere in the Kaimai and Mamakū Ranges. Ngāti Raukawa and the Crown also acknowledged that other iwi also had interests in parts of these

lands.<sup>386</sup> As discussed in chapter 2, the lands in the north-eastern corner of this district, including the Wharepuhunga block, were heavily contested during the late eighteenth and early nineteenth centuries, and many of the competing groups were closely related. The tribal landscape in Wharepūhunga and the lands between Maungatautari and Kihikihi is therefore highly complex, with many groups able to trace important ancestral associations to those lands.

The Raukawa Claims Settlement Act 2014 settled claims over traditional Ngāti Raukawa territories by claimants identifying as Ngāti Raukawa, Ngāti Mōtai, Ngāti Mahana, Ngāti Whāita, Ngāti Āhuru, Ngāti Te Apunga, and Ngāti Wairangi, as well as claimants representing specific areas or land blocks.<sup>387</sup> In this inquiry, we received many claims regarding Wharepūhunga lands from groups which claimed affiliation with Ngāti Raukawa and/or the hapū listed in the 2014 settlement Act.<sup>388</sup> We have not inquired into these claims. But we also received several claims over Wharepuhunga from claimants who did not identify with Ngāti Raukawa, or who claimed dual affiliation with Ngāti Raukawa and other iwi. These claims were:

- Wai 651 – Ngāti Matakore and Ngāti Rangatahi of Ngāti Maniapoto, Ngāti Waewae of Ngāti Tūwharetoa, Ngāti Pīkiahū of Ngāti Raukawa;<sup>389</sup>
- Wai 784 – Ngāti Kauwhata;<sup>390</sup>
- Wai 972 – Ngāti Kauwhata;<sup>391</sup>
- Wai 1004 – Mike Taitoko and others of Ngāti Maniapoto;<sup>392</sup>
- Wai 1482 – Ngāti Wehi Wehi;<sup>393</sup>
- Wai 1944 – Ngāti Hinemata;<sup>394</sup>
- Wai 2014 – Ngā Uri o Peehi Tūkorehu; the Ngāti Paretekawa section of Ngāti Maniapoto.<sup>395</sup>

Each of these groups identified interests in Wharepuhunga (or parts of the block) which were distinct from the Ngāti Raukawa interests in the block and

386. Raukawa and the Raukawa Settlement Trust and the Crown, Deed of Settlement of Historical Claims, 2 June 2012, pp 6–7, 9, 48. Also see Raukawa and Raukawa Settlement Trust and the Crown, Deed of Settlement: Attachments, 2 June 2012, p 4.

387. Raukawa Claims Settlement Act 2014, s14(3)

388. Specifically, these are Wai 255 (Ngāti Raukawa, Ngāti Mahana); Wai 389 (Ngāti Raukawa); Wai 1340 (Ngāti Raukawa); Wai 538 (Ngāti Raukawa, Ngāti Whāita); Wai 1472 (Ngāti Raukawa, Ngāti Kauwhata, Ngāti Wairangi, Ngāti Whakatere ki te Tonga); Wai 1473 (Ngāti Raukawa, Ngāti Āhuru); Wai 1474 (Ngāti Raukawa, Ngāti Mōtai, Ngāti Te Ahunga); Wai 1602 (Ngāti Raukawa, Ngāti Te Koherā); Wai 1615 (Ngāti Raukawa, Ngāti Takihiku, Ngāti Whāita); Wai 1769 (Ngāti Raukawa, Ngāti Āhuru, Ngāti Huri, Ngāti Tūkorehe); Wai 1887 (Ngāti Raukawa, Ngāti Kikopiri, Ngāti Whāita); Wai 2019 (Ngāti Raukawa, Ngāti Huri); Wai 2076 (Ngāti Raukawa, Ngāti Tūkorehe); Wai 2077 (Ngāti Raukawa, Ngāti Rahurahu); Wai 2078 (Ngāti Raukawa, Ngāti Āhuru): see submission 3.4.158.

389. Claim 1.1.272(c), pp 2–3, 14–16.

390. Submission 3.4.147, pp 10–12, 16. Also see submission 3.4.147(a).

391. Submission 3.4.134, pp 7, 11, 26–27, 57–59; also see submission 3.4.134(b).

392. Claim 1.1.59(a).

393. Submission 3.4.154(a), pp 4, 8–9, 15.

394. Submission 3.4.233, paras 4, 12–17, 19–31.

395. Submission 3.4.208, pp 2–5, 22–24.

therefore not covered by the 2014 settlement. We will therefore include them as part of our consideration of Crown purchasing methods below.

### 11.4.3 Did the Crown use survey debt to leverage land sales?

As discussed in section 11.3.3(4), Wilkinson's first individual share purchases were from two owners of the Mangauika block, who rode out from their community under cover of darkness and met him at night to hide their shame at what they were doing.<sup>396</sup> Those purchases occurred in April 1890. Wilkinson continued to attempt to pursue individual shares over the coming months, but with very little success. It was not until Wilkinson began to discuss survey costs with owners later in the year that they began to sell on a larger scale, and then the lands offered were not the prime Waipā Valley real estate that the Crown sought, but more marginal border lands where mana had been contested before the Native Land Court.<sup>397</sup>

Chapter 10 has considered the scale of land sold or taken to cover survey costs – our concern here is with their use as a means to break the ice on land purchasing. When Ngāti Maniapoto leaders agreed in 1889 to pay survey costs, it appears that their leaders believed they would be able to do so while also protecting the bulk of their land.<sup>398</sup> While they had hoped to pay as much as possible of the survey costs in cash by developing their land, their efforts were severely limited by both the prohibition on private leasing and mortgaging, and the land title regime.<sup>399</sup> As discussed in chapter 10, this form of title was not intended to support land development, only to facilitate alienation.<sup>400</sup>

Nor could Te Rohe Pōtae Māori landowners expect the Crown to offer any assistance for their attempts to farm the district, even though turning the land to productive use was the Crown's stated aim. In a letter to Lewis in March 1890, Wilkinson appeared almost enthusiastic at the prospect of sheep farming operations falling into difficulty through lack of technical expertise, disputes among landowners, or sheep dying of exposure or being killed by wild pigs.<sup>401</sup>

Just as the land title regime was intended to facilitate alienation, so was the imposition of survey charges. Wilkinson was perfectly open about his intention to use survey liens as a means to pressure the district's landowners into selling. Early in 1890, as his land purchasing efforts were getting under way, he lamented the two-year grace period that Te Rohe Pōtae Māori were being given before survey costs would be charged against their lands and begin to incur interest. Because they had not yet been forced to pay up front for the surveys, he advised the Native

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396. Document A67, p 222.

397. Document A67, pp 393, 395–396, 403–404; doc A67(a), vol 1, pp 265–268; doc A60, pp 1157–1159.

398. Document A79, pp 300–301.

399. Document A67(a), vol 1, pp 174–177; doc A67, pp 229, 231–232, 253–254; 'Reports from Officers in Native Districts', AJHR, 1890, vol 1, G–2, pp 3–6.

400. Other Tribunals have also discussed this: see doc A79, pp 12–15.

401. Document A67, pp 229–230; doc A67(a), vol 1, pp 174–177.

Department, they were not yet ‘in want of money’, and therefore under no pressure to sell.<sup>402</sup>

Nonetheless, it is clear that Te Rohe Pōtae leaders were aware of these costs, and knew they would have to either pay or accrue interest once the two-year period elapsed. As we described earlier, on two occasions in 1890 Te Rohe Pōtae leaders offered land – Te Kopua 1U and Waiaraia – to pay off survey debt, and both were important for the Crown’s purchasing programme.<sup>403</sup>

The Crown accepted such offers, but saw them only as a foot in the door. When Wilkinson paid for Te Kopua 1U, he did not tell the sellers that he had also been buying individual shares in other parts of the block. His intention was to use those shares to force a partition that would favour the Crown, thereby allowing it to begin the process of breaking up the block and allow the Crown to buy the most fertile land closest to the railway.<sup>404</sup> Wilkinson similarly saw the Waiaraia offer as an opportunity to break wider resistance to land purchasing. He hoped that Wahanui’s involvement would remove the ‘shame or dread’ which Māori landowners felt about selling their shares.<sup>405</sup>

In the event, it was not Wahanui’s actions that broke the resistance to land selling, but further pressure from the Crown. Following Wilkinson’s recommendation, the Crown in 1891 began to take steps to impose survey charges on the land and begin to charge interest.<sup>406</sup> The following year, at the surveyor general’s request, the Native Land Court issued orders imposing charges totalling some £6,348 on more than 60 blocks of the district’s land.<sup>407</sup> In the absence of effective means to raise these funds, Te Rohe Pōtae Māori landowners could either sell their shares, or watch as interest accumulated on the charges. Many took the former option.<sup>408</sup>

Following Waiaraia, tribal and hapū leaders sold several more blocks to cover survey liens for their remaining lands. Husbands and Mitchell listed these blocks as: Taurangi (10,000 acres, sold by Wahanui in August 1891 as part of the Waiaraia negotiation); Umukaimata 4A (5,000 acres, sold by Taonui in November 1892; Hauturu West F1 (6,000 acres, sold in May 1895); Hauturu East A (6,000 acres, sold in May 1895); Hauturu East D (5,000 acres, sold in May 1895); and Mangarapa 3 (400 acres, sold in December 1892). Together with Te Kopua 1U, the total area of

402. Wilkinson to Under-Secretary, Native Department, 27 March 1890 (doc A67(a), vol 1, pp 174–177); doc A67, pp 227–228; doc A79, p 243.

403. For the sale of Te Kopua 1U, see doc A67, pp 232–233, 240; doc A55, pp 103–104; doc A79, pp 169, 227–228; doc A60, pp 377–378. The transactions and further Crown purchasing in Te Kopua 1 are also discussed in detail in Beryl Woolford Roa, ‘“Less than a Pig”: The Alienation of Māori Land in The Northwest King Country’ (PhD thesis, University of Auckland, 2008), fols 34–62 (doc 03(a), pp 34–62). For the sale of Waiaraia, see doc A67, pp 393, 395–396, 403–404; doc A60, pp 1157–1159; doc A79, p 228. The court hearing and land transactions are also discussed in detail by Husbands and Mitchell, see doc A79, pp 557–599.

404. Document A55, pp 103–104, 109; doc A79, p 169; doc A67, pp 232–233, 240, 400–401, 442.

405. Document A67, pp 400–401, 442; doc A55, p 109.

406. Document A67(a), vol 1, pp 309–310; doc A67, p 232.

407. Document A79, pp 242–244.

408. Document A79, pp 244–245.

these blocks comes to 33,438 acres.<sup>409</sup> It is not clear why Husbands and Mitchell did not include the Waiaraia sale (10,000 acres). They also separately mentioned Ratomokia 2A (5,626 acres, sold in March 1894) as having been sold to cover survey costs,<sup>410</sup> and Boulton referred to Umukaimata 4 (11,000 acres) as having been set aside by Taonui in order to cover survey costs.<sup>411</sup> If these blocks are included, the total area comes to 50,064 acres. More than half of that was in the southern border areas where Whanganui hapū also had claims.

Even though tribal or hapū leaders negotiated these sales, there was a coercive element to all of them, since (as the Crown has conceded) they could not readily raise the substantial funds involved by means other than land sales.<sup>412</sup> This difficulty was summed up by Te Moerua Natanahira, one of the owners of Kinohaku West, who wrote to the Native Minister in 1893 that the Crown would have to take land because ‘we have no money . . . to pay the surveyor.’<sup>413</sup> Direct pressure was also applied in most cases. Wahanui offered parts of Taurangi and Ratomokia only after Wilkinson threatened to withdraw from negotiations and leave him with no means of repaying survey liens on remaining hapū lands. The Ratomokia, Umukaimata, Hauturu, and Mangarapa sales all occurred after the Crown had begun to charge interest on the survey liens, and after Cadman and Ballance had threatened to take land by compulsion if it was not offered voluntarily.

On a small number of occasions, Māori landowners were able to find cash to pay survey liens, but only where the amounts involved were relatively small. Husbands and Mitchell listed one such occurrence in 1892 (in Hauturu East), two in 1894, and three in 1895. The number increased later in the decade, possibly as a result of owners applying the proceeds of sales of other blocks to pay off their debts on land they were keeping. In all, only 22 such instances were recorded between 1892 and 1901, and the amounts involved were typically fairly small, rarely exceeding £50.<sup>414</sup> But the total amount levied for survey charges in the inquiry district up to 1907, according to Husbands and Mitchell, was £23,728.<sup>415</sup> In ‘a cash poor region,’ they wrote, ‘even relatively modest charges could place a significant burden upon owners.’ Charges of hundreds and sometimes even thousands of pounds that were in fact levied on many Te Rohe Pōtae blocks ‘inevitably entailed . . . large-scale alienation.’<sup>416</sup>

Even where tribal and hapū leaders did not sell blocks to cover survey liens, survey costs were a significant motivation for sales by individuals. When the Crown acquired a block, its policy was to also take on the survey costs. It adopted this practice in acknowledgement that Māori landowners had no option but to sell

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409. Document A79, p 351; doc A67, pp 400–402; doc A95(i), Crown purchases.

410. Document A79, p 247; doc A95(i), Crown purchases.

411. Document A67, p 402; doc A60, pp 1157–1158.

412. Submission 3.4.307, pp 25–26.

413. Te Moerua Natanahira and 33 others to the Native Minister, 6 February 1893 (doc A79(a) (Husbands and Mitchell), vol 1, p 186); doc A79, p 245.

414. Document A79, p 349.

415. Document A79, p 307.

416. Document A79, p 244.

to the Crown, and that it alone was determining the price. Any individual who retained his or her land therefore faced ongoing debt and interest costs, whereas anyone who sold would get cash immediately and also have the debt cleared.<sup>417</sup>

From 23 October 1894, the Crown granted itself a further means of using survey debt to acquire land. The Native Land Court Act 1894 allowed the court to order that survey debts be repaid in land, regardless of owners' wishes. In practice, whenever Wilkinson applied to the court to be granted title over land he had purchased, he also applied for a portion of the non-sellers' land to cover their survey debts. In effect, Māori landowners were being removed from involvement in determining which of their lands would be taken in repayment of survey costs.<sup>418</sup> By this means, according to Husbands and Mitchell, the Crown acquired 16,704 acres of non-sellers' land up to 1901, in 123 subdivisions, most of which were no larger than a few hundred acres.<sup>419</sup> The land taken by this mechanism was 'particularly significant', Husbands and Mitchell concluded, 'because it involved land that Maori would otherwise not have alienated'.<sup>420</sup>

In 1896, the Crown extended this principle further. The Native Land Laws Amendment Act 1896 allowed the court, when it was awarding title, to vest a portion of the land in trust for the purpose of selling it to cover survey charges. By this mechanism, 34,340 acres of Rangitoto Tuhua land was taken for survey costs. The proportions taken ranged from 5.7 per cent of the original block up to 54 per cent for Rangitoto Tuhua 37.<sup>421</sup> The Crown conceded that the amounts taken were at times excessive.<sup>422</sup>

Altogether, Husbands and Mitchell calculated that Māori landowners sold 33,438 acres to cover survey costs, and a further 51,870 acres was taken to pay for survey charges under the Native Land Court Act 1894 or Native Land Laws Amendment Act 1896.<sup>423</sup> Boulton arrived at different estimates, but agreed that in excess of 80,000 acres was either sold or taken in order to pay survey liens.<sup>424</sup> The impacts varied widely from block to block.<sup>425</sup> According to Boulton's estimates, more than one-third of the 423-acre<sup>426</sup> Rapaura block was alienated to repay survey liens, as was 28.8 per cent of the 34,508-acre<sup>427</sup> combined area of the Taurangi blocks. Māori owners also lost 15 per cent of Hauturu West and 10.8 per cent of

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417. Document A79, pp 311–312.

418. Native Land Court Act 1894, s 65; doc A79, pp 317–322; doc A67, p 428.

419. Document A79, pp 317–318, 352–357.

420. Document A79, p 318.

421. Document A79, pp 283, 316, 323, 351–352.

422. Submission 3.4.307, pp 25–26.

423. Document A79, p 370.

424. Document A67, pp 429–430.

425. Document A67, pp 428–431; doc A79, pp 311–325.

426. Document A21, p 123. At the time of purchase, the Crown believed the block to be 456 acres: doc A67, p 431.

427. Document A21, annex 7, Taurangi and Taurangi 1A, 1B, 2, 3A, 3B, 4, and 5. At the time of purchase, the Crown believed the overall area of the Taurangi blocks to be 34,671 acres: doc A67, p 431.

Hauturu East. More than 37,000 acres of Rangitoto Tuhua land, 8 per cent of the total, was sold or taken for liens.<sup>428</sup>

The restrictions on alienation affected these amounts in two ways. First, as the Crown has conceded, the restrictions meant that Te Rohe Pōtae Māori could not pay survey charges by leasing land.<sup>429</sup> Secondly, the amount of land sold or taken to repay survey costs depended entirely on what the Crown was willing to pay in the absence of competition. Witnesses referred to several examples of Māori land-owners protesting at the prices the Crown was offering for sale blocks, and several in which owners offered sale blocks only to find that the proceeds did not cover the entire survey debt and that, therefore, more land had to be sold.<sup>430</sup> We will discuss the fairness of the prices offered in section 11.5.

#### **11.4.4 Did the Crown buy shares before boundaries or title had been determined?**

As outlined in section 11.2.1, other Tribunal reports have described the conditions that must be met for Crown purchases of Māori land to be Treaty compliant: the rightful owners must be identified, and their relative interests known; all disputes over mana or ownership must be resolved before the Crown enters negotiations; the whole community must be involved in the decision, not just individuals; the area of land must be clearly defined; the nature of the transaction must be clearly explained; the price must be fair; the transaction must not cause harm to the owners, for example by leaving them without sufficient land for their needs; and the owners must give their free and informed consent.<sup>431</sup>

##### **11.4.4.1 Purchasing before title was determined or survey was complete**

On occasions during its first few years of purchasing, the Crown did purchase individual shares before boundaries or ownership had been settled. Claimants argued<sup>432</sup> that this occurred in breach of Ballance's 16 January 1887 promise to Te Rohe Pōtae leaders that '[t]he Government would not purchase any land until the sub-divisions had been made.'<sup>433</sup> As discussed in section 11.3.2, this promise was made in the context of questions from Ormsby and others in which they argued

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428. Document A67, p 431. Douglas, Innes, and Mitchell did not provide a GIS area for the Rangitoto-Tuhua parent block.

429. Submission 3.4.307, pp 25–26. Also see doc A67, pp 306, 428.

430. Document A79, pp 324–326.

431. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 1, p 104; Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, vol 1, p 120; Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 617, 625; Waitangi Tribunal, *Report on the Orakei Claim*, p 206; Waitangi Tribunal, *The Ngai Tahu Report*, p [831]; Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p 456.

432. Submission 3.4.119, p 30.

433. 'Mr Ballance at Otorohanga', *Waikato Times*, 29 January 1887, p 3; doc A68, p 82; doc A67, p 131. Also see doc A55, p 83; doc A35, p 81.

that no purchasing should take place until the Aotea Rohe Pōtae block had been subdivided along hapū lines and titles individualised.<sup>434</sup>

During 1889, Wilkinson had advised the Native Department that purchasing should occur only in blocks where the survey had been completed and title had been determined with no appeal likely. This advice was reflected in the instructions Wilkinson received in December 1889, with one exception.<sup>435</sup> In its eagerness to get hold of the Waitomo Caves, the Crown authorised Wilkinson to begin purchasing in Hauturu East 1A and 3 in December 1889, in spite of his advice to the Native Department that surveys had not been completed and that it was possible that some owners might seek a rehearing over title.<sup>436</sup>

During 1890, Crown officials grew frustrated at the lack of progress, not only with purchasing but with readying the land for purchase by completing surveys. Hauāuru evidently protested that the Crown should not be purchasing at all, as the land had not yet been subdivided along hapū lines in accordance with Ballance's promise.<sup>437</sup> Wilkinson claimed that the Government had made no such promise, and now began to advocate for purchasing in advance of survey. The Government was initially uncertain about how to proceed, but by August 1890 the Native Department had formed the view that sketch maps were sufficient evidence of boundaries, and could be used as a basis for purchasing.<sup>438</sup>

According to Boulton, Wilkinson did purchase land in advance of survey.<sup>439</sup> However, she gave only two specific examples. The Crown proceeded with the purchase of Waiaraia in August 1891 despite having received clear warnings that the survey boundaries were wrong. Taonui, in July, had written to Wilkinson asking for the sale to be delayed until the boundaries of two neighbouring blocks, Umukaimata and Mohakatino Parininihi (which Taonui referred to as 'Poutama'), were finalised.<sup>440</sup> On the basis of advice from the surveyor general and instructions from the Native Department, Wilkinson proceeded with the purchase. A subsequent survey of Umukaimata found that 6,000 of Waiaraia's 12,360 acres belonged to the neighbouring blocks.<sup>441</sup> The owners of Umukaimata subsequently

434. 'Mr Ballance at Otorohanga', *Waikato Times*, 29 January 1887, p 3; 'The Native Minister at Otorohanga', *Waikato Times*, 27 January 1887, p 3; doc A68, p 82; doc A67, p 131.

435. Document A67, pp 201, 206–209, 214.

436. Document A67, p 201.

437. Document A67, p 241.

438. Document A67(a), vol 1, pp 174–177; doc A67, pp 241, 245–246; doc A79, pp 220–221; doc A55, p 83.

439. Document A67, p 246.

440. Document A79, pp 564–582; doc A28 (Thomas), pp 400–401; doc A67, p 404; doc A55, pp 111–112. Also see Gudgeon to chief judge regarding Mohakatino Parininihi surveys, Native Land Court, Otorohanga Minute Book 13, p 49 (doc A28(a) (Thomas document bank), vol 2, p 657); doc A60, pp 1157, 1167; doc A95(i), Crown purchases; doc A21, annex 7, Waiaraia block.

441. Document A79, pp 564–582; doc A28, pp 400–401. Also see Native Land Court, Otorohanga Minute Book 13, p 49 (doc A28(a), vol 2, p 657).



petitioned Parliament in 1907, and six years later received 2,500 acres to compensate for the error. Owners sought more land in 1925 and 1936, without result.<sup>442</sup>

In Wharepuhunga, Wilkinson was instructed to start buying individual shares in August 1890, even though the court had not yet formally issued the title, let alone considered owners' relative interests or ordered any subdivision along tribal lines. Furthermore, the external boundary was disputed by one of the owners.<sup>443</sup> The court did not issue its final judgment on the block until May 1892, by which time Wilkinson and other purchasing officers had succeeded in acquiring some or all of the shares owned by three of the four claimant groups.<sup>444</sup>

Boulton also discussed alleged irregularities in court processes, which had led Wilkinson to buy shares from owners whose rights to the land were not clear. She described a report from Wilkinson to Lewis in 1892, referring to three owners appearing on the title to Hauturu East 3 who had not appeared on the title to the Hauturu East parent block. One of those three had sold her share to the Crown before Wilkinson became aware of the issue. Similarly, the title to Hauturu East 2A named 10 people who had not been on the title to Hauturu East 2.<sup>445</sup>

According to Wilkinson, Judge Gudgeon of the Native Land Court had confirmed that no one should be listed on a subdivision title who had not been on the title to the parent block. Wilkinson was clearly concerned: he regarded it as 'unfortunate' that he had purchased one of the questionable shares. He recommended that the Native Department check all Te Rohe Pōtae subdivision lists to ensure that any irregularities could be resolved. It is not clear how the department responded, if at all.<sup>446</sup>

Boulton also referred to 1892 allegations of irregularities on the titles to the Puketarata, Puketarata 6, Tokanui 1, and Pokuru blocks. According to her, a settler claimed that some of the owners were missing from the titles to these blocks, while others appeared on the title without having any legitimate interest. The settler claimed that these matters would soon be put before the court, though it is not clear whether that occurred.<sup>447</sup> The Crown had been actively purchasing in the Puketarata blocks since 1890, and in 1894 partitioned its interests in 15 Puketarata blocks.<sup>448</sup> It purchased Pokuru 2E in 1898. There is no record of it purchasing shares in Tokanui during the 1890s.<sup>449</sup>

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442. Document A28, pp 400–401; doc A79, pp 582–594.

443. Document A60, pp 1208–1224, 1227–1233; doc A79, pp 236–237, 248–249, 254; doc A55, pp 112–113; doc A67, p 210; 'The Wharepuhunga Block: Judgment of the Native Land Court', *New Zealand Herald*, 18 May 1892, p 3.

444. Document A60, pp 1227–1228; 'The Wharepuhunga Block: Judgment of the Native Land Court', *New Zealand Herald*, 18 May 1892, p 3.

445. Document A67, pp 239–240; doc A67(a), vol 1, pp 316–318.

446. Document A67, p 239; Wilkinson to Sheridan, 29 January 1892 (doc A67(a), vol 1, pp 316–318).

447. Document A67, p 239; doc A67(a), vol 1, p 314.

448. Document A79, p 265.

449. Document A95(i), Crown purchases.

**11.4.4.2 Purchasing before relative interests were defined**

Many of the blocks in Te Rohe Pōtae had large numbers of owners, sometimes numbering in the hundreds. Each of those owners had different connections to the land. Some had deep ancestral connections which had been kept alive through continuous occupation over many generations. Others had ancestral connections, but they and their immediate forebears lived in other parts of the district. Others had left the district entirely some generations earlier, following Te Rauparaha to Kapiti or emigrating elsewhere, and were included on the title out of ‘aroha’ (often translated at the time as ‘affection’). Some men were on titles only through marriage to women with rights in the land.<sup>450</sup> Hone Kaora of Ngāti Hikairo, explaining ownership lists for Kāwhia subdivisions, told the court that each had ‘the largest owners’, ‘the smaller’, and ‘those admitted through “aroha”’.<sup>451</sup> The exact picture varied from one land block to the next, but it was common for each block to have a number of owners who were on the title through distant ancestral connection that was not supported by ahi kā – that is, by active occupation or use.<sup>452</sup>

The inclusion of owners with differing interests could have significant implications for the Crown’s land purchasing operations. First, it meant that some blocks contained owners with little connection to the land, who were therefore vulnerable to selling. Secondly, until relative interests were defined, no one could be certain of the relative value of any owner’s shares. If the Crown purchased on the basis that all shares were equal, those with lesser interests would be overpaid and those with greater interests would be underpaid.<sup>453</sup> From August 1888, whenever the Native Land Court awarded title to a block of land it was required also to determine relative interests.<sup>454</sup> But, prior to 1892, the court in Ōtorohanga typically neglected this requirement, possibly at the request of owners who were reluctant to complete the process of title determination and therefore render their land vulnerable to sale.<sup>455</sup>

During 1889, Crown officials considered how to handle this issue, and decided to start purchasing anyway and to assume that all shares were of equal value. By doing this, Lewis reasoned, the owners with greater interests would realise they were likely to miss out and would quickly return to the court seeking definition of relative interests.<sup>456</sup> Te Rohe Pōtae leaders expressed their clear opposition to this approach. Hauāuru, as noted above, regarded it as a breach of Ballance’s 1887 promise that purchasing would not begin until the title determination and

450. Document A79, pp 193–194, 217–218; doc A67, pp 234–236. Also see ‘The Wharepuhunga Block: Judgment of the Native Land Court’, *New Zealand Herald*, 18 May 1892, p 3; ‘Reports from Officers in Native Districts’, AJHR, 1891, G-5, p 4.

451. 9 Otorohanga MB 86 (doc A79, p 194). Also see Wilkinson to Under-Secretary, Native Department, 10 June 1891, AJHR, 1891, G-5, p 4; doc A67, p 236.

452. Document A67, pp 236, 240–241; doc A79, pp 236–242; ‘The Wharepuhunga Block: Judgment of the Native Land Court’, *New Zealand Herald*, 18 May 1892, p 3.

453. Document A67, pp 236–241; doc A79, pp 236–242, 248–249.

454. Document A79, pp 219–220; doc A67, p 212.

455. Document A79, pp 236–242; doc A67, pp 234–245.

456. Document A67, pp 207–209.

subdivision processes were complete.<sup>457</sup> Owners of Puketarata, Takotokoraha, Maungarangi, and Ouruwhero wrote to the Native Minister in May 1890 warning that Crown purchases before relative interests were defined would inevitably become the subject of grievances or disputes, and asking that the Crown hold off.<sup>458</sup> Likewise, some of the Ngāti Raukawa owners of Wharepuhunga wrote to Wilkinson in February 1891 with the same warning.<sup>459</sup> Owners of Te Kopua and other blocks expressed similar misgivings.<sup>460</sup> The Crown's response was not to hold off purchasing. Rather, it sought to persuade owners to return to the court to define relative interests, and it also pressured the court to give priority to this work, which it did from 1892. In the last six months of that year, relative interests were defined for more than 100 land blocks or subdivisions.<sup>461</sup>

None of the witnesses provided a definitive list of blocks in which purchasing progressed before relative interests were known. The relatively small number of individual shares purchased during 1890 and 1891 probably meant it was not a major issue in most blocks. Boulton did describe examples of owners being underpaid in Te Kopua<sup>462</sup> and of absentee owners being overpaid in Wharepuhunga.<sup>463</sup> We will discuss these in section 11.5.

#### 11.4.5 What methods did the Crown use to acquire shares from individuals?

Once Wilkinson had used survey charges to break Te Rohe Pōtae Māori resistance to sales, he was able to purchase by the usual Crown method of acquiring geographically undefined shares from individuals. This was the method by which he completed the vast majority of Crown purchases in the district. Husbands and Mitchell described the process:

Armed with pre-prepared purchase deeds that appear to the casual eye like modern day petitions with pre-printed lines and columns for the names and signatures of 'the vendors' and 'attesting witnesses,' the land purchase officer [Wilkinson] actively pursued the interest of every owner. In return for the owner's signature on the deed agreeing to 'surrender, convey and assure unto her Majesty the Queen' their share of the land in question, the land purchase officer provided the seller with a cheque for his or her proportion of the block's purchase price calculated according to their relative interest.<sup>464</sup>

The success of this approach depended on Wilkinson's tireless pursuit of individual signatures. As Husbands and Mitchell described it, he criss-crossed the

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457. Document A55, p 83.

458. Document A67, p 240.

459. Document A60, pp 1217–1218, 1221–1222. Also see doc A55, p 113.

460. Document A67, pp 240–241.

461. Document A79, pp 238–239.

462. Document A67, pp 237–238. Also see doc A55, pp 103–104.

463. Document A79, p 237; doc A60, pp 1217–1218, 1229–1230, 1233–1234.

464. Document A79, pp 247–248.

region seeking the handful of individuals in each block who might be persuaded to sell their shares, despite rangatira and communal opposition and despite their own sense of shame.<sup>465</sup>

Success also depended on Wilkinson's success at identifying owners who were most vulnerable to his efforts at persuasion, including those with least interest in the land and those most in direct need of cash. As already discussed, creating and exploiting 'want of money' was an important element of the Crown's programme for the whole district. The hybrid land title system introduced in this and other districts made it difficult for Māori landowners to manage land collectively and therefore mitigated against development. The restrictions on alienation further hampered development by preventing owners from leasing or borrowing to raise capital. And the Crown conspicuously failed to offer either financial or technical assistance.

The Crown was fully aware of the effects of this system, from its own previous purchasing experience and from the disastrous effects of private purchasing from individuals that had occurred since the 1860s. During the 1880s, some members of the House of Representatives had warned against further individualisation of title or purchasing from individuals. Even if the Crown had not been aware, it was certainly reminded in May 1891 when the Native Land Laws Commission issued its report. The commission described the 'confusion, loss, demoralisation, and litigation without precedent' that had followed individualisation of Māori land titles, and the inevitable results: leaders could no longer manage land transactions or collective economic endeavours. Instead, individuals could sell in secret, enticed by purchase officers who deliberately created want of money.<sup>466</sup>

The alienation of Native land under this law took its very worst form and its most disastrous tendency. It was obtained from a helpless people . . . The strength which lies in union was taken from them. The authority of their natural rulers was destroyed.

Parliament had passed other disastrous laws, the commission reported, 'but it is difficult to find a parallel to the evil consequences which have resulted'.<sup>467</sup> As noted earlier, the commission also reported that Māori throughout the country were unanimous in their opposition to individuals having rights to sell tribal and hapū lands.<sup>468</sup> The Crown seems to have taken the commission's report not as a warning but as a template. Throughout the 1890s, Wilkinson systematically purchased shares from individuals. As part of this general approach, Wilkinson actively sought opportunities to target individuals who might be particularly vulnerable to persuasion and only very rarely turned down such opportunities. We will consider

465. Document A79, p 248.

466. 'Report of the Commission Appointed to Inquire into the Subject of the Native Land Laws', AJHR, 1891, G-1, pp ix-xix.

467. 'Report of the Commission Appointed to Inquire into the Subject of the Native Land Laws', AJHR, 1891, G-1, p x.

468. 'Report of the Commission Appointed to Inquire into the Subject of the Native Land Laws', AJHR, 1891, G-1, p xix.

three categories of vulnerable seller: those who had little connection to the land; those who were in debt or urgent need of money; and minors.

**11.4.5.1 *The Wharepuhunga block: absentee sellers and those with lesser interests***

When the Native Land Court considered the Wharepuhunga block during the early 1890s, ownership was heavily contested. The block had traditionally been Ngāti Raukawa territory, but its pattern of occupation had been heavily influenced by the conflicts and migrations that occurred in the 1810s and 1820s. Most Ngāti Raukawa had migrated south to Kāpiti, and some had gone elsewhere such as Taupō, Rotorua, and Heretaunga (Hawkes Bay).<sup>469</sup> According to the court's 1892 judgment, the block was protected by Peehi Tūkorehu, who was of Ngāti Raukawa descent but had declared his affiliation to Ngāti Maniapoto, and was occupied by two of his nephews, Te Kohika (Ngāti Raukawa, Ngāti Te Koherā) and Te Ngohi Kāwhia (Ngāti Paretekawa and Ngāti Maniapoto, but also of senior Ngāti Raukawa descent; Kāwhia was a Treaty signatory and the father of Rewi Maniapoto). In turn, they were joined by others of Ngāti Raukawa who returned from Taupō and other places with Peehi's permission.<sup>470</sup> When the court finally awarded title for the Wharepuhunga block in 1892, Judge Gudgeon found that the block had 954 owners. Of those, the judge assessed that 572 had been placed on the title out of aroha, which meant (by his definition) they had ancestral connections to the land but neither they nor their recent ancestors had lived there.<sup>471</sup>

The Crown had begun purchasing in the block in August 1890, without waiting for title to be issued or relative interests defined. Armed with lists of owners from an initial court hearing in 1890, Wilkinson and the Taupouuiatia block land purchase officer William Grace targeted owners who did not live on the block.<sup>472</sup> This purchasing allowed the Crown to gain a foothold in the block. As Husbands and Mitchell observed, absentee owners were 'particularly susceptible to government offers to alienate their shares' as they were '[r]emoved from the sanction of the local community, and [had] no immediate use for the land themselves.'<sup>473</sup> It occurred despite protests from Ngāti Raukawa occupants of Wharepuhunga. In one letter, the rangatira Te Wehou Rangitutia, acknowledged as one of the block's principal owners, objected to land being sold by those whose 'fires never burned on the block.'<sup>474</sup> In another, 70 Ngāti Raukawa women informed the Native

469. 'The Wharepuhunga Block: Judgment of the Native Land Court', *New Zealand Herald*, 18 May 1892, p 3; doc A60, pp 1212–1228; doc A12 (Hearn), pp 280–285.

470. 'The Wharepuhunga Block: Judgment of the Native Land Court', *New Zealand Herald*, 18 May 1892, p 3; doc A60, pp 1212–1228; doc A12, pp 280–285. Also see doc A83 (Te Hiko), pp 215–218, 228–230; Waitangi Tribunal, *The Pouakani Report*, vol 1, p 148.

471. 'The Wharepuhunga Block: Judgment of the Native Land Court', *New Zealand Herald*, 18 May 1892, p 3; doc A60, pp 1212–1228; doc A12, pp 280–285.

472. Document A60, pp 1217–1232.

473. Document A79, p 248.

474. Wehou to Wilkinson, 3 February 1891 (doc A60, pp 1217–1218). Also see doc A55, p 113. Some sources named Te Wehou as Rangitutia Wehou.

Minister that '[t]his is the only block of land we have', and that continued Crown purchasing would leave 'the greater part of us . . . landless'.<sup>475</sup>

By the time relative interests were defined in May 1892, the Crown had already purchased shares from 159 owners, mainly from Ngāti Te Kohera, Ngāti Parekāwa, Ngāti Ngārongo, Ngāti Paretekawa, and Ngāti Whakatere.<sup>476</sup> For some of these purchases, the Crown paid a 2s 6d inducement to the Ngāti Te Koherā and Ngāti Parekāwa rangatira Ngahuru (aka Ngakuru) Te Rangikaiwhiria for each signature obtained. This occurred at Grace's suggestion – he had used similar tactics in the Tauponuiatia block. Wilkinson opposed it, but the Native Department overruled him.<sup>477</sup>

Purchasing continued after relative interests were defined. Wilkinson put a particular focus on the 200 Ngāti Raukawa whose forebears had moved to Kāpiti and who had been placed on the title out of aroha. In July 1892, the Native Department entered into an agreement with the Ōtaki postmaster, offering him a commission of 2 shillings for every signature on the Wharepuhunga sale deed. The Crown also acquired shares from sellers in Taupō, Hawkes Bay, Whakatāne, and Whanganui.<sup>478</sup> By 1894, the Crown had acquired well over one-quarter of the block's shares, almost all from people who did not live there. On 3 April, the court awarded the Crown 37,767 acres from the block's total area of 133,449 acres. The Crown continued to purchase in the block, though it is not clear who from, eventually acquiring another 20,805 acres by 1899.<sup>479</sup>

Other than Wharepuhunga, Husbands and Mitchell record that Wilkinson purchased interests from owners based in 'Porirua, Otaki, the Rangaitikei, Parihaka, Auckland and even Australia'.<sup>480</sup> These owners had interests in blocks including Hauturu West, Kawhia, Orahiri, Taharoa, Mangawhero, and Kinohaku East and West.<sup>481</sup> While the evidence is less conclusive, Paul Thomas, in his Mōkau history report, reports that the Crown purchase officers obtained signatures for the Mohakatino Parininihi block from owners based in Rotorua, Coromandel, Ōtaki, Wellington, and Auckland sold their interests.<sup>482</sup>

475. Document A60, p 1234; doc A55, pp 116–117.

476. Document A60, pp 1232–1233.

477. Document A60, pp 1220–1224; doc A67, p 246; doc A55, p 115. On one occasion in the Tauponuiatia block, Grace sought permission to reduce purchase prices and use the money saved to pay inducements to rangatira, and on another occasion he offered a rangatira 100 acres of Crown land in return for him procuring signatures. In that block, Grace had also bribed witnesses to falsify evidence before the court, and arranged with shopkeepers to provide goods to Māori on credit, in order to force them into selling their shares: doc A55, p 64; doc A67, pp 177–178, 246, 359–360; Waitangi Tribunal, *Te Kāhui Maunga*, vol 2, pp 490–491.

478. Document A79, pp 248–249; doc A60, pp 1232–1242.

479. Document A21, annex 7, Wharepuhunga block, p [3]; doc A95(i), Crown purchases.

480. Document A79, p 248.

481. Document A79(a), vol 1, pp 57–59, 81–84, 208–210.

482. Document A28, p 406.

#### 11.4.5.2 *Sellers in need of cash*

As well as targeting absentee sellers in the Wharepuhunga block, and using survey debts to leverage sales more generally, Wilkinson also sometimes targeted individuals who were considered vulnerable to sale because of want of money. This was not mere opportunism. In his 1890 annual report to the House of Representatives, Wilkinson had indicated that he intended to target Māori landowners who became indebted to European storekeepers or who fell into debt when farming operations failed.<sup>483</sup> Later, in 1897, he encouraged the Crown to build more roads so that Māori would buy wagons and buggies, thereby getting themselves into debt.<sup>484</sup>

Witnesses provided some examples of Māori landowners who offered shares for sale after they had (in the words of Husbands and Mitchell) ‘fallen upon hard times’.<sup>485</sup> Marr recorded that Wilkinson obtained his first shares in Kakepuku only after finding an owner who had fallen into debt.<sup>486</sup> Husbands and Mitchell referred to an elderly man who had fallen ill and sold his shares in a Kāwhia subdivision in December 1892 in order to obtain enough money to support him through the final months or years of his life; a kuia who sold shares in Mangauika 1 in 1896 because she was in urgent need of money; another kuia who sold shares in three Kinohaku East subdivisions because she needed money to visit a sick relative in Auckland.<sup>487</sup> Finally, Thomas provided evidence of a man trying to sell his brother’s interests in Mohakatino Parininihi due to his ‘great need of the cash.’<sup>488</sup>

#### 11.4.5.3 *Minors’ shares*

The Maori Real Estate Management Act 1888 empowered the Native Land Court to appoint trustees for any minors (people under the age of 21) who held land interests. Trustees were empowered to sell or lease land interests, but only with the approval of a Supreme Court judge. The Act required that the proceeds from any sale or lease must be held in trust by the Public Trustee, and could be paid out only with a judge’s consent.<sup>489</sup> It appears to have been routine in this inquiry district for minors to be named on the title,<sup>490</sup> and for their interests to be vested in trustees.<sup>491</sup> Te Kopua 1, for example, had 37 adults and 49 minors.<sup>492</sup>

483. Document A67, pp 228–229; doc A55, pp 75–76.

484. Document A67(a), vol 2, p 618. Wilkinson recommended roads linking Ōtorohanga with Kihikihi and Te Kūiti, and with the Kāwhia–Alexandra road.

485. Document A79, p 249.

486. Document A55, pp 122–123.

487. Document A79, p 249; doc A79(a), vol 1, pp 221–222.

488. Document A28, pp 405–406.

489. Maori Real Estate Management Act 1888, s 6. Also see doc A79, p 416; doc A67, p 247.

490. Document A67, p 247; doc A79, pp 1, 3, 149, 151, 213, 286–287.

491. Document A79, pp 1, 286–287.

492. Document A67(a), vol 1, p 212. Similarly, in the Puketarata block there were 111 minors listed on the title: doc A67(a), vol 1, pp 202–205; doc A67, pp 247–248, 418. The proportion of minors’ interests also appears to have been significant in Pirongia West: doc A67, p 164.

When the Crown began purchasing, it was reluctant to purchase minors' shares if the court had not yet defined relative interests. This was not because it opposed purchases from minors in principle, but because it was afraid of losing out if it paid full price and the Native Land Court subsequently found that the minors owned only part-shares, as was often the case. In Puketarata and Waiwhakaata in 1890, Wilkinson refused to buy minors' shares for this reason.<sup>493</sup> He showed much less reluctance once relative interests had been defined. In 1891, for example, he purchased the shares of three minors in Te Kopua 1Q. Wilkinson forwarded the proceeds to the Public Trustee, and also sent an affidavit to Wellington so the purchase could be confirmed by the Supreme Court.<sup>494</sup>

Soon afterwards he wrote to the Native Department arguing that, for small purchases of minors' shares, judicial approval should not be required, and that the payments should be made directly to the minor's trustee instead of to the Public Trustee. He gave two reasons. First, he said, the sums involved were typically very small, providing only enough to buy some clothes or blankets, and under those circumstances there was little need for 'stringent inquiry' by a judge. Secondly, that Māori adults who held minors' shares in trust were refusing to sell, because they would not receive the purchase money. Some owners were reluctant to sell for another reason: they expected land prices to increase, and wanted their children to have the benefit.<sup>495</sup> The Government quickly enacted Wilkinson's suggestions. In 1892, the law was amended to provide that minors' shares worth less than £10 could be sold without judicial approval; larger sales would still require judicial approval. That year, Wilkinson purchased six minors' shares in the Wharepuhunga block.<sup>496</sup>

In 1893, the law was amended again to allow the proceeds from sales of minors' shares worth less than £10 to be paid directly to their trustee, who was usually a parent or guardian, rather than being held in trust by the Public Trustee.<sup>497</sup> And from 1894, according to Husbands and Mitchell, 'the Crown's land purchase officers appear to have been largely uninhibited in their acquisition of minors' interests in blocks that were under purchase.'<sup>498</sup> They gave two examples. One was Mahoenui A, which was owned by 19 minors; by 1899, the Crown had purchased the shares of 16.<sup>499</sup> The other was Pirongia West, where the Crown purchased 163 individual shares in the three years to November 1897, of which 38 belonged to

493. Document A67, pp 217, 237, 247–248; doc A79, pp 417–418; doc A55, p 82.

494. Document A67, pp 248–249; doc A79, p 418; Wilkinson to Under-Secretary, Native Department, 27 May 1891 (doc A67(a), vol 1, pp 300–302); Wilkinson to Under-Secretary, Native Department, 28 May 1891 (doc A67(a), vol 1, pp 304–307).

495. Wilkinson to Under-Secretary, Native Department, 27 May 1891 (doc A67(a), vol 1, p 301); doc A79, pp 416–418; doc A67, p 249; doc A55, p 61.

496. Native Land Purchases Act 1892, s15; doc A67, p 249; doc A79, pp 417–419.

497. Maori Real Estate Management Act 1888 Amendment Act 1893, s 4; doc A67, p 249; doc A79, pp 417–419.

498. Document A79, p 419.

499. Document A79, pp 419–420.



minors. Twenty of those were acquired within the first month of purchasing.<sup>500</sup> 'If the Pirongia West deed is any indication, by the middle of the 1890s the Crown land purchase officer was making little distinction between adults and minors when acquiring interests in a block, purchasing from both as the occasion arrived.'<sup>501</sup>

#### 11.4.6 Did the Crown buy land that the court had declared inalienable?

The Native Land Court Act 1886 Amendment Act 1888 directed the court, when awarding title, to determine whether each owner had sufficient land for his support. If an owner did not have sufficient land, the court was required to determine how much land the owner needed for his support and declare that land inalienable.<sup>502</sup> The court could also remove the restrictions, but only if a majority of owners applied to the court and all owners agreed, and then only if the owners would continue to have sufficient land for their occupation and support.<sup>503</sup>

In practice, as land blocks were going through the court, Māori owners frequently asked for restrictions to be imposed under which specific subdivisions would be inalienable. At Wahanui's request, the entire 1886 Rohe Pōtae block was declared inalienable when it was created, apparently to protect owners from any attempts to purchase before the block was divided into tribal and hapū subdivisions.<sup>504</sup> Subsequently, as the subdivisions were created, the court declared a significant number of blocks inalienable. A schedule prepared by the Native Department for the year ending 31 December 1889 listed 24 blocks that had been declared inalienable, ranging in size from 12 acres for Kakepuku 8 to 36,288 acres for Pirongia West. Together, these blocks covered an area of 74,345 acres (see table 11.4).<sup>505</sup> Husbands and Mitchell identified a further 19 blocks with a combined area of 15,537 acres,<sup>506</sup> and Berghan identified another seven blocks with a combined area of 58,525 acres.<sup>507</sup> Most of these blocks were declared inalienable after Wilkinson's October 1889 memorandum.

The Tribunal in *Te Urewera* regarded these court-ordered restrictions as important safeguards, ensuring that communities retained sufficient land and, at least in theory, giving communities some degree of collective control over alienations. 'In reality,' however, the restrictions offered no protection at all, as 'the Crown purchased individual interests as if there were no restrictions on titles.'<sup>508</sup> In this district, the Crown appears to have shown some initial reluctance to purchase land that had been declared inalienable. In October 1889, when he was identifying

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500. Document A79, p 419.

501. Document A79, p 427. Also see pp 419–420.

502. Native Land Court Act 1886 Amendment Act 1888, s 13.

503. Native Land Court Act 1886 Amendment Act 1888, s 6.

504. Document A79, pp 151–152. Also see doc A60, p 86.

505. Document A91, vol 2, pp 315–319.

506. Document A79, pp 194–195, 267–268, 422, 452.

507. Document A60, pp 304–305, 382, 525, 530, 561, 579–580, 775, 1045.

508. Waitangi Tribunal, *Te Urewera*, vol 3, pp 1272–1273.

blocks for purchase, Wilkinson informed the Native Department that he '[took] it for granted that such restrictions would not interfere with Govt purchases.'<sup>509</sup> But, a year later, the Native Department instructed him not to buy shares in the Pukeroa Hangatiki block, which the court had declared inalienable except by lease.<sup>510</sup> This did not mean that the Crown opposed purchasing in such blocks; rather, it was not certain of its legal position. Its response to this was to change the law, weakening the protection offered to land that had been declared inalienable.

The Native Land Laws Amendment Act 1890 allowed the Native Land Court to remove restrictions if a simple majority of owners agreed; the consent of all owners was no longer needed.<sup>511</sup> Then in 1892, the Native Land Purchases Act allowed the governor to remove or declare void any court-ordered restrictions on alienation of Māori land 'for the purposes of a sale to Her Majesty'.<sup>512</sup> During 1892, Wilkinson completed the purchase of the 200-acre Whakairoiro 4 and the 400-acre Mangarapa 3. In both cases, the court had declared the parent blocks inalienable except by lease or with the governor's consent. In 1893, Wilkinson made his first share purchases in the Te Kuiti block, which was subject to similar restrictions. We do not have evidence that the governor had removed the court-ordered restrictions, though that seems likely.<sup>513</sup>

In 1894, the Crown exempted itself from court-ordered restrictions. Section 76 of the Native Land Court Act 1894 provided that:

Nothing in this Act contained shall limit or affect the power of the Crown to purchase or acquire any estate, share, right, or interest in any land or Native land, nor the power of any Native to cede, sell, or transfer any such estate, share, rights, or interest to the Crown.

Section 52 of the Act also empowered the court to remove restrictions with the consent of at least one-third of the owners – the consent of a majority was no longer required, let alone the consent of all owners.

From 1895 onwards, Crown purchasing in formerly restricted blocks accelerated.<sup>514</sup> In all, as shown in table 11.4, during the calendar years 1890 to 1904 the Crown completed purchases in 25 of the 50 blocks that had been declared inalienable. Its purchases during that period amounted to 36,489 acres from the 148,407 acres that had been declared inalienable. These figures include only completed

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509. Wilkinson to Lewis, Under-Secretary, Native Department, 24 October 1889 (doc A67(a), vol 1, p 125; doc A67, p 215). Wilkinson expressed disregard for the restrictions on other occasions: see doc A60, p 1292.

510. Document A79, p 424.

511. Native Land Laws Amendment Act 1890, s 3.

512. Native Land Purchases Act 1892, s 14.

513. Document A79, pp 424–425, 452; doc A95(i), Crown purchases; doc A67(a), vol 1, pp 129–131.

514. Document A79, pp 424–425, 452; doc A95(i), Crown purchases.

purchases; the Crown may have acquired shares in many more blocks during this period.<sup>515</sup>

The total area of Crown purchases in inalienable blocks might also be much larger. Berghan recorded that the Ngāti Raukawa owners of the 133,449-acre<sup>516</sup> Wharepuhunga block asked in 1888 for it to be declared inalienable. However, if the order was made, it appears to have been lifted when Ngāti Raukawa leaders later asked for the block to be vested in King Tāwhiao.<sup>517</sup> Between 1890 and 1905, the Crown purchased 58,572 acres in this block, against the clear wishes of some of the principal owners.<sup>518</sup> Berghan also noted that ‘several’ Rangitoto Tuhua blocks had been declared inalienable but did not specify which blocks or the dates on which the orders were made.<sup>519</sup> The titles were typically issued for the Rangitoto Tuhua blocks between 1897 and 1900.<sup>520</sup> As shown in table 11.7, the Crown purchased just under 25,000 acres in Rangitoto Tuhua blocks during 1900–1905.

The significance of these purchases is that Māori landowners had expressed clear wishes to the court that their lands be made inalienable (or, in some cases, that their lands be made inalienable by sale or mortgage, while leasing was permitted). Whereas the Crown’s restrictions prohibited only private transactions, the owners intended these restrictions to also apply to the Crown and to protect land for future generations.

One measure of owners’ opposition to sales in these blocks is the relatively slow progress Wilkinson typically made. In Kinohaku East 5, for example, he purchased the first share in April 1896, but four years later had succeeded in acquiring only 15 shares from the block’s 54 owners.<sup>521</sup> Similarly, in several of the Puketarata blocks, Wilkinson succeeded in acquiring only a small proportion of the individual shares.<sup>522</sup>

Owners also directly expressed their opposition to Crown purchasing in these blocks. In 1894, Hotutaua Pakukohatu and 11 other rangatira appealed to Seddon to ‘give full effect’ to the court’s restrictions over Kinohaku East 1 (Ototoika). The land, they said, had been occupied by themselves and their forebears for seven generations. It ‘should be reserved permanently for us and our descendants’, and should ‘remain as a whole for the people.’<sup>523</sup> This appears to have been a response to Wilkinson’s activities: in the same month, he purchased the Crown’s first four

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515. Husbands and Mitchell recorded the timing of individual share purchases for some of the blocks: doc A79, p 452. Berghan recorded that almost all of Orahiri 3 was partitioned and awarded to the Crown in 1907. However, other sources do not record Crown purchases in this block at this time: doc A60, p 616; doc A95(i), Crown purchases; doc A21, annex 7, Orahiri block.

516. Document A21, annex 7, Wharepuhunga blocks.

517. Document A60, pp 1209, 1212–1216; doc A79, p 178.

518. Document A21, annex 7, Wharepuhunga blocks.

519. Document A60, p 914.

520. Document A79, p 282.

521. Document A79, pp 424–425.

522. Document A79, pp 267, 424–425; doc A95(i), Crown purchases.

523. Hotutaua Pakukohatu and 11 others to premier, 20 March 1894 (doc A79, pp 270–271, 425).

shares in Ototoika.<sup>524</sup> We do not know if they received any response from Seddon. The Crown continued with its purchasing plans. In 1895, Wilkinson dismissed the owners' claims to the land through ancestral connection and continuous occupation as 'mere sentiment'. He acknowledged that Pakukohatu and the other writers were 'leading members of the tribe', but advocated that each of the block's 187 owners 'might be left to decide themselves whether he will or will not sell his interest'.<sup>525</sup> Wilkinson continued purchasing and by 1898 had 16 more shares, enough for a Crown subdivision of 153 acres.<sup>526</sup>

Similarly, Hoani Haereiti told the court in 1899 that, when the title was investigated in 1889, he had 'asked that the [Marokopa block] land be made inalienable so that the land be retained for the people'. The court had made such an order, and he could not understand why the Crown was now applying to have the block partitioned. The judge responded that, under the law, a court order could not prevent the Crown from buying. The Crown was awarded almost half of the 5,000-acre block.<sup>527</sup>

#### 11.4.7 Did the Crown establish reserves, and did it later buy reserve land?

Before the Crown began to buy land in the district, the Native Minister (Mitchelson) had promised that reserves would be set aside to ensure that Māori could retain sufficient land for their needs.<sup>528</sup> Soon afterwards, the Native Department advised the Minister that 10 per cent of all land the Crown purchased should be set aside as reserves, not to protect Māori from landlessness, but as 'an incentive to sell'.<sup>529</sup> Wilkinson's instructions subsequently gave him discretion to offer reserves on 'large blocks', on condition that the Crown selected their location, they did not include any railway land, and they were not offered if Wilkinson considered them 'undesirable or unnecessary'.<sup>530</sup> These exchanges revealed much about the Crown's approach. When Te Rohe Pōtae leaders had agreed to place their land before the Native Land Court, their intention was that they would manage the settlement process, including deciding which lands might be offered for sale or lease, and which would be retained. The Crown's approach was that it should make those decisions.

In practice, relatively few reserves were made. Boulton identified 23,<sup>531</sup> all created as part of early purchases. Most were very small, ranging from half an acre

524. Document A79, pp 271–272.

525. Wilkinson to Sheridan, 14 May 1895 (doc A79, p 271).

526. Document A79, p 271.

527. 34 Otorohanga MB 170–171 (doc A79, pp 425–426). Also see doc A79, pp 271–272; doc A95(i), Crown purchases.

528. Document A67, pp 185–186, 216; doc A67(a), vol 1, pp 102–104.

529. Lewis to Mitchelson, 18 December 1889 (doc A67(a), vol 1, p 137). Also see doc A55, p 89; doc A67, pp 249–250.

530. Lewis to Wilkinson, 17 January 1890 (doc A67(a), vol 1, pp 157–159); doc A91, vol 2, pp 303–305; doc A67, pp 219–220, 223–224.

531. Thirteen were in Puketarata, three were in Te Kopua, two were in Mangauika, others were in Maungarangi, Ouruwhero, Takotokoraha, Waiwhakaata, and Wharepuhunga: doc A67, pp 432–433. The Crown submitted that 24 reserves were made but did not identify them: submission 3.4.307, p 39.

to 190 acres. The exception was the Wharepuhunga Reserve, created as part of the Crown's initial purchases from that block.<sup>532</sup> From 1891, Wilkinson began to offer higher prices (typically, an extra sixpence per acre) to sellers who agreed to forego reserves. Wilkinson explained to the Native Department that the few owners who were willing to sell typically did not live on the land and had little connection to it, and therefore preferred cash to reserves. Those who did live on a block would not sell.<sup>533</sup> Two years later, he advised the Native Department:

A large number of owners have, when selling their shares to me, expressed a wish to get the cash represented by the area of reserves they were entitled to as they never intend to live on the block and therefore set no store on the reserves. It is a pity they were ever made.<sup>534</sup>

It appears that, after 1894, reserves were only rarely created.<sup>535</sup> In all, the Crown acquired just under 640,000 acres<sup>536</sup> of Māori land in this district during 1890–1905, and appears to have set aside only 5,009 acres in reserves, three-quarters of that in the Wharepuhunga Reserve block.<sup>537</sup> We note that the Crown submitted that the reserves 'made up ten per cent of the area sold in the 1890s'.<sup>538</sup> We assume that this submission was made in error. The Crown purchased 531,130 acres during the 1890s; the reserves amounted to less than one per cent.<sup>539</sup>

Of the 23 reserves created, three ended up in Crown ownership. The first of those was the 30-acre Puketarata 2D Reserve, which had been created in 1897. Two years later, two of the owners offered to sell it, saying they had land elsewhere. Wilkinson sought advice about the proposal, and the surveyor general responded that small reserves of the nature of Puketarata 2D were of 'no practical use' to Māori, and should be acquired wherever possible. Their existence in the midst of Crown lands inevitably interfered with the subdivision process and created a need for special road access.<sup>540</sup> The sale went ahead.<sup>541</sup> In 1910, the Crown purchased the 118-acre Te Kopua 1Q Reserve.<sup>542</sup> In 1917, it purchased the 3,769-acre

532. Document A67, pp 432–433, 472. Berghan identified another five purchases in which 10 per cent reserves were supposed to be returned to sellers. However, we could find no evidence that reserves were set aside: doc A60, pp 1274–1275.

533. Document A67, pp 371–372, 381, 484; doc A55, p 89; doc A60, pp 1139–1140, 1199, 1205–1206.

534. Wilkinson to Sheridan, 2 October 1893 (doc A60, p 1241).

535. Document A60, pp 378, 452, 531, 68, 826–828, 1075, 1241.

536. Document A21, p 131 tbl B5.

537. Document A67, pp 432–433, 472. Berghan identified another five purchases in which 10 per cent reserves were supposed to be returned to sellers. However, we could find no evidence that reserves were set aside: doc A60, pp 1274–1275.

538. Submission 3.4.307, p 39.

539. Document A21, p 127. Douglas, Innes and Mitchell incorrectly recorded 310.5 acres of 1899 purchases as 1889. Those purchases have been included in the 1890s purchasing figures.

540. Chief surveyor to Sheridan, 3 December 1898 (doc A67, pp 433–434).

541. Document A67, pp 432–433; doc A95(i), Crown purchases.

542. Document A21, annex 7, Te Kopua blocks (Pirongia SD), p [4].

Wharepuhunga Reserve block.<sup>543</sup> In total, the Crown purchased 3,917 acres – or 78 per cent – of the small area set aside for reserves between 1890 and 1905.

#### 11.4.8 Did the Crown protect Māori landowners' interests when it partitioned land?

As we have seen, the Crown used various tactics to break down communal resistance to land sales. The Crown leveraged survey debt. It bypassed communities and their leaders, buying shares in secret from individual sellers. It targeted owners with little connection to the land, including absentees in Kāpiti and elsewhere. It sometimes targeted owners who had fallen on hard times – some of whose 'hard times' it may have intentionally contributed to by creating 'want of money'. It threatened to take land by compulsion if community leaders did not sell. And it bought indiscriminately, acquiring shares wherever it could, seeking to strangle commercial opportunities while encouraging more cash-commodity consumption and related debt, relievable only through further land sales.

It supported these on-the-ground tactics with legal and economic mechanisms that tended to break down communal authority, hamper land development, and undermine economic well-being. The land title regime destroyed centuries-old communal relationships with land, replacing them with individual tradeable shares. It was the worst of all worlds, in that individuals could sell whenever they chose, which undermined any attempt to develop land collectively, but no individual had a plot of his or her own.<sup>544</sup> As other Tribunals have found, this was a system that led inevitably towards alienation and was designed to do so.<sup>545</sup>

Alongside this land title regime, the restrictions on alienation meant that Māori communities could not lease or mortgage land. While a few were able to raise capital by selling timber rights or entering other resource arrangements which were not covered by the restrictions, most had no means of obtaining capital other than sale and no one they could sell to except the Crown. This, too, undermined development and made owners vulnerable to sale.

The collapse of the negotiations with Cadman at the end of 1891 marked the end of any effective communal resistance to the Crown's purchasing plans. Less than a decade earlier, the district had been governed autonomously under the mana of its hapū and the guidance of senior leaders such as Taonui and Wahanui; now, to use Wilkinson's words, their influence had been 'almost entirely destroyed', to the point where they could no longer determine which lands would be retained and which would be sold.<sup>546</sup>

As discussed earlier, from 1892 the pace of purchasing increased. Taonui died suddenly towards the end of that year, aged 50.<sup>547</sup> There was a further upswing

543. Document A60, p 1256; doc A21, annex 7, Wharepuhunga blocks, p 4.

544. Document A79, p 242.

545. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, pp 443–444; Waitangi Tribunal, *Te Urewera*, vol 3, pp 1272–1273; Waitangi Tribunal, *The Hauraki Report*, vol 2, pp 784–785.

546. 'Reports from Officers in Native Districts', AJHR, 1892, G-3, p 5. Also see doc A68, p 144; doc A79, pp 185–186.

547. 'Death of Taonui', *Evening Post*, 6 December 1892, p 3.

in Crown purchasing in 1893 and a dramatic increase in 1894, when the Native Land Court awarded the Crown title to 122,640 acres.<sup>548</sup> Rewi Maniapoto died in June of that year,<sup>549</sup> and he was followed in August by his comrade-in-arms King Tāwhiao.<sup>550</sup> We cannot know if the passing of this generation of leaders contributed to the breakdown of communal resistance to land sales, or merely coincided with it, but by 1894 it was clear that the Crown's purchasing tactics were working. They were working, furthermore, precisely because they had systematically broken down the influence of rangatira over people and land.

One of the measures of this was the extent to which Crown purchasing occurred in spite of opposition from Māori communities and their leaders. Aside from the survey blocks described above, almost all of the purchasing in this district was completed by way of individual shares and without general community involvement.<sup>551</sup> We are aware of only two exceptions. One was the sale of an 85-acre subdivision of Kakepuku in December 1892, which followed a community meeting in Ōtorohanga.<sup>552</sup> The second was the sale of 15,392 acres<sup>553</sup> of Pirongia West land in 1895, which was brokered by the Ngāti Hikairo rangatira Hone Kaora, who persuaded the Crown to increase its price from 3s 6d to 5 shillings per acre in return for delivering more than half of the block's shares.<sup>554</sup>

Other than those isolated examples, the general approach was for Wilkinson to pick off individual shares one or two at a time until he felt he was not likely to be able to get any more. He would then apply to the Native Land Court to have the Crown's interests in the block defined and partitioned off. This purchasing process was slow and painstaking. In the 10,104-acre Ouruwhero, for example, Wilkinson obtained his first signature on 29 May 1890 and a further 10 during the rest of that year. They were followed by four in 1891, 20 in 1892, 10 in 1893, and three in 1894. The block had 205 owners, so in nearly four years of trying he had acquired the shares of just one-quarter of the owners. Wilkinson then applied to the Native Land Court for partition. This resulted in the block being split, with the Crown awarded a 1,761-acre portion in March 1894.<sup>555</sup> Wilkinson then began another round of purchasing from individuals, and in 1899 the owners' remaining land was split 25 ways, with the Crown acquiring four portions totalling 2,518 acres.<sup>556</sup> In all, the Crown acquired 4,289 out of 10,104 acres – or 43 per cent – over 10 years.

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548. Document A21, p131 tbl B5.

549. 'Death of Rewi: A Famous Chieftain of the Olden Time', *New Zealand Herald*, 23 June 1894, p3.

550. 'Death of Tawhiao', *Waikato Times*, 28 August 1894, p3.

551. Document A79, pp 247–250; doc A67(a), vol 2, pp 349, 358–359, 370–371, 397, 416, 421, 464, 513, 525, 634, 652.

552. Document A79, p 247; doc A60, p 206.

553. The subdivisions sold were Pirongia West 1C1 (1,459 acres) and 3A (13,933 acres): doc A21, annex 7, Pirongia West blocks; doc A95(i), Crown purchases.

554. Document A79, p 247; doc A60, pp 753–756.

555. Document A79, pp 249–250; doc A95(i), Crown purchases; doc A60, pp 688–689; doc A21, annex 7, Ouruwhero.

556. Document A60, pp 689–690.

Similarly, in the Puketarata block, Wilkinson obtained signatures from 27 owners (out of 397) during 1890, nine in 1891, 61 in 1892, 51 in 1893, and seven in January 1894, coming to a grand total of 155 or 39 per cent of the owners.<sup>557</sup> During 1893 and 1894, the Crown was awarded title to no fewer than 16 separate Puketarata blocks, with a combined land area of 4,671 acres or 26 per cent of the total block.<sup>558</sup> Again, this was followed by further purchasing. The Crown acquired title to five more subdivisions in 1897, six more in 1898, and two in 1899.<sup>559</sup>

The same pattern was repeated throughout the district, with most blocks subjected to successive waves of purchasing and partitioning. According to Husbands and Mitchell, other than judges and assessors, Wilkinson was the principal actor in the court from 1892 through to the early decades of the following century, largely due to his repeated applications for land to be partitioned.<sup>560</sup> He applied for partitions 'at least 300 times' between March 1894 and December 1901.<sup>561</sup> The peak years for partitioning occurred in 1894 and 1898, with smaller spikes in 1895, 1897, 1899, and 1901, but Wilkinson remained highly active in the years between, acquiring individual shares.<sup>562</sup>

This pattern of purchasing had two important implications for Māori land-owners. First, each share transaction was between the seller and the Crown, and many took place in secret. Non-sellers could not know whether the Crown had bought shares in their land, and if so how much. Secondly, at the time of sale no one involved – the Crown, sellers, and non-sellers – could know exactly which area of land was being sold. It was only when the Crown applied to the court to partition its interests that the shares were converted to actual land.<sup>563</sup>

Wilkinson described his standard approach to partitioning in a memorandum to Sheridan in November 1900. There, Wilkinson explained how, after acquiring shares, he checked the signatures on the deeds, calculated how much land each seller owned, calculated the survey liens and interest outstanding on the land that was being sold. Having determined how much land the Crown had acquired, either by purchase or survey lien, Wilkinson then held meetings with the non-sellers, 'with a view to settling outside the Court how we are to divide the land.'<sup>564</sup>

On most occasions, Wilkinson reported, he and the owners reached agreement out of court. He would then appear in court and apply for the agreed partition.<sup>565</sup> This appears to have occurred for almost all of the Crown's purchases. In 1894, for example, Wilkinson reported that he had reached out of court agreement with the non-sellers of 40 blocks he was placing before the court for partition.

557. Document A79, p 250.

558. Document A95(i), Crown purchases. Also see doc A60, pp 826–827; doc A21, annex 7, Puketarata.

559. Document A60, pp 831–832.

560. Document A79, p 253.

561. Document A79, p 251.

562. Document A79, pp 256–269.

563. Document A67, pp 217–218.

564. Wilkinson to Sheridan, 24 November 1890 (doc A79(a), vol 1, p 116); doc A79, pp 253–254.

565. Document A79(a), vol 1, p 116; doc A79, pp 253–254.



Similarly, in 1898 he reported that he had reached agreement in a single day over the partitioning of 11 Kinohaku West subdivisions, three Kinohaku East subdivisions, as well as Taharoa B and Taorua 2.<sup>566</sup>

Where agreement could not be reached, he pursued the Crown's interests in court. In 1898, for example, he defended the Crown's proposed partitioning of Umukaimata 1, arguing that it would be inequitable if the non-sellers – led by Tangihaere – were to get 'all the good land'.<sup>567</sup> The court only partially accepted his arguments, giving Tangihaere a single block instead of the two that Wilkinson had proposed, but giving Wilkinson some of the land that he wanted.<sup>568</sup>

Wilkinson was similarly unyielding in his 1893 negotiations with Wharepuhunga non-sellers. Having made one small adjustment to his proposed boundary, he told non-sellers he would compromise no more, and would 'fight the matter out in Court if necessary'. Only when faced with that threat had the owners 'finally agreed to an amicable subdivision'.<sup>569</sup> Wilkinson reported to the Native Department that he had 'obtained for the Crown . . . some of the best (if not the very best) part of the block'. Because most of his purchasing was from absentee sellers, he had in effect obtained the best land in the block from people who did not live there.<sup>570</sup>

Each round of partitioning drew Māori landowners back into court, and it was common for them to subdivide their remaining lands, as occurred in the Puketarata example above.<sup>571</sup> Husbands and Mitchell suggested that owners may have been seeking to protect their land from further purchasing, since '[I]and owned by long lists of owners was . . . much more vulnerable to the advances of land purchasing agents'.<sup>572</sup> They also suggested that owners partitioned in order to make their lands easier to manage and develop.<sup>573</sup>

Even where owners did not subdivide, the effect of successive rounds of Crown purchasing and partitioning was to progressively divide each land block up into smaller and smaller subdivisions. In the most extreme cases, what had begun as a single block could, over a period of 10–15 years, become well over 100 individual subdivisions, in which Māori and the Crown each held scattered holdings.<sup>574</sup> According to Boulton, the result was that the district became 'a patchwork of Crown and Maori owned subdivisions', in which 'larger blocks that might have been suitable for large-scale pastoral farming were rapidly broken up by areas of

566. Document A79, p 254.

567. 33 Otorohanga MB 77–78 (doc A79, p 255); doc A79, pp 254–255.

568. Document A79, pp 254–255.

569. Wilkinson to Premier and Native Minister, 13 April 1894 (doc A67, p 218; doc A60, pp 1272–1273).

570. Wilkinson to Premier and Native Minister, 13 April 1894 (doc A67, p 218; doc A60, pp 1272–1273).

571. Document A79, pp 250–269, 411, 494–501; doc A146, pp 411–417. Regarding initial subdivision of the Aotea-Rohe Potae block, see doc A79, pp 186–212.

572. Document A79, p 147. Dr Hearn made the same point: doc A146, p 409.

573. Document A79, p 500.

574. Document A73, pp 92–95, 149; doc A79, pp 250, 258–263, 306; doc A146, pp 409, 411; doc A67, pp 424–425.

Crown land.<sup>575</sup> Individual owners or whānau could be left with small numbers of shares in multiple blocks, but no single block of land that they could use and develop, and could be left with little or no interest in land that was of spiritual significance to them.<sup>576</sup> For these reasons, in Boulton's view, each round of partitioning became a kind of 'tipping point', which increased owners' willingness to sell.<sup>577</sup> There is evidence that Wilkinson was aware of this effect and sought to exploit it. In 1891, he encouraged one of the owners of Wharepungunga to apply for a partition of the block in the hope that this would encourage 'a general burst up' of the block, which would make it easier to purchase.<sup>578</sup>

Another reason that partitioning contributed to sale was that, as land became more fragmented, it ultimately lost its economic value to either Māori landowners or the Crown. Crown officials were aware of the potential for harm arising from this system of land purchasing, both for Māori and for the Crown's own objectives, and at times expressed concern that the purchasing and partitioning of ever smaller subdivisions was leaving the Crown with land that could not easily be used.<sup>579</sup> In late 1898 and early 1899, there was brief correspondence between Wilkinson and the Native Department about reducing the prices offered for more fragmented land. Officials showed no concern for Māori landowners who were often left with small, fragmented, and in some cases unusable holdings.<sup>580</sup>

#### 11.4.9 Treaty analysis and findings

When Te Rohe Pōtae Māori entered negotiations with the Crown over the opening of their district, their essential precondition was that the Crown use its lawmaking and governing power to protect their authority over and possession of land. In the 1883 petition, they asked that land title decisions be left to them to arrange and that laws be passed to protect their lands from sale, while allowing leasing in an open market.<sup>581</sup> In chapter 8 we found that the demands Te Rohe Pōtae Māori made of the Crown were consistent with the Treaty.

Over time, in response to the Crown's actions and negotiation positions, Te Rohe Pōtae leaders modified some of what they sought. They had entered negotiations fearful of private buyers, but by 1885 they were equally fearful of the Government's intentions. At the February 1885 hui at Kihikihi, their position on land title determination remained unchanged. But the Kawhia Committee chairman John Ormsby did indicate that they were willing to contemplate the possibility that some land might be sold, so long as all decisions were made by hapū, and so long as sales or leases were negotiated by the Kawhia Committee with no Crown or settler involvement. The clear position of Te Rohe Pōtae leaders was

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575. Document A67, pp 37, 424–425.

576. Document A67, pp 37, 289, 356, 424–425, 478; doc A79, p 259; doc A55, pp 56–57; doc A146, pp 405–411.

577. Document A67, p 437.

578. Wilkinson to Lewis, 28 August 1891 (doc A60, p1222). Also see doc A60, pp1223–1228.

579. Document A67, p 356; doc A67(a), vol 2, p 640.

580. Document A67(a), vol 2, p 640.

581. 'Petition of the Maniapoto, Raukawa, Tuwharetoa and Whanganui Tribes', AJHR, 1883, J-1.

that they did not want the Crown to take control of the buying and selling of their land.<sup>582</sup>

As we saw in chapter 8, the Crown did not give Te Rohe Pōtae leaders most of what they wanted. In particular, it was never prepared to relinquish its powers to determine Māori land titles or to control land transactions. But the Native Minister, John Ballance, did make several commitments at the Kihikihi hui. He assured Te Rohe Pōtae leaders that the Government did not intend to become a large purchaser of their land, and sought only enough for the railway, for which it would pay a fair price. He explained that the Crown did expect to see land made available for settlement, but would be content if owners would lease their lands. He gave assurances that hapū committees would make all decisions about sales or leases, that all sales or leases would occur in an open market, and that they would have the right to retain their lands and benefit from growth in land values as the railway and roads were completed.<sup>583</sup>

Having received these and other assurances, Te Rohe Pōtae leaders consented to the railway. We have already described how the Crown swiftly broke these promises, committing first to a large-scale land purchasing programme and secondly to ensuring it – and not Māori landowners – would retain the benefit from rising land prices. The laws enacted after 1888 denied Te Rohe Pōtae Māori the ability to sell or lease on an open market.

The Crown's purchasing programme, once it got under way at the end of 1889, marked a further departure from these commitments and from the wishes of Te Rohe Pōtae leaders. Having assured them that it did not intend to become a large-scale purchaser, and that they could lease land in preference to selling, the Crown became a large-scale purchaser. Having assured them that hapū representatives would make all decisions about sales or leases, the Crown did all that it could to buy from individuals.

The Crown's purchasing tactics were intended to leverage sales, and did so. Having given in to its settler constituency, the Crown sought to separate Te Rohe Pōtae Māori from their lands by a range of means, all of which had been tried and proven in other districts. The Crown deliberately used survey debts to break resistance to land sales. It created pressure on communities to sell their land, initially by imposing survey debts and charging interest while simultaneously denying landowners the right to lease or arrange other ways of financing the debts. The Crown quite openly used survey debts as a means of breaking resistance to land sales and drawing Te Rohe Pōtae Māori into a cash economy which would create further need to sell land. From 1894, it allowed the Native Land Court to partition land as payment of survey costs, thereby effecting a compulsory purchase.

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582. 'Notes of a Meeting between the Hon Mr Ballance and the Natives at the Public Hall at Kihikihi, on the 4th February 1885', AJHR, 1885, G-1, pp 15–16; 'The Native Minister in Waikato: Visit to Alexandra', *Waikato Times*, 5 February 1885, p 2. Also see 'Evidence of Wahanui before the Native Affairs Committee on the Native Land Disposition Bill, 19 August 1885, AJHR, 1885, I-2B, p 5.

583. See 'Notes of a Meeting between the Hon Mr Ballance and Te Kooti and his People at Kihikihi, on the 3rd February, 1885', AJHR, 1885, G-1, pp 12–24, especially p 24.

Having promised that hapū would make all decisions about land alienation, the Crown engaged with hapū leaders only when they were willing to sell land. Otherwise, it focused its purchasing effort on individuals, picking off their interests one by one in a manner that was entirely corrosive of collective rights. It targeted individuals who were considered most vulnerable to selling, including absentees, those on the title out of aroha, those who did not live on the land in question, and those who were indebted or in need of money. It did so with the clear intention of bypassing and breaking down communal resistance to land sales. In doing so, it actively broke down traditional relationships with land and among hapū, and deliberately undermined communal authority and leadership.

Having promised that Te Rohe Pōtae Māori would retain their lands for as long as they wished, it pressured them to sell and threatened to take land by compulsion if they did not. Having promised that Te Rohe Pōtae Māori would be able to make land available by leasing, the Crown actively prevented leasing by enforcing the restrictions on alienation and warning settlers and Māori against such arrangements. The restrictions were intended to further the Crown's land purchasing programme by eliminating competition and denying Māori economic opportunities, and achieved their desired effect.

The Crown initially sought to purchase land in the north of the district which it considered the most productive and suitable for settlement. Those lands contained significant Māori settlements and food sources, and had been at the centre of efforts by Māori to cultivate land and engage with the settler economy. When Māori in those lands proved unwilling to sell, the Crown sought to break resistance throughout the district by purchasing land whenever and wherever it could.

It purchased from individuals without regard for the wishes of hapū and iwi leaders, and without regard for the potential effects on the prosperity or well-being of Māori communities. It made no effort to determine which lands hapū and iwi leaders wished to retain for their communities, other than to negotiate over partition boundaries. It purchased minors' shares without apparent regard for their future needs.

It actively purchased land in blocks that the Native Land Court had declared inalienable at the owners' request. It continued to pressure leaders and purchase from individuals even in blocks where it had been warned that some owners would be left landless. It initially set aside reserves but quickly ceased to do so, and then repurchased most of the area reserved. The Crown's claim that 10 per cent of the land purchased in the 1890s was reserved is quite incorrect;<sup>584</sup> the true figure is less than one per cent.<sup>585</sup>

The vast bulk of its purchases were of individual undefined shares. In these circumstances, neither sellers nor non-sellers could know which land would be subject to the transaction, and therefore none could fully understand the nature

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584. Submission 3.4.307, p 39.

585. The Crown set aside just over 5,000 acres of reserves, almost all of that in the Wharepunga block. The Crown's total purchasing during the 1890s amounted to 530,819.55 acres: doc A67, pp 432–433, 472; doc A21, p 127.

of the transaction. Under those circumstances, sellers could not give free, prior, informed consent; non-sellers could have land taken which they had shares in against their express wishes.

Having acquired some shares in a block, the Crown used partitioning to further break down traditional relationships and leverage further sales. It managed partitioning with the aim of acquiring the best land for itself, without regard for the well-being or interests of the remaining owners.

On some occasions, it made purchases where surveys were incomplete, or there was uncertainty about ownership, or where relative interests had not yet been determined, and those involved in the transaction therefore cannot have been certain as to what was being sold. Again, informed consent is not possible under such circumstances.

Each of these purchasing methods was individually in breach of the Treaty guarantee of tino rangatiratanga and of the Crown's obligation to actively protect Te Rohe Pōtae Māori in possession of their land. Where the Crown broke promises or failed to comply with the conditions of entry to the district, it breached the partnership principle and failed in its duty to act honourably and in good faith.

But it is not enough to consider the individual purchasing methods. This was a programme in which the Crown used its lawmaking powers and purchasing tactics together, with the express purpose of breaking communal relationships with land and achieving its transfer to Crown ownership. Individual titles, limited land rights, survey debts, purchasing from individuals while bypassing hapū and iwi leaders, and partitioning were all parts of a whole, in which each element worked together to separate communities from their land.

The purchasing programme was coercive in its entirety. As other Tribunals have found, there can have been no free, informed consent by individuals, because they were not the proper rights-holders. There can be no free, informed consent where the land was subject to restrictions, because those restrictions created want of money and militated against other uses of the land. Even where there was some element of volition on the part of hapū or iwi leaders, their choices were made in conditions that the Crown had created in order to pressure them into selling. In its entirety, the Crown's purchasing programme was conducted in a manner that was coercive.

The purchasing programme was also a deliberate and systematic attack on the tino rangatiratanga of Te Rohe Pōtae communities and therefore an extremely serious breach of the Crown's duty of active protection. It was a fundamental betrayal of the conditions made and assurances given as part of Te Ōhākī Tapu, which reflected very poorly on the Crown's honour and trustworthiness. In its entirety, it was a breach of the partnership principle and the duty to act honourably and in good faith. It was explicitly designed to transfer wealth from Māori to the Crown and settlers. In its entirety it was a breach of the principles of equity and equal treatment.

To the extent that the Crown wanted to see land settled, it certainly had alternatives. Te Rohe Pōtae Māori were entirely willing to settle the land, if only the Crown would enact laws that preserved their mana whakahaere and then left

them to manage the settlement programme themselves. The Crown did not make any attempt during the 1890s to leave settlement to Te Rohe Pōtae Māori or even involve them in decisions about how settlement should progress. The Crown's programme in fact worked against settlement. It prevented Māori leaders from inviting settlers into their lands and establishing farms, while delaying settlement of purchased lands to benefit from rising land prices, and fragmenting landholdings in the district. To the extent that the Crown wanted Māori to pay for the railway and used purchasing as a means to achieve this, it did not have obvious alternatives, but nor did it have any right under the Treaty to impose railway costs on Māori landowners. They had made it entirely clear that they did not want the railway if it became the means to deprive them of their land.

The intentions, methods, and effects of the Crown's purchasing programme were well understood at the time, by the Crown's representatives, settlers, and Māori alike. The Crown ignored waves of Māori protest during the 1890s. It began to consider modifying its purchasing targets only in 1898, not because it was responding to protest but because Ministers were becoming aware that continued Crown purchasing would leave increasing numbers of Māori landless and therefore, in Seddon's words, 'a burden to the colony'.<sup>586</sup> Even then, it took four more years and over 345,000 acres of land lost to Te Rohe Pōtae Māori before the Crown ceased active purchasing.<sup>587</sup>

In all, the Crown acquired 639,815 acres during the 1890–1905 calendar years – slightly over one-third of the inquiry district.<sup>588</sup> The amounts varied from block to block and region to region. In the south-west of the district, very little land remained in Māori possession outside of the Mokau Mohakatino block. Purchasing had also been heavy in the Kinohaku and Hauturu blocks, and in other parts of the north such as Puketarata, Te Kopua, Pirongia West, Ouruwhero, Otorohanga, Mangauika, and Mangarapa (see tables 11.5–11.7). None of these Crown purchases was conducted in a manner that was consistent with the Treaty and its principles. All occurred in conditions that were coercive.

In conclusion, we find that:

- By purchasing Te Rohe Pōtae Māori land under cover of restrictions on alienation, by using survey debts to leverage sales, by purchasing geographically undefined shares from individuals without regard for community wishes and interests, by targeting individuals who were vulnerable to selling, by using partitioning to further leverage sales, by using aggressive tactics such

586. Seddon, 2 August 1898, NZPD, vol 102, pp 186–187 (doc A67, p 164).

587. Document A21, p 131 tbl B5.

588. Document A21, p 131 tbl B5. According to Douglas, Innes, and Mitchell, the Crown purchased a total of 639,815.07 acres during the years 1890–1905. The inquiry district totals 1,931,136 acres (excluding extension areas). All of the Crown's purchases during the period 1890–1905 occurred within the original inquiry district. Wherever we mention land sales as a proportion of the inquiry district, we are referring to the original district. In all, the Crown's purchases amounted to 33.13 per cent of the original district during this period: submission 3.4.309(a), p 2; submission 3.4.130(g), pp 2–3; doc A21, pp 7, 34. Also see doc A67, pp 11, 28; doc A95, p 4.

as threats of compulsory acquisition, by failing to take reasonable steps to ensure that Te Rohe Pōtae communities retained land they wished to retain, by purchasing land that had been declared subject to alienation, by purchasing in spite of community opposition and in spite of warnings that some owners might be left landless, the Crown failed to fulfil its duty of active protection and breached the Treaty guarantee of tino rangatiratanga.

- By using these methods to pressure Te Rohe Pōtae Māori to sell land in spite of Te Rohe Pōtae leaders' requests that their land be protected if the district was opened to the railway and to settlement, and in spite of the conditions imposed and promises made as part of Te Ōhākī Tapu, the Crown breached the partnership principle and failed in its obligation to act fairly, honourably, and in good faith.
- By using these methods to pressure Te Rohe Pōtae to sell land for the express purposes of transferring land and wealth to the Crown and settlers, and thereby ensuring that Te Rohe Pōtae Māori did not enjoy the benefit of rising land prices along the railway route, the Crown failed to fulfil its duty of active protection and breached the partnership principle, and breached the principles of equity and equal treatment.

## 11.5 DID THE CROWN PAY FAIR PRICES FOR THE LAND IT PURCHASED?

### 11.5.1 Introduction

When the Crown began to purchase Te Rohe Pōtae Māori land in 1890, Wilkinson was instructed to offer 3s 6d per acre, with discretion to go up to 5 shillings if owners would not sell. The Native Department acknowledged that Māori landowners would probably expect five or six times this price, but saw no reason to offer more. In its view, Māori landowners would eventually come to accept what the Crown was prepared to offer.<sup>589</sup>

As discussed above, most owners initially refused to sell their land,<sup>590</sup> but from 1892 onwards that resistance began to give way. In the first few years of purchasing, Wilkinson typically paid between 2s 6d and 4 shillings per acre, occasionally paying 5 shillings and exceeding that on one occasion.<sup>591</sup> Over time, the prices gradually increased, but typically remained within a range of 3 to 7 shillings per acre.<sup>592</sup> The rare exceptions were for small subdivisions close to towns or the rail-

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589. The Under-Secretary for the Native Department set out the policy in a memorandum to the Native Minister on 18 December 1889, and in a letter to Wilkinson on 21 December. Wilkinson initially misinterpreted his instruction as meaning he should offer 3s 6d per acre for 'broken bush country' and 5 shillings per acre for good agricultural land close to the railway. The exchanges are discussed in doc A67, pp 209–211, 223–224. Also see doc A67(a), vol 1, pp 133–142; doc A91, vol 2, pp 297–305, 309–312, 327; doc A95(n), pp 5–12, 16–21.

590. Owners typically wanted to retain their land, but also regarded the Crown's prices as very low: see doc A67, pp 223–226, 228, 252; doc A68, pp 96–97.

591. Document A95(i), Crown purchases.

592. Document A95(i), Crown purchases.

way line.<sup>593</sup> Overall, throughout 1890–1905, Parker (see table 11.3) calculated the average purchase price at 4.79 shillings per acre,<sup>594</sup> and Dr Hearn calculated it at 4.36 shillings per acre.<sup>595</sup> The 1907 Native Land Laws Commission's average purchase price was 4.23 shillings per acre for the Aotea-Rohe Potae block.<sup>596</sup>

In 1894, Wilkinson acknowledged that the Crown alone determined the purchase price.<sup>597</sup> It was able to do so because it faced no competition, and therefore faced no pressure to match the prices that others might offer and no risk of missing out if competitors offered more.

Throughout the 1890s and beyond, Māori landowners consistently sought higher prices than the Crown was offering, and were generally reluctant to sell unless circumstances compelled them to do so. The district's leaders also protested that the prices were too low, and were effectively forced on landowners. In their 1891 negotiations with Cadman, those leaders asked for prices to be determined by arbitration.<sup>598</sup> In 1894, John Ormsby told a visiting member of the House of Representatives that Te Rohe Pōtae Māori were paying 'the worst form of taxation', meaning 'the difference between what the Government pays us for our land (from 2s 6d to 6s per acre) and the market value (from 10s to 20s per acre).'<sup>599</sup> In their 1897 petition, Eketone and other leaders said that Māori landowners had no input on sale prices.<sup>600</sup> They referred to 'the intense desire of the Government that we should speedily sell to them our lands for whatever price they please to give.'<sup>601</sup>

Te Rohe Pōtae leaders regarded the Crown's approach to pricing as a clear betrayal of the undertakings the Crown had given the previous decade, when they were told that the value of their lands would grow if they consented to the

593. The exception was the purchase of Kinohaku East 1B2A, 1B3B, and 1B4A, which together totalled of 3,101 acres, for 10 shillings an acre: doc A95(i), line 129.

594. Document A95(o) (Parker), para 7.4.

595. Document A146, p189 tbl 4.2. Dr Hearn's calculations were based on fiscal years ending 31 March.

596. 'Native Lands in the Rohe-Potae (King Country) District', 4 July 1907, AJHR, 1907, G-1B, p 4; doc A146, p194; doc A68, pp 202–203. The commission's figures referred to the Aotea-Rohe Potae land block, which had boundaries that were broadly similar but not identical to this inquiry district. Specifically, the Aotea-Rohe Potae block excluded the pre-1865 purchase blocks, the inquiry district extension areas, and the Mohakatino Parininihi, Mokau Mohakatino, Maraeroa, Ketemaringi, Maraeroa, and Moerangi-Matakowhai blocks. It included some areas that are not within the inquiry district, including the Ohura South block and other blocks to the south of the district: doc A67, p 14 n

597. See Wilkinson to Sheridan, 7 September 1894 (doc A67(a), vol 2, pp 488–493); doc A67, p 369. Also see Editorial, *Waikato Times*, 16 January 1892, p 2; 'Native Land Court Bill', 2 October 1894, NZPD, vol 86, p 477 (doc A68, pp 194–195).

598. Document A68, pp 134–135, 137.

599. The visiting member of the House of Representatives was Major Benjamin Harris, who said he had come to learn about Māori grievances regarding land laws: 'Major Harris at Otorohanga', *Waikato Times*, 17 April 1894 (doc A68, p 183). Also see 'The Native Land Question', *New Zealand Herald*, 19 April 1894.

600. Document A67, p 351.

601. Pepene Eketone and 163 others, petition 217 (doc A67, pp 299, 480); doc A93, p 7. According to Boulton, other signatories included Taonui and Ormsby: doc A67, p 351.



railway.<sup>602</sup> They were far from alone in objecting to the Crown's purchase prices. In 1891, the surveyor Oliver Creagh reported that the Crown was offering Māori owners 3 shillings per acre for land at Kinohaku East, when the owners 'know that they can get £1 an acre from private parties.'<sup>603</sup> Settlers in lands bordering Te Rohe Pōtae sometimes expressed the view that the district's land could be worth in excess of £2 per acre in an open market, and was certainly worth more than £1.<sup>604</sup> The *New Zealand Herald* and *Waikato Times* expressed similar views about the value of the district's land. Both at times characterised the Crown's purchasing as a form of confiscation.<sup>605</sup> Opposition politicians expressed similar views.<sup>606</sup> The Member of the House of Representatives for Waipa, FW Lang, described the Liberal Government as New Zealand's greatest land shark, compelling Māori to sell for a few shillings land they 'could easily have got pounds for.'<sup>607</sup>

For any Crown purchase of Māori land to comply with the Treaty, a fair price must be paid.<sup>608</sup> Claimants argued that the Crown did not meet this requirement and instead used the restrictions so it could buy 'as cheaply as possible', in breach of previous assurances that Māori landowners would benefit from rising land prices if they agreed to the railway. Claimants, based on evidence from Dr Hearn, submitted that the true value of the land may have been about 5.7 times higher than the Crown paid.<sup>609</sup>

The Crown accepted that, where the Crown had an exclusive purchasing right, 'it was under additional Treaty duties . . . to apply high standards of good faith and fair dealing, and . . . to purchase reasonably and fairly.'<sup>610</sup> It conceded that it misused its exclusive purchasing right by 'often paying prices which Māori and other observers considered unreasonably low,'<sup>611</sup> and that its purchasing practices left 'some Rohe Pōtae Māori . . . with little option but to sell their land or shares in land even when they, and other observers, considered that the prices offered

602. 'Major Harris at Otorohanga', *Waikato Times*, 17 April 1894, p 6; doc A68, p 183.

603. 'Report of the Commission Appointed to Inquire into the Subject of the New Zealand Native Land Laws', 23 May 1891, AJHR, 1891, G-1, p 27; doc A146, p 185; doc A67, pp 225, 227.

604. 'The Ministry and the King Country', *New Zealand Herald*, 29 November 1893, p 3; doc A146, pp 76–78; 'The Native Lands in Waikato', letter to the editor, *New Zealand Herald*, 26 March 1894; doc A68, p 183.

605. Editorial, *Waikato Times*, 16 January 1892, p 2; 'Natives and their Lands', *New Zealand Herald*, 18 June 1895; Editorial, *New Zealand Herald*, 26 April 1895, p 4; Editorial, *New Zealand Herald*, 2 May 1896, p 4. Also see 'Unjust Government Dealing with Maori Land', *New Zealand Herald*, 3 September 1894, p 3; 'Government dealing with native lands', *New Zealand Herald*, 3 September 1894, p 4; doc A146, pp 80, 185; doc A68, p 199.

606. Document A68, pp 193, 198, 221.

607. 'Native Land Court Bill', NZPD, 1895, vol 86, p 475 (doc A68, pp 194–195).

608. Waitangi Tribunal, *Te Kāhui Maunga*, vol 2, p 418. Also see Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 1, p 106; Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, vol 1, p 120; Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 617, 625.

609. Submission 3.4.119, pp 3, 6–7, 11, 14–15, 17, 37–45, 51, 53–54; claim 1.5.4, pp 23–24, 27–33.

610. Submission 3.4.307, pp 24, 29. Also see submission 3.4.11, pp 2–3.

611. Submission 3.4.307, pp 25–26.

Parker's calculations				Hearn's Calculations		Native Land Commission (Aotea-Rohe Potae block)	
Calendar year Decimal shillings	Number of transactions	Average price (decimal shillings)	Range (decimal shillings)	Fiscal year	Average price (decimal shillings)	Period	Price range
1891	2	2.51	2.50 to 2.52	1890/91			
1892	0	–	–	1891/92	2.97	To December 1892	2.50 to 6.00
1893	12	3.25	2.00 to 6.00	1892/93	3.00		
1894	37	4.03	2.00 to 5.00	1893/94	4.30	To August 1894	2.50 to 5.00
1895	15	5.27	2.50 to 7.00	1894/95	4.31	To May 1895	3.50 to 6.00
1896	5	4.40	3.00 to 5.00	1895/96	5.38	To July 1896	3.00 to 5.00
1897	17	6.37	3.75 to 20.00	1896/97	4.92	To September 1897	3.75 to 7.50
1898	69	5.27	3.00 to 10.00	1897/98	5.36	To June 1898	3.00 to 10.00
1899	36	5.14	2.50 to 8.00	1898/99	5.78	To June 1899	2.50 to 8.00
1900	11	6.27	4.00 to 8.00	1899/00	5.04	To July 1900	4.00 to 8.00
1901	169	5.49	1.50 to 35.00	1900/01	2.61	To April 1901	1.50 to 8.00
1902	2	6.00	6.00	1901/02	–		–
1903	0	–	–	1902/03	5.35		–
1904	7	4.76	3.83 to 5.50	1903/04	4.14		–
1905	2	3.50	3.00 to 4.00	1904/05	4.00		–
<b>TOTAL</b>	<b>384</b>	<b>4.79</b>	<b>1.50 to 35.00</b>				

Table 11.3: Calculations of prices the Crown paid for Māori land in Te Rohe Pōtae inquiry district 1890–1905

Sources: Document A95(o), para 7; doc A95(i), Crown purchases; doc A146, p 189, Table 4.2; 'Native Lands in the Rohe-Potae (King Country) District: An Interim Report', 4 July 1907, AJHR, 1907, vol 1, G-18, p 4. We note that, for 1901, the 35 shillings at the upper end of the range is an error in Parker's database; the actual figure for the Crown's purchase of Pirongia West 1 Sec 2C1 was 5 shillings per acre. We have not modified the figures as provided by Parker for this table, but note that, with the error rectified, the average price per acre for 1901 is 5.31 shillings.

represented less than the market value.<sup>612</sup> The Crown also acknowledged that Te Rohe Pōtae Māori had subsidised the cost of the railway, because the Crown was able to buy land at low prices and sell at higher prices.<sup>613</sup>

612. Submission 3.4.307, pp1–2

613. Transcript 4.1.24(a) (Crown counsel, hearing week 17, James Cook Hotel, Wellington, 11 February 2015), p164.

These concessions and acknowledgements are helpful, but limited. They address the question of whether prices were *perceived* to be fair, but they do not address the question of whether prices were *actually* fair. On that, the Crown submitted that its nineteenth century view had been that the prices were ‘fair in the absence of development’.<sup>614</sup> But it is not clear to us how the Crown might have known what was fair in the absence of a functioning land market. That depends on how it determined the prices it would pay. We will consider that question first.

## 11.5.2 How did the Crown determine the prices it would pay?

### 11.5.2.1 Were purchase prices influenced by the Crown’s settlement and financial goals?

When the Crown began to purchase Māori land in this district in 1890, it had two related objectives. It wanted to see the land settled by small farmers. And it wanted to earn a profit from land transactions which could be used to fund the railway and other infrastructure.<sup>615</sup>

Achieving these objectives required it to exclude competition and to control purchase and sale prices. Its settlement objective required it to acquire land, subdivide and develop it, and onsell at a price that was sufficiently low to be attractive for settlers. In its estimation, this goal could not be achieved if it allowed private buyers into the market; doing so would fuel speculative activity, which would push land prices out of reach of aspiring small farmers.<sup>616</sup> Its financial objective required that it make a substantial profit from the development and onsale of land. This could only be achieved if the Crown could purchase land at low prices. This, too, required it to exclude competition.<sup>617</sup>

It was these policy objectives that led the Crown to keep restrictions in place in Te Rohe Pōtae even when Māori in other districts had access to an open market. It was also these objectives that led the Government to halt work on the railway in 1887. It knew that land prices would rise once the railway was completed, and it did not want that to occur while the land remained in Māori possession.<sup>618</sup> These measures were in breach of the Crown’s earlier promise that Te Rohe Pōtae Māori would benefit from growth in land values along the railway route. Ministers had made this promise in order to entice Te Rohe Pōtae leaders to consent to the railway, and it was on this basis that consent was given. But as we saw in section 11.3.3, the 1887–91 Atkinson Government reversed this commitment and decided that the Crown should benefit from rising land values.

During 1890 the Native Minister, Edwin Mitchelson, explained the Crown’s policy with respect to Te Rohe Pōtae land prices in some detail. In October of that year, he told a group from the chamber of commerce:

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614. Submission 3.4.307, p 12.

615. Submission 3.4.307, pp 28, 31.

616. Document A68, pp 98–99.

617. Document A68, pp 98–99.

618. Document A68, p 85. According to Cleaver and Sarich, construction was ‘almost at a stand-still’ between 1889 (when the line was completed as far as Puketutu) and 1897, though some work was done: doc A20, pp 93, 291.

The object of the Government in not withdrawing the restrictions on the native land was that small settlers would not be able to acquire the land from private purchasers at anything like so cheap a rate as they could if the Government first bought it.<sup>619</sup>

The Government's aim, he said, was to buy land along the railway route for 3s to 7s 6d per acre, and sell it to settlers for 15 to 20 shillings per acre – whereas if private speculators were allowed into the market the price would rise to £3 per acre. Mitchelson also explained that the Crown's purchasing programme was being held back by Māori, who had 'unreasonable' expectations as to the value of their land and regarded it as a 'veritable goldmine', partly because they were making incomes from illegal leases, which the Government intended to put an end to.

Mitchelson gave further explanation in a public meeting in Auckland the following month, saying the Government wanted land for settlement, but faced difficulties because Māori landowners thought that private buyers would pay them more. The *New Zealand Herald* reported his remarks thus:

The Government . . . considered that it would be unwise to allow any large blocks of land suited for settlement to pass into the hands of private speculators, to be doled out again at fabulous prices to intending settlers. (Applause.). They considered the first duty of the Government was to obtain the land at such a price as would enable settlers to pay interest upon it, and make themselves comfortable homes, and live without getting into difficulties. (Applause.)

He [Mitchelson] thought it a great mistake that the colony had ever abandoned its right of pre-emption. (Hear, hear) As regards the King Country, the Government had been frequently urged to withdraw the proclamation from it, but they considered it would be unwise to do so. They had already spent large sums on the central line of railway, and it had opened up a good deal of country. As this had advanced the value of the land, the Government considered that whatever value had been given to the land ought to belong to the State, and not to any private persons who now wished to acquire the land. (Loud applause.)<sup>620</sup>

The Crown's approach to purchasing, and to determining purchase prices, must be seen in this context.

When the Crown began purchasing, prices were determined through discussion among Crown officials, in particular those responsible for land purchasing, survey, and land development. Ministers were also sometimes involved.<sup>621</sup> Typically, the surveyor-general or another surveyor would be asked to provide an initial estimate, and purchasing officials would offer Māori landowners a little less.<sup>622</sup> In November 1889, for example, the surveyor-general provided advice to

619. 'Deputation to Mr Mitchelson', *New Zealand Herald*, 9 October 1890, p5; doc A68, pp98–99.

620. 'The Acting Premier', *New Zealand Herald*, 8 November 1890, p5; doc A68, pp98–99.

621. Document A67, p361.

622. Document A67, pp361, 366–368.

the Native Department about 17 subdivisions the Crown wanted to buy. As well as listing maximum purchase prices and minimum sale prices, the surveyor-general also estimated development costs (for survey, subdivision and roading) and profits.<sup>623</sup> Typically, the sale price was 250 per cent of the purchase price, and the estimated profit was 87.5 per cent of the purchase price. The proposed sale prices were all in the range of 10 to 25 shillings per acre – very close to the prices Mitchelson believed would make settlers comfortable and far below the £3 per acre that Mitchelson estimated subdivided land would fetch in a free market.<sup>624</sup> As the Crown Law Office's historian Brent Parker noted, officials were not making a calculation of market value; they 'were deciding what the Crown should pay'.<sup>625</sup>

As time wore on, the Crown relied less on surveyors and more on Wilkinson's advice. Typically, he suggested a purchase price, which more senior officials (and occasionally Ministers) approved.<sup>626</sup> Wilkinson took into account various factors, including terrain, vegetation, proximity to the railway and to towns, road access, outstanding survey liens (which the Crown would inherit) and prices paid for other subdivisions in the same block.<sup>627</sup> He also discounted for blocks with large numbers of owners, to reflect the time he would have to put into purchasing.<sup>628</sup> His overriding criterion, according to Boulton, was to set the purchase price at the lowest level consistent with still being able to persuade 'a good portion of the owners to sell'.<sup>629</sup> Wilkinson acknowledged, at various times, that the Crown was not paying the 'actual market value',<sup>630</sup> and advised that Māori landowners might feel that some 'wrong or injustice is being done to them by compulsor[il]y confining them to selling their land to the Crown only, and at prices fixed by the Crown'.<sup>631</sup>

### 11.5.2.2 *Did the Crown use independent valuations?*

It follows from the discussion above that the Crown was not greatly interested in determining the value of Te Rohe Pōtae land on an open market. During the period covered by this chapter, the Crown had access to various mechanisms which it could have used to arrive at independent estimates of market values for Māori land.

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623. Document A91, vol 2, pp 313–314, 340–341. Also see doc A67, pp 209–210, 219, 493; doc A95(n), pp 2–4; doc A95(q), p 4; doc A95(q)(i).

624. Document A91, vol 2, pp 313–314, 340–341. Also see doc A67, pp 209–210, 219, 493; doc A95(n), pp 2–4; doc A95(q), p 4; doc A95(q)(i).

625. Document A95(j), p 8.

626. Document A67, pp 361, 366–368.

627. Document A67, pp 361, 366–368, 370–371.

628. Document A67(a), vol 2, pp 490–491; doc A67, pp 369–370.

629. Document A67, p 361.

630. Wilkinson to Sheridan, 7 September 1894 (doc A67(a), vol 2, pp 490–491); doc A67, pp 369–370.

631. Wilkinson to Sheridan, 7 September 1894 (doc A67(a), vol 2, p 493); doc A67, p 369. Also see Wilkinson to the Premier and Native Minister, 13 April 1894 (doc A67(a), vol 2, pp 466–472); Wilkinson to Sheridan, 1 January 1894, on back of letter in Māori from Rawiri Te Rangitaurua and others to Wilkinson, 20 Tihema 1893 (doc A67, p 354).

In the 1880s, the Crown used independent valuers for various purposes, such as determining compensation for public works takings. From 1893, the Native Land Purchase and Acquisition Act provided a mechanism for the independent valuation of Māori lands, though the purchasing system established under the Act was never put into use (see section 11.3.3). In 1894, the Crown established a system of independent valuation for lands taken under the Land for Settlements Act. And in 1896 the Government Valuation of Land Act established a national system for the valuation of lands.<sup>632</sup> The Crown acknowledged that it did not use independent valuations for its land purchases in the inquiry district until 1905. Its submissions gave no reason for this.<sup>633</sup>

On at least two occasions, Te Rohe Pōtae Māori asked the Crown to use the Native Land Purchase and Acquisition Act 1893 provisions for independent valuation (section 6). The first occasion was in 1893, when a small group of owners of Kinohaku West K offered to sell land if it was independently valued using the Native Land Purchase and Acquisition Act provisions.<sup>634</sup> The surveyor-general refused, because 'I feel sure that Govt would have to pay a much larger price if the land is dealt with under the Act quoted. It is a question of policy perhaps more than anything else.'<sup>635</sup> During their negotiations with Cadman in 1892, Te Rohe Pōtae leaders also asked that independent valuations be used for Crown purchases. Loveridge believed this was one of Cadman's reasons for walking away from the negotiations. Using arbitration, in Loveridge's view, would 'undoubtedly have led to the Crown paying significantly higher prices.'<sup>636</sup>

On several occasions during 1894, Wilkinson recommended that independent valuations be used. He was partly concerned (as noted above) that the prices being offered were unfair. He also believed that he could purchase more land if the Crown was offering prices that were determined by independent valuation.<sup>637</sup> His Native Department superiors took no action.<sup>638</sup>

### 11.5.2.3 *Did the Crown negotiate with owners?*

Some owners responded to the Crown's offers by asking for a higher price,<sup>639</sup> and occasionally the Crown was willing to increase its offer by a small amount if this would induce more sales,<sup>640</sup> and if owners agreed to forego reserves.<sup>641</sup> Most often,

632. Submission 3.4.307, pp 24–25, 41; doc A146, p 209. Also see doc A67, p 352.

633. Maori Land Settlement Act 1905, s 25; submission 3.4.307, p 25.

634. Document A67, pp 353–354.

635. S Percy Smith to Sheridan, 6 February 1894 (doc A67(a), vol 2, p 463); doc A67, p 354.

636. Document A68, p 146.

637. Document A67(a), vol 2, pp 466–472. Also see doc A67, pp 351–354, 369, 488–493.

638. Document A67(a), vol 2, p 488; doc A67, p 369. As noted above, by 1897 Wilkinson had returned to his previous position that Māori would sell 'at almost any price' if they wanted the money badly enough: 'Reports from Officers in Native Districts', AJHR, 1890, G-2, p 5; doc A67, p 228.

639. Document A67, pp 223–226, 247, 353, 355–360, 365–366; doc A60, pp 753–756; submission 3.4.307, pp 35–36.

640. Document A67, pp 355–360.

641. Document A67, pp 371–372.

however, the Crown rejected or simply ignored Māori counter-offers.<sup>642</sup> In 1895, for example, Wilkinson sought permission to raise his offer for a block of high quality agricultural land from 5 to 7 shillings per acre after most owners refused to sell, but his Land Purchase Department superiors refused.<sup>643</sup> The Crown appears to have simply ignored the owners of another block who said they would sell their shares if the Crown raised its offer from 3s 6d per acre to 10 shillings.<sup>644</sup>

Wilkinson's correspondence with more senior officials illustrates the tensions at work between the Crown's desire to buy land and its reluctance to pay above predetermined prices. At times, he recommended increasing the Crown's offer by modest amounts in order to 'hurry up the purchase'.<sup>645</sup> Also, as noted above, he argued that independent valuations would increase sales.<sup>646</sup> But on other occasions he cautioned against showing too much enthusiasm to buy land, since it could encourage owners to hold out.<sup>647</sup> Correspondence between Wilkinson, Lewis, and other officials reveals that they did not see price as the main factor determining whether Te Rohe Pōtae Māori would sell land. Rather, they believed that many Māori did not want to sell at all and would make land available only when they needed cash, at which point they would sell at almost any price.<sup>648</sup>

On the rare occasions when the Crown did not have exclusive purchasing rights, it showed more willingness to negotiate. The Mahoenui block provides one example. In early 1894, there were no restrictions in place other than those imposed by proclamation on specific blocks under the Native Land Purchases Act 1892. Under those circumstances, the Crown was prepared to increase its offer from 3s 6d to 5 shillings per acre, but only so it could acquire enough shares to issue a proclamation and prevent any private purchases.<sup>649</sup>

#### **11.5.2.4 Did the Crown account for the value of timber and other resources?**

Many of the land blocks in the inquiry district were heavily forested in kahikatea, tōtara, rimu, and matai.<sup>650</sup> Private Europeans recognised the value of these resources. During the 1890s, two Waikato sawmillers (JW Ellis and H Burnand) entered an agreement with the owners of the Mangawhero block under which they were allowed to cut kahikatea, paying royalties to the owners.<sup>651</sup> On the face of it, this would appear to have been a breach of the restrictions, but the sawmillers had obtained legal advice to the effect that their business was lawful so long as they were not leasing land but only extracting timber from it.<sup>652</sup>

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642. Document A67, pp 355–360.

643. Document A67, p 365.

644. Document A67, pp 353–354, 355–356.

645. Wilkinson to Sheridan, 7 September 1894 (doc A67(a), vol 2, p 492); doc A67, p 365.

646. Document A67, pp 351–354, 369, 488–493; doc A67(a), vol 2, pp 466–472.

647. Document A67(a), vol 2, p 618; doc A67, pp 370–371.

648. Document A67, pp 188, 203–204, 210–211, 226–228, 370; doc A67(a), vol 2, p 618.

649. Document A67, pp 343–349, 381; doc A67(a), vol 2, p 515. Also see doc A146, p 196.

650. Document A25, p 46 (and throughout).

651. Document A67, pp 311–312.

652. Document A146, p 231.

After 1900, when private leasing was allowed through Māori land boards, several other timber milling operations opened up.<sup>653</sup> The Crown was certainly aware of the timber resources and the demand from timber merchants for their use; at times it attempted to sell timber resources on land it had bought. From 1900 on, the Crown began to take advantage of this demand, licencing sawmillers to cut timber from lands it had purchased from Māori during the preceding decade.<sup>654</sup> But we have seen no evidence that the Crown took any account of the value of this timber when it determined the prices it would offer for land. In 1907, the Stout-Ngata commission concluded that the Crown had determined prices based only on 'the surface value' of the land, reflecting its potential for farming, and the evidence in this inquiry supports that conclusion.<sup>655</sup>

### 11.5.3 How much was Te Rohe Pōtae Māori land worth?

The Crown has acknowledged that the prices it paid for Māori land in this district were 'considered unreasonably low' by Māori and other contemporary observers. But it did not concede that prices were in fact unreasonably low.<sup>656</sup> Crown counsel also submitted that there was 'no simple formula' for determining the price that should have been paid, especially after so much time has passed, and that any assessment should take into account 'the location and quality of the land . . . the specific circumstances at the time of the sale, and the wider context of any particular transactions.'<sup>657</sup> Claimants argued that prices were in fact unreasonably low.<sup>658</sup> Their view was based on evidence provided by Dr Hearn about purchase and lease prices in the district after 1905, when independent valuations were required and private leasing was allowed.<sup>659</sup>

Between 1900 and 1905, purchase prices in Te Rohe Pōtae typically ranged between 4 shillings and 6 shillings per acre, though some higher prices were paid (see table 11.3).<sup>660</sup> Dr Hearn provided evidence that showed a substantial increase in prices after 1905:

- The 1907 Native Land Commission recorded that the Crown paid an average price of 9.87 shillings per acre for 65,446 acres purchased during 1905 and 1906 in the Aotea-Rohe Potae block, after the new valuation rules were in place.<sup>661</sup>

653. Document A25, pp 46, 57.

654. Document A25, pp 19, 46. Also see doc A67, p 325; doc A60, p 457; doc A146, p 230.

655. 'Native Lands in the Rohe-Potae (King Country) District', 4 July 1907, AJHR, 1907, G-1B, p 4; doc A146, p 242.

656. Submission 3.4.307, pp 25–26; also see pp 1–2.

657. Submission 3.4.11, pp 14–15.

658. Submission 3.4.119, pp 3, 6–7, 11, 23, 37–45, 51, 53–54; claim 1.5.4, pp 23–24, 27–33.

659. Maori Land Settlement Act 1905, ss 16, 25. The Act provided that the capital valuation would be assessed under the Government Valuation of Land Act 1896.

660. Document A95(i), Crown purchases.

661. 'Native Lands in the Rohe-Potae (King Country) District', 4 July 1907, AJHR, 1907, G-1B, p 4; doc A146, pp 195, 202; doc A67, p 373.



- A 1905–1908 return of Crown purchasing revealed that it paid an average price of 19s 10d per acre for 121,776 acres in the Auckland land district. Of the 201 transactions listed, 153 were in this inquiry district.<sup>662</sup>
- The same 1905–1908 return revealed that the Crown paid an average of 8s 9d for 127,821 acres in the Taranaki land district. Of the 29 purchases, 27 were in this inquiry district (almost all of them in Rangitoto Tuhua).<sup>663</sup>

Dr Hearn also provided evidence of prices paid by private buyers and lessees in the ‘King Country’ in the five years to 30 September 1909. During that time:

- Private purchasers<sup>664</sup> bought 3,748 acres of ‘King Country’ Māori land for £7,362 at an average price of £1.96 (that is, just under 40 shillings) per acre.<sup>665</sup>
- Private lessees leased 177,544 acres at average annual rents of just over 1.2 shillings per acre. With rents commonly set at 5 per cent of unimproved capital value, this implied the land was worth an average of 2.4.1 shillings per acre. Dr Hearn argues that this is a reasonable proxy for the market value of the land.<sup>666</sup>

Claimants, in generic submissions, noted that Hearn’s 2.4.1 shillings figure was 5.7 times the 4.23 shillings per acre average Crown purchasing price which Dr Hearn calculated from 1907 Native Land Commission data, and submitted that ‘[m]arket prices were on average 5.7 times what the Crown paid.’<sup>667</sup> The Crown also acknowledged that prices paid after 1905 were ‘substantially higher than the 4s per acre average for the 1890s purchases.’<sup>668</sup> Dr Hearn noted that land prices had been rising during the early 1900s, and this offered one possible explanation for rising purchase prices, but not for the sudden increase after 1905.<sup>669</sup>

Witnesses provided other evidence which would support the view that the Crown paid less than market value. Parker provided evidence that, while the Crown was buying Te Rohe Pōtae land at prices averaging less than 5 shillings per acre, it was onselling land from its pre-1865 purchases with asking prices ranging

662. ‘Maori Land Purchase Operations: Report under the Maori Land Settlement Act 1905 for the year ended 31 March 1908’, 1 June 1908, AJHR, 1908, G-3A, pp 1–3; doc A93, p 77; submission 3.4.307, pp 20–21. The transactions in this district were Rangitoto A (44 purchases), Rangitoto Tuhua (31), Tokanui (14) Kakepuku (9), Taumatotara (7), Kinohaku West (6), Otorohanga (5), Kinohaku East (4), Hauturu East (4), Hauturu West (4), Te Kuiti (4), Pirongia West (3), Te Kopua (2), Manguika (2), Parihoru (2), Pukenui (2), Takotokoraha (2), Waiwhakaata (2), Korakonui (1), Maungarangi (1), Pehitawa (1), Pukeroa-Hangatiki (1), Taharoa (1), and Turoto (1).

663. ‘Maori Land Purchase Operations: Report under the Maori Land Settlement Act 1905 for the year ended 31 March 1908’, 1 June 1908, AJHR, 1908, G-3A, pp 1, 3; doc A93, p 77; submission 3.4.307, pp 20–21. The transactions in this district were Rangitoto Tuhua (25 transactions), Tauroa (1 transaction), Taumatamahoe (1 transaction).

664. Private alienation was allowed with Māori land council approval under section 4 of the Maori Lands Administration Amendment Act 1901.

665. ‘King-Country Native Lands’, 8 October 1909, AJHR, 1909, G-11, p 15; doc A146, p 197.

666. Document A146, pp 197–198.

667. Submission 3.4.119, pp 40 n, 42, 53; doc A146, pp 194–198.

668. Submission 3.4.307, p 20.

669. Document A146, p 207.

between 90 to 720 shillings per acre.<sup>670</sup> Parker also provided evidence of the prices the Crown sought when it on-sold land it purchased between 1890 and 1905. Overall, the Crown made very little land available at less than 8 shillings per acre, and the vast majority was offered at prices exceeding 20 shillings. Typically, the land was offered at 2–6 times the purchase price, with the margins increasing as time wore on.<sup>671</sup> This data does not necessarily indicate what actual market prices might have been, as the Crown was the only buyer, and also the only seller. It could set prices to suit its policy objectives, but that did not mean they reflected market value. Nonetheless, Parker's figures are broadly in line with Dr Hearn's lease-based estimates, adding a degree of corroboration to them.

Much of the other evidence we were provided with about purchase prices was inconclusive. Private purchasers bought a small amount of land in this district during 1890–1905, presumably in areas that were not covered by restrictions. But, according to Dr Hearn, the prices for most of these transactions are not known.<sup>672</sup> Dr Hearn also provided evidence of Crown purchase prices in the North Island as a whole during the 14 years to 31 March 1905. This data showed the North Island average as slightly above the average in this district. But comparisons are statistically futile because a large proportion of the North Island purchases were in this district, and because the Crown had exclusive purchasing rights over the whole island for most of the period covered.<sup>673</sup>

Overall, we are persuaded that the Crown did in fact pay below market values, at least on average, for the land it purchased in this district during 1890–1905. As described above, this was the consistent view of Māori and settlers alike throughout the 1890s. And it is confirmed by the sudden and significant increase in purchase prices after independent valuations were introduced in 1905. Indeed, the premier, Seddon, acknowledged that Māori had been underpaid, telling the House of Representatives in 1905 that 'Maori landowners suffered, inasmuch as they did not get the same value for their lands as would have been obtained if the land had been held by Europeans.'<sup>674</sup> By introducing independent valuations, he said, 'the Government and Parliament were prepared to give the market value for the land'. The inevitable inference is that they previously had not.<sup>675</sup>

The Stout-Ngata commission also expressed this view, reporting in 1907 that the Crown 'bought on its own terms' with 'no competition to fear', and with the

670. Document A95(i), Crown purchases.

671. Document A95(a); doc A95(i).

672. Document A146, p 196.

673. Document A146, pp 187–189, 196. Hearn drew his data from Innes's report, *Te Rohe Pōtae Crown Purchase Deed Document Bank*, which provided data about Crown purchasing in the inquiry district, including the extension areas: doc A141 (Innes), pp 27–28.

674. Richard Seddon, 13 October 1905, 'Native Land Settlement Bill', NZPD, vol 135, p 710 (doc A146, p 206).

675. Richard Seddon, 17 October 1905, 'Native Land Settlement Bill', NZPD, vol 135, p 785 (doc A146, p 206).

owners having ‘no standard of comparison’ such as rents from leased land or profits from farming. Under these circumstances, they had been ‘reduced by cost of litigation and surveys, by the lack of any other source of revenue, to accept any price at all for their lands’.

The price was, in our opinion, below the value. It was the best possible bargain for the State. It was in accordance with the will of Parliament, and it opened up a vast territory to the land-seekers. The Executive, no doubt, conceived it was furthering the interests of general settlement, [but] it rated too low the rights of the Maori owners and its responsibility in safeguarding their interests.<sup>676</sup>

This was the view of a commission established by the Crown to advance settlement, whose members were a senior public service official and the chief justice.

#### **11.5.4 Did the Crown underpay when it bought shares before relative interests were defined?**

As discussed earlier, prior to 1892 the Native Land Court did not typically define relative interests in Te Rohe Pōtae subdivisions. According to Husbands and Mitchell, this occurred at the request of the owners, who took the view that land should be subdivided along hapū lines before any attempt was made to define the value of individual interests.<sup>677</sup> This caused both Wilkinson and Lewis much frustration, as it created risks for the Crown: if it purchased before relative interests were defined, it might find itself paying for shares from owners who later turned out to have very little real interest in the land.<sup>678</sup> The other side of this equation, as Boulton noted, was the risk of unfairness to sellers: owners with large interests might be underpaid, and those with small interests might be overpaid.<sup>679</sup>

From early 1890, Ngāti Maniapoto and Ngāti Raukawa leaders urged the Crown not to proceed with purchases when relative interests were unknown, but they were not heeded.<sup>680</sup> Wilkinson was instructed to go ahead with purchases even when relative interests were unknown. He was told, furthermore, to assume that all owners had equal shares and to warn sellers that they would have no claim on the Crown if it turned out they were underpaid.<sup>681</sup>

Witnesses provided definitive evidence of the Crown acquiring individual shares in seven blocks before relative interests were defined. They were: Hauturu East 3; Mangauika; Ouruwhero; Puketarata; Takotokoraha; Turoto; and

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676. ‘Native Lands in the Rohe-Potae (King Country) District’, 4 July 1907, AJHR, 1907, G-1B, p 4; doc A68, pp 17, 202–203; doc A67, p 381; doc A73, pp 104–105; doc A79, p 487; doc A146, p 195.

677. Document A79, pp 160, 214, 215–221, 239–240.

678. Document A67, pp 208–209, 211–212, 236.

679. Document A67, pp 217–218, 236–239.

680. Document A67, p 240; doc A79, p 237.

681. Document A67, pp 206–209, 211–212, 236–240.

Wharepuhunga.<sup>682</sup> It is possible that there are more, but we do not have definitive lists of dates on which shares were acquired for all blocks. In two of these blocks, the risk of purchasing before relative interests were known did not pay off for the Crown. In Wharepuhunga, the Crown bought 159 individual shares before relative interests were known. The vast majority of those were from absentees or others with minor interest in the land. The Crown paid full price for these shares, but when relative interests were defined the court awarded one-quarter shares to 121 of the owners who had sold. Wilkinson estimated that the Crown had paid for 12,454 acres and only acquired 8,038. In financial terms, this amounted to a loss of £552.<sup>683</sup>

In Takotoraha, the Crown paid full price for 17 shares before relative interests were known. Of those, four of the owners had received lower payments (by about one-third) than their shares had entitled them to, and another 13 owners had received higher payments (also by about one-third). Altogether, in Wilkinson's calculation, the Crown had overpaid by £9 12s 11d. Wilkinson seemed to give no thought to the possibility that those who had been underpaid should be compensated.<sup>684</sup>

In Te Kopua 1, Wilkinson acquired seven shares before relative interests were defined. If all shares had been equal, the seven sellers would have together owned 763 acres, but when relative interests were defined they were awarded shares totaling 1,165.5 acres. The Crown acquired more than 400 acres it had not paid for, or in financial terms it paid £133 10s 6d for shares that (based on its own price per acre) were worth £203 19s 3d.<sup>685</sup> Again, there is no evidence of the Crown giving any consideration to paying the shortfall. Instead, Wilkinson 'noted with satisfaction' that the money the Crown had saved by underpaying would cover the costs of developing the land for settlement.<sup>686</sup> Boulton reported that there were other blocks in which the Crown acquired more land than it had paid for, but did not name the blocks.<sup>687</sup>

### 11.5.5 Treaty analysis and findings

For any Crown purchase of Māori land to comply with the Treaty, a fair price must be paid. When the Crown grants itself exclusive purchasing rights, this obligation is heightened. By excluding private purchasers, the Crown acquires an obligation

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682. Regarding Takotokoraha and Wharepuhunga, see doc A79, pp 236–237. Regarding the other blocks, Boulton provided evidence that relative interests were not determined until mid-1892. Boulton provided evidence of purchasing prior to that date in Hauturu East 3 (doc A67(a), vol 1, p 317), Mangauika (doc A67, p 222), and Turoto (doc A67, pp 366–367). Husbands and Mitchell provided evidence of purchasing prior to that date in Ouruwhero and Puketarata (doc A79, p 250). In Ouruwhero, relative interests were not defined until late in 1892, by which time the Crown had acquired the shares of at least 20 owners, see doc A79(a), vol 1, pp 376–378.

683. Document A79, p 237.

684. Document A79, p 237; doc A79(a), vol 1, pp 61–62.

685. Document A67, pp 210, 237–238; doc A55, pp 103–104.

686. Document A67, pp 237–238; doc A55, pp 103–104.

687. Document A67, pp 237–238, 256.

– sometimes likened to a fiduciary duty – to use its power to protect Māori interests.<sup>688</sup>

In this district, during the years 1890–1905 the Crown showed very little interest in what a fair price might have been. Te Rohe Pōtae leaders had asked that all decisions about alienation be made by hapū, and Ballance had promised that that would be the case. They had asked that all transactions be negotiated by the Kawhia Committee, and Ballance had promised that some form of body with owner representatives would conduct the negotiations. Owners had asked that sales or leases take place in an open and competitive market, and Ballance had promised that would occur. Ballance had also held out the expectation that, as a result of the railway, prices of Te Rohe Pōtae Māori land would rise from ‘three or four shillings an acre’ to ‘as many pounds per acre’, and that Te Rohe Pōtae Māori would receive the benefit from those price increases.<sup>689</sup> The Crown subsequently renege on all of these promises. Instead, it established a land purchasing system in which sellers had very little access to money by means other than selling to the Crown, in which there were no competitors, in which it actively pressured owners to sell, and in which it targeted individual sellers, many of whom were vulnerable and none of whom had bargaining power to compare with that of the Crown.

The Crown established this system in order to coerce sales while also controlling prices, in accordance with its financial and settlement goals. Officials showed no interest in obtaining independent valuations and little interest in negotiating with owners. Their approach, in block after block, was simply to determine a price that suited the Crown and wait until owners were compelled by force of circumstance to sell their shares.<sup>690</sup> Wilkinson acknowledged that the Crown itself fixed the price, with minimal input from owners. This was a highly cynical purchasing operation, which was specifically intended to transfer wealth from Te Rohe Pōtae Māori to the Crown, and did so.

It is difficult to determine what a fair price would have been if Te Rohe Pōtae Māori had been able to manage their lands as they wished, to obtain income from means other than land sales, to negotiate collectively in a competitive market, and to do so without threats or coercion from the Crown. It is possible that very little land would have been sold at all, and it is very likely that owners would have driven a harder bargain on any land that was sold. Others were telling them that their lands were typically worth well over £1 per acre and sometimes considerably more; and Ballance had suggested £3 or £4. We see no reason to disagree with Seddon’s conclusion that the district’s Māori were not paid a market value, nor

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688. ‘While the purchase monopoly was enacted in part to protect Māori from land speculation, the Crown assumed a serious obligation to protect Māori interests when conducting its operations. It assumed a responsibility to pay Māori a fair price for their land.’: Waitangi Tribunal, *Te Kāhui Maunga*, vol 2, p 418. Also see Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 1, p 104; Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, vol 1, p 120; Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 580–581, 617, 625; submission 3.4.307, p 29. Also see submission 3.4.11, pp 2–3.

689. ‘Notes of a Meeting between the Hon Mr Ballance and the Natives at the Public Hall at Kihikihī, on the 4th February 1885’, AJHR, 1885, G-1, p 17; doc A78, p 1129.

690. Document A67, pp 188, 203–204, 210–211, 226–228, 370.

with the view of the Native Land Commission that the prices paid were ‘the best possible bargain for the state.’<sup>691</sup> Based on the views of contemporary observers, on the growth in prices once valuations were required, and on the leasehold returns provided by Dr Hearn, it seems likely that the underpayment was considerable.

The Crown made two concessions about the prices it paid. First, it acknowledged that it had breached the Treaty during the 1890s by using its ‘pre-emptive powers’ in a manner that left some Te Rohe Pōtae Māori with ‘little option but to sell their land or shares in land even when they, and other observers, considered that the prices offered represented less than the market value of their land.’<sup>692</sup> It also conceded that when it purchased Te Rohe Pōtae Māori land during the 1890s it misused its monopoly by ‘[o]ften paying prices which Māori and other observers considered unreasonably low.’<sup>693</sup>

We welcome these concessions, not least for their acknowledgement that Māori were effectively pressured or coerced into selling at whatever price the Crown offered. But we also note that the Crown did not concede that prices were *in fact* too low; it conceded only that Māori (along with others) *perceived* them to be too low, but had little choice but to sell anyway. In our view, the prices were in fact too low. Wilkinson and other Crown officials acknowledged on several occasions that the prices were below what private buyers would have offered.

We therefore find that:

- By denying Te Rohe Pōtae Māori the right to sell or lease land in an open market, by pressuring Māori landowners to sell at prices the Crown determined, and by failing to take reasonable steps to determine a fair market value for Te Rohe Pōtae Māori lands in the absence of a functioning market, the Crown breached the Treaty guarantee in article 2 of tino rangatiratanga. By failing to respect the rights of Te Rohe Pōtae Māori as provided for in article 3, the Crown breached the principle of equal treatment.
- By breaking its February 1885 promise that Māori communities would have the right to sell or lease land in an open market, the Crown breached the partnership principle and its duty to act honourably, fairly, and in good faith.
- By paying prices that were by the admission of its own officials less than private purchasers were prepared to pay, the Crown breached the principle of partnership and its duties of active protection and to act honourably, fairly, and in good faith.

## 11.6 THE JOSHUA JONES LEASE

The story of Joshua Jones’ lease of lands in the Mōkau area is one of the clearest examples of the consequences of the Crown’s failure to give effect to Māori authority. As we saw in chapter 7, Mōkau was a particular site of attention for the Crown in its efforts to open Te Rohe Pōtae to European settlement. The area, also known

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691. ‘Native Lands in the Rohe-Potae (King Country) District’, 4 July 1907, AJHR, 1907, G-1B, p 4.

692. Submission 3.4.307, p 1.

693. Submission 3.4.307, pp 25–26.

as Poutama, stretched roughly from the Mōkau River to Parininihi.<sup>694</sup> During the early 1880s, the Mōkau rangatira Wetere Te Rerenga, with Rewi Maniapoto's assistance, sought to manage engagement with various influences coming to bear on the Mōkau lands at the time by obtaining title to the land through the Native Land Court.

At that time, the settler Joshua Jones was seeking to establish a mining venture on the Mōkau lands. In 1882, after the Native Land Court hearings in Waitara determined the title for the Mokau Mohakatino 1 block, Jones negotiated with Wetere and the other owners of the block to enter into a lease.<sup>695</sup>

Over the following years the terms of the lease became contested. In 1885, the Government passed special legislation confirming Jones' right to complete negotiations to lease Mokau Mohakatino 1. In 1888, it established a royal commission of inquiry to look into the situation, which found in favour of Jones. Ten days after the commission returned its findings, and without consulting with Māori, the Government passed the Mokau-Mohakatino Act 1888, which allowed Jones' lease to be confirmed later that year. In the early twentieth century, the situation was revisited by a series of Government inquiries, but these did not result in the lease being overturned. Finally, in 1911, virtually the whole 56,500-acre Mokau Mohakatino 1 block was alienated by private purchase.

The Crown acknowledged that the Joshua Jones saga is a longstanding grievance for the people of Mōkau. The Crown made several key concessions of Treaty breaches in respect of its handling of the Jones lease.

The Crown conceded that it failed to consult with Māori prior to passing the 1888 Act. The Crown said that 'despite a long period of protest by the owners of Mokau Mohakatino against Joshua Jones' attempt to lease the block, it did not consult the owners before promoting the Mokau-Mohakatino Act 1888, which validated a lease over the block that the owners had not consented to.' In this, the Crown admitted that it 'failed to accord the Māori owners of Mokau-Mohakatino equality of treatment, and failed to respect their rangatiratanga over their land, and this constituted a breach of the Treaty of Waitangi and its principles.'<sup>696</sup>

The Crown also conceded that the provision in the 1888 Act that allowed the lessee the monopoly power to lease additional land in Mokau Mohakatino 1 gave 'an extraordinary degree of support for the claims of a settler against the rights of Maori landowners.'<sup>697</sup> The Crown therefore conceded that its failure to protect the owners' interests in land they wished to retain breached the Treaty of Waitangi and its principles.<sup>698</sup>

The Crown acknowledged that the protections given to Jones by the 1888 Act were a major factor in the eventual permanent alienation of the land to private

694. Document A28, p 15.

695. The main part of the block was designated Mokau Mohakatino 1. Mokau Mohakatino 2 was the name given to the Government's township site which was abandoned upon the court's refusal of this application in 1882: doc A28, p 282.

696. Submission 3.4.296, p 34.

697. Submission 3.4.296, p 40.

698. Submission 3.4.296, p 40.

purchasers in 1911. It said that ‘the Mokau-Mohakatino block was alienated first through lease and later through sale largely because the owners did not have alternative options other than expensive litigation’. The Crown also acknowledged that ‘[p]rior to the sale of Mokau-Mohakatino, despite requests for assistance and recommendations of support from two Native Land Commission reports, the Crown did not intervene to help the owners.’<sup>699</sup>

The Crown concluded ‘that its failure to protect the owners’ interests, when the lessees did not meet their obligations under the lease, contributed to the sale of Mokau Mohakatino, and this failure to protect the owners’ interests in land they wished to retain breached the Treaty of Waitangi and its principles.’<sup>700</sup>

The claimants did not think the Crown’s concessions went far enough. They considered, in particular, that the cause of the Crown’s failings in respect of the Jones saga was rooted in its determination to break down the aukati at all costs. The Crown’s attitude was most apparent in its introduction of the Native Land Court into Mōkau in 1882.<sup>701</sup> This occurred after the Crown entered into ‘secret negotiations’ with Ngāti Tama, pressuring Ngāti Maniapoto and Mōkau Māori to apply to have their lands come before the court (as discussed in chapter 7).<sup>702</sup> Claimants argued that ‘the Crown used as leverage the wishes of Rohe Potae Maori to engage with settlers on their own terms.’<sup>703</sup> The Crown did this, claimants said, in pursuit of a policy that had three broad aims: to undermine the Kīngitanga and traditional authority structures; to break the aukati; and to substitute Crown authority, including the Native Land Court, in their place.

For claimants, the Crown’s goal of breaking the aukati was reflected in the way that it protected Jones’ interests over those of the Māori owners, not just in validating the lease through the 1888 legislation, but also when it passed the Special Powers and Contracts Act 1885, which gave Jones special dispensation to complete negotiations for the lease of Mokau Mohakatino 1.<sup>704</sup> These actions, the claimants contended, constitute further Treaty breaches above and beyond what the Crown has conceded.

The Crown did not agree with the claimants’ view that its handling of the Jones lease had been motivated by a ‘relentless pursuit of breaking the aukati’, and submitted instead that ‘there were cautious overtures on both sides towards rebuilding relationships.’<sup>705</sup>

In this section, therefore, we address the following questions:

- What terms of lease did Jones propose and did the owners of the Mokau Mohakatino 1 block agree?
- What effect did the Special Powers and Contracts Act 1885 have on negotiations for the lease and how was it viewed by the owners?

699. Submission 3.4.296, p 40.

700. Submission 3.4.296, p 40.

701. Submission 3.4.122, pp 3–4.

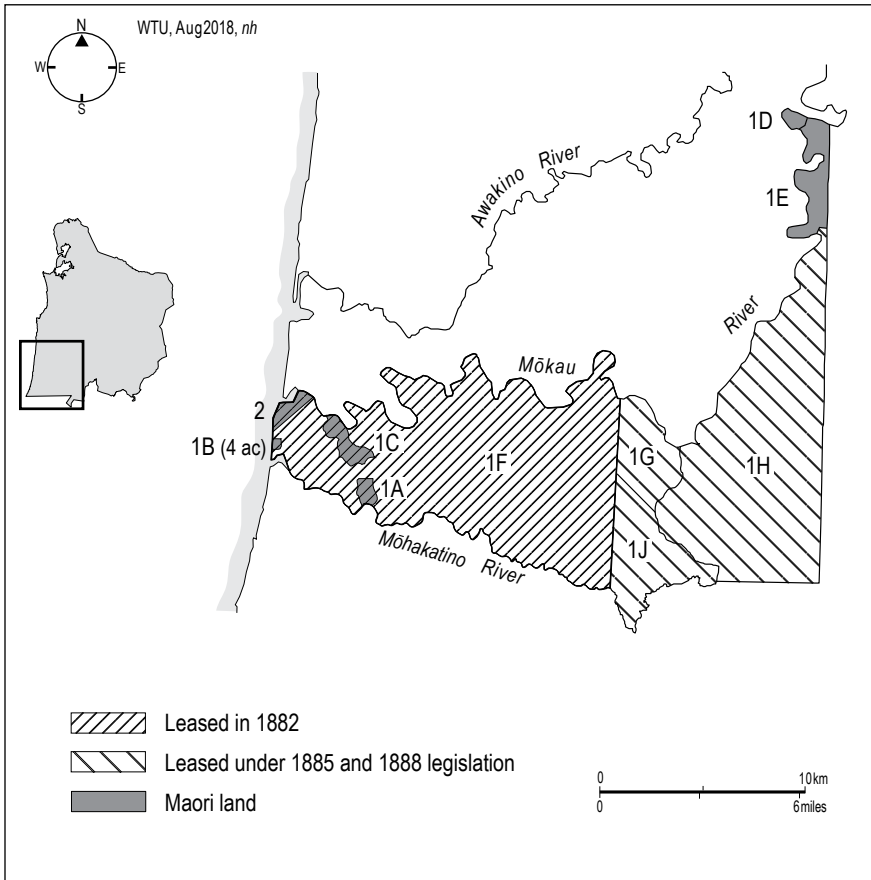
702. Submission 3.4.122, p 3.

703. Submission 3.4.366, p 4.

704. Submission 3.4.243, p 99; submission 3.4.246, pp 53–57, 60–64.

705. Submission.3.4.296, p 4.





Map 11.4: Mokau–Mohakatino block: leases to Joshua Jones, 1882–88

- What were the terms of the royal commission and were its recommendations reasonable?
- How did the Crown come to pass the Mokau-Mohakatino Act 1888 without the owners' consent?
- What was the Crown's role in subsequent inquiries into the lease and the eventual alienation of the land by private purchase in 1911?

### 11.6.1 The terms of the Jones lease

Joshua Jones, an Australian miner and speculator, arrived in New Zealand in 1876 'looking out for land' and opportunities. Based in New Plymouth, Jones sensed opportunities for coal mining and timber milling in Mōkau soon after his arrival.<sup>706</sup>

706. Document A28, p 192.

Jones first tried to purchase the Mokau Mohakatino 1 block during the Native Land Court hearing in Waitara in June 1882. Though the ownership of the block was yet to be confirmed by the court, Jones and his land agent William Grace anticipated that Wetere Te Rerenga and other Mōkau-based Ngāti Maniapoto would be named as the owners. Wetere and Rewi Maniapoto declined the offer, but signalled that they would be open to 'some form of lease or business arrangement'.<sup>707</sup>

Immediately following the hearing, Jones began negotiating the lease of the block with Wetere and other Mōkau leaders (though not Rewi), as representatives of the owners of Mokau Mohakatino 1.<sup>708</sup> Jones had a solicitor in Waitara draw up a deed in English, which Grace then translated into Māori.<sup>709</sup> We note that neither the Māori nor the English deed have survived into the present day. Our knowledge of the deeds' terms, disputed and otherwise, comes from the fact that signed copies of the deeds were presented before the royal commission in 1888 and described in the report from that inquiry.<sup>710</sup>

Joshua Jones was seeking a 56-year lease over the entirety of Mokau Mohakatino 1, right up to its unsurveyed boundary near Totoro. Jones' proposal included mining rights to the land, while the lessors would be paid £25 per annum in rental plus 10 per cent of the coal-mining proceeds.<sup>711</sup> A covenant was attached to the proposed lease agreement, with stringent conditions for Jones to meet as lessee. Jones had to pay for the survey of the block, removing a major expense for Māori. He had to establish a company with at least £30,000 in initial capital. Jones was required to continue to invest £3,000 per annum in the mine to increase the enterprise's viability. If a township was required to house and support the mine's workforce, Jones was to pay for that too. Jones was also responsible for keeping the cleared land on the block in good condition, including sowing it in good pasture and keeping it well fenced.

In addition, the lease provided formal mechanisms for the block owners to retain some control over and participate in the development of their land. Of the company directors, two would be representatives of the owners, voted in by a majority of owners.

There were other, more idiosyncratic, conditions not included in the deeds. Jones was to buy a steamer, to be piloted by Wetere, for the transportation of the coal. Finally, when Jones and Wetere travelled together, Jones would meet Wetere's expenses, including providing him with clothes.<sup>712</sup>

707. Document A28, p 288.

708. Document A28, p 289.

709. 'Lease of Certain Lands at Mokau: report of the Royal Commission appointed to inquire into the circumstances of a lease at Mokau, made by the native owners to Mr Joshua Jones', AJHR, 1888, G-4C, p 13; doc A28, p 289.

710. 'Lease of Certain Lands at Mokau: report of the Royal Commission appointed to inquire into the circumstances of a lease at Mokau, made by the native owners to Mr Joshua Jones', AJHR, 1888, G-4C, p 1.

711. For details of the negotiations and the lease terms see doc A28, pp 289-91; AJHR, 1909, G-11, pp 3-5.

712. Document A28, p 290.

The terms of the written lease were, however, ambiguous in one crucial respect. There was a significant difference between the English and Māori versions of the written deeds, which would prove important to later investigations into the agreement between Jones and Mōkau Māori. WJ Butler, a Native Land Court official and translator and witness at the 1888 royal commission, examined the deeds at the time of the negotiations in 1882, and found that under the English version, the Māori lessors would receive 10 per cent of profits from the mining operation less deductions for expenses. In the te reo Māori version, it was a flat 10 per cent with no deductions.<sup>713</sup>

The lease symbolised Mōkau Māori ambitions. Later, at the 1888 royal commission hearings, Wetere describing Māori motivations for entering the lease. He said that the people of Mōkau were willing to enter into business relationships with mutual responsibilities and benefits.<sup>714</sup> As historian Paul Thomas explained, under this arrangement Mōkau Māori would open up their land and the resources contained within them in return for economic benefit and ‘real partnership’.<sup>715</sup> In particular, the opportunity to lease the land rather than sell it outright offered an opportunity for Māori to access the benefits of economic development while also retaining some control over their lands.

Wetere and Rewi refused to agree to the lease until they had taken it to the other Mokau Mohakatino 1 owners for debate. This took place at Wetere’s settlement of Te Rainga in early July 1882. Around 120–130 Māori were present at the height of the gathering, though not all were owners, nor did every owner attend.<sup>716</sup> Jones was present in Mōkau by 1 July seeking agreement to his lease, but he struggled to gain signatures. On 9 July came a turning point in the negotiations with the arrival of Heremia and other Upper Mōkau Māori. Heremia opposed the deed, but declared that he would support it if it met three conditions.<sup>717</sup>

The first was that the lease could not last 56 years; instead, the owners should have the power to terminate the lease at any point.<sup>718</sup> Heremia’s reasoning was that once the survey and court costs Mōkau Māori had incurred through the recent court process were repaid, the owners could then resume full control of the lands.

Heremia’s second condition was that the lease should only give Jones rights to mineral and coal extraction – it should not be an absolute lease over the whole block. Local Māori would be able to continue living on the block, using and cultivating the land, while Jones would be able to mine the coal, taking whatever timber he needed for the mining operations.

713. ‘Native Lands and Native-Land Tenure: Interim report of Native Land Commission, on Native lands in Mokau-Mohakatino block’, AJHR, 1909, G-11, p 4; doc A28, p 289.

714. Document A28, pp 289–291.

715. Document A28, p 291.

716. ‘Lease of Certain Lands at Mokau: report of the Royal Commission appointed to inquire into the circumstances of a lease of land at Mokau, made by the Native owners to Mr Joshua Jones’, AJHR, 1888, G-4C, pp 15–6, 22; doc A28, pp 291–292.

717. Document A28, pp 292–293.

718. Document A28, p 292.

Heremia's third condition limited the area that Mōkau Māori were willing to lease to Jones. Instead of the lease applying up to Totoro, it would be for land reaching to Mangapohue, which was around 30 miles up the Mōkau River.

According to Te Ohu, a previously staunch opponent of the lease, Heremia's intervention swung the support of the hui behind the lease.<sup>719</sup> Of the 100 registered owners, not all of whom were present, allegedly 81 signed.<sup>720</sup> The deeds were signed on 13 July 1882, just over a month after the Waitara Native Land Court hearing. The question becomes, then, to what did the parties agree?

We regard it as unlikely that Mōkau Māori would have agreed to the terms of the lease unless they thought Heremia's conditions were enshrined in the written document. In particular they almost certainly would not have agreed to the lease if it ran for 56 years or extended to the whole block. Indeed, contrary to the terms of the deed, Jones himself appears to have accepted the Mangapohue boundary during the 1882 negotiations, after being told by William Grace that that was the best he could hope for. Jones later told the 1888 royal commission that he had agreed to this boundary.<sup>721</sup> This would not, however, stop him from repeatedly asserting a legal interest in the whole block over the next three decades.

Major W B Messenger, head of the armed constabulary at Pukearuhe, also gave evidence to the 1888 royal commission about the lease negotiations. According to Messenger, he, Grace, and other interpreters had assured Māori that 'it was a mineral and timber lease' only, in line with Heremia's second condition.<sup>722</sup> He also said that Māori from that region were advised they could continue to live on the block and cultivate and use the land.<sup>723</sup> Messenger told the commission that this was central to the negotiations of the lease. He said:

I do not believe they [local Māori] understood that it was a lease to give exclusive possession of the whole of the lands. I certainly did not understand it. I should think Mr Grace was two hours explaining the deed to them, but there had been talk between the Natives and Mr Grace about it for two or three days previously.<sup>724</sup>

The 1888 royal commission ultimately rejected Messenger's evidence on the basis that it was not his role to explain the nature of the lease.<sup>725</sup> It does appear, however, that there were fundamental differences between what Mōkau Māori told Jones that they would accept and the signed deeds. Messenger told the com-

719. 'Lease of Certain Lands at Mokau: report of the Royal Commission appointed to inquire into the circumstances of a lease of land at Mokau, made by the Native owners to Mr Joshua Jones', AJHR, 1888, G-4C, p 21; doc A28, p 293.

720. Document A28, p 295.

721. Document A28, p 294.

722. Document A28, p 295.

723. Document A28, p 295.

724. 'Lease of Certain Lands at Mokau: report of the Royal Commission appointed to inquire into the circumstances of a lease of land at Mokau, made by the Native owners to Mr Joshua Jones', AJHR, 1888, G-4C, p 16; doc A28, p 295.

725. Submission 3.4.296, p 17.

mission that both English and Māori language versions clearly stated that the agreement was for an absolute lease of the land for 56 years, even though the signatories had spent several days arguing for a lease covering mining and mining rights only, which Mōkau Māori had the right to terminate.<sup>726</sup>

In his evidence before this inquiry, Paul Thomas argued that the only reasonable conclusion to draw was that Mōkau Māori signed the deeds on the understanding that they reflected what they had voiced over the preceding several days.<sup>727</sup> We agree.

### 11.6.2 The Special Powers and Contracts Act 1885

In September 1885, the Government passed the Special Powers and Contracts Act 1885. The legislation included a special provision by which Joshua Jones was given the legal right to complete negotiations for the lease of land in the Mokau Mohakatino 1 block. The Act also referred to the whole of Mokau Mohakatino 1 rather than the confined area that Mōkau Māori had argued for the lease to cover in the 1882 negotiations.<sup>728</sup> The previous year, the Government had passed the Native Land Alienation Restriction Act 1884, which had reintroduced the Crown's right of pre-emption over Māori land. The Special Powers Act clarified that Jones's lease could operate as an exception to the Native Land Alienation Restriction Act.<sup>729</sup>

Jones himself provided much of the impetus for the inclusion of the Mokau Mohakatino provision in the Special Powers Act. In 1885, he had petitioned Parliament calling for an inquiry into his lease. He was a persistent pain to parliamentarians, constantly pushing them to support his case. He was described around parliament as the most 'indefatigable lobbyist' and as a 'bore' and crank.<sup>730</sup> He was also provocative, levelling significant allegations against the Government. The most serious, according to Thomas, was Jones's claim that the then Native Minister John Bryce 'had deliberately undermined his efforts to gain a land lease, in particular through preventing the survey of the Poutama blocks in 1882.'<sup>731</sup> There was an element of truth to this claim, in that in 1883 the Government had agreed to hold back applications to lands within the aukati until further discussions were held with Te Rohe Pōtae leaders (see chapter 8, section 8.3.3). It is, however, hard to argue this was directed at Jones specifically. Jones also claimed that the Crown's reassertion of pre-emption in 1884 had 'completely confiscated the interests acquired by him' and had rendered the money he had spent pursuing the lease a waste.<sup>732</sup>

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726. Document A28, p 296.

727. Document A28, p 296.

728. Document A28, pp 343–344.

729. Document A28, p 343.

730. Document A28, pp 339–340.

731. Document A28, p 339.

732. Petition 17, 'Report of Public Petitions Committee', AJHR, 1885, I-1, p 4 (doc A28, p 339).

Jones' tactics proved effective. In July 1885, Parliament's Public Petitions Committee inquired into his claim.<sup>733</sup> During the inquiry, Bryce denied deliberately trying to interfere with Jones's lease and his affairs in Mōkau.<sup>734</sup> Bryce told the committee that he regarded Jones as 'dangerously intemperate and prone to wild allegation.'<sup>735</sup> Private transactions between Māori and Europeans were for the law to decide, he said, not the Government. However, John Ballance, who had succeeded Bryce as Native Minister, took a different view. Ballance believed that the Government had a general obligation to assist Jones's efforts, not least due to his contribution towards, in Ballance's words, 'opening up the aukati'.<sup>736</sup> He explained that the Native Land Alienation Restriction Act 1884 had not been intended to restrict the interests of Europeans who already had interests in Te Rohe Pōtae, and that legislating an exemption for Jones would not be an ethical or legal problem.<sup>737</sup>

The committee did not seek testimony from Mōkau Māori and gave only minimal consideration to the concerns they had previously raised with the Government. On 17 July 1885, the committee recommended the Government remove 'any prejudicial effect' which the Alienation Restriction Act could have on Jones's Mōkau interests.<sup>738</sup> As a result, a special provision was inserted into the Special Powers and Contracts Act affirming Jones's rights to the Mokau Mohakatino 1 block; he could now complete negotiations for his lease. The Act also exempted Jones's interest in Mokau Mohakatino 1 from the maximum 21-year period one could lease land from Māori: he could now pursue a 56-year term.<sup>739</sup>

In a wider context, Ballance's testimony also signalled a new Crown approach to Te Rohe Pōtae. As Ballance put it, here was an opportunity to support a settler's efforts towards 'opening up the Aukati'. Before 1885, the Government had been reluctant to support Jones's claim in case, as Bryce had told the committee, it inflamed relations between Te Rohe Pōtae Māori and the Crown.<sup>740</sup> By mid-1885, the Government had become less cautious, and it saw less of a risk in provoking Te Rohe Pōtae Māori. Of course, the Government had long wanted to open up Te Rohe Pōtae; but now, it was prepared to act openly in pursuit of this. (For more on this period, see chapter 8).

Thomas thought it doubtful whether Mōkau Māori even knew of the legislative support given in 1885 for Jones and his lease.<sup>741</sup> Without doubt, most, if not all, would have bitterly opposed it. Relations between Jones and Mōkau Māori had begun to sour less than a year after the signing of the deeds. Around May 1883, word reached Mōkau that Jones claimed to have in his possession an absolute

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733. Document A28, p 339.

734. Document A28, p 340.

735. Document A28, p 340.

736. Document A28, p 340.

737. Document A28, pp 340–341.

738. Document A28, p 343.

739. Special Powers and Contracts Act; document A28, pp 339, 343.

740. Document A28, p 340.

741. Document A28, p 344.

land lease for 56 years over Mokau Mohakatino 1, signed by Mōkau Māori.<sup>742</sup> This alarmed the owners of the block, as it contradicted what they had agreed to with Jones during negotiations at Te Rainga in July 1882. Weterere, in possession of copies of the deeds, asked Major W B Messenger, who was still stationed nearby at Pukearuhe, to examine them. Messenger informed Weterere that they did not reflect the negotiations; the documents did not specify that they were only for mineral and coal rights, but were for an absolute 56-year land lease over the whole of the block.<sup>743</sup>

Weterere travelled to Mōkau and explained the situation to other chiefs, including Heremia. The chiefs, Te Oro Watihi would later testify, were shocked that the deeds did not reflect Heremia's three conditions. Heremia, upon hearing the lease read aloud, apparently said: "These are not my words; there is a fixed term in the lease and it must be broken from to-day."<sup>744</sup> At a later hui, Mōkau Māori decided on a general course of action. Wahanui wrote to Bryce, informing him of the situation; Jones was presented with a written notice, including a trespass warning; and Mōkau Māori began sharing their views on the Jones affair with the *Taranaki Herald*, which published a series of articles on the matter.

Jones responded, telling his version of events through the press and demanding Government support. In the next few months, Jones, Heremia, and Wahanui continued to exchange views on the situation in the *Taranaki Herald* and other colonial newspapers.<sup>745</sup>

Heremia also took more direct action. Heremia reasoned that because Jones could not be trusted with the leasing arrangement he could not be trusted with the coal. By February 1884, Jones had mustered enough capital to start a small-scale mining operation on the south bank of the Mōkau River with a small crew of Europeans.<sup>746</sup> In early 1884 Heremia and five others, including his nephew Te Huia Te Rira, rowed to the mine, threw the coal in the river, and escorted the miners to the river mouth where they were put on the first ship back to Auckland.<sup>747</sup> After a week, the miners returned, as did Heremia in late March, with the same result: coal in the river, and the miners given orders to leave.

Weterere Te Rerenga, by contrast, continued to support a relationship between Mōkau Māori and Jones. Weterere's support was, however, narrowly defined. He was primarily interested in the coal partnership and the prospect of commercial gain for his people. Weterere was nonetheless prepared to go to some lengths to support Jones, including committing to settle some of his supporters by the mine at Mōkau to prevent further disruption by Heremia.<sup>748</sup> According to Thomas, Weterere main-

742. Document A28, p 327.

743. Document A28, p 327.

744. 'Lease of Certain Lands at Mokau (report of the Royal Commission appointed to inquire into the circumstances of a lease of land at Mokau, made by the Native owners to Mr Joshua Jones)', AJHR, 1888, G-4C, p 16; doc A28, p 328.

745. Document A28, p 328.

746. Document A28, pp 331–332.

747. Document A28, pp 331–332.

748. Document A28, p 332.

tained this position till around 1887, when it became apparent Jones would not keep to his side of the bargain by paying rent and mining coal.<sup>749</sup>

By mid-1884 Jones's coal-mining operations in Mōkau had ceased. Jones had attempted to complete the lease by gaining the signatures of the approximately 20 owners who had not originally signed the deeds. However, this strategy was unsuccessful, and by July 1884 Jones had abandoned his efforts to gain further signatures.<sup>750</sup> Mōkau Māori remained opposed to further land leases or sales, and Jones' poor conduct had ended most local's willingness to cooperate in restarting his mining enterprise. Frustrated, Jones turned to Parliament for help.

Under the law of the time, Jones needed to meet three further preconditions to finalise his lease. He needed it legally validated by a court, for the land to be surveyed, and for his interests to be partitioned out.<sup>751</sup>

The Crown carried out a covert survey of the Mokau Mohakatino 1 block in February 1888. The survey was conducted without the approval or indeed the knowledge of local hapū. The surveyor had commenced his work while around 600 Māori were gathering in Mōkau, several miles to the south, for a hui. With most local Māori elsewhere, there were few to protest or disrupt the survey.<sup>752</sup> In late June 1888, the Native Land Court displayed the survey plan in New Plymouth and Ōtorohanga and issued a public notice saying Māori had 14 days to object to the boundaries.<sup>753</sup> Given the lack of notice, it is not surprising the court received only four letters of protest. The court considered these objections at a hearing in New Plymouth on 7 November 1888, as well as hearing from other owners. The court disregarded the voices of protest and ordered the survey to be officially registered, with Totoro as the eastern boundary.

### 11.6.3 The 1888 royal commission of inquiry

Political agitation had worked well for Joshua Jones in 1885, and after his efforts to complete the lease and establish coal mining were frustrated by Māori opposition, he again turned to it as a tactic for control of Mokau Mohakatino 1. From late 1887, Jones and his supporters in Parliament pressured the Government to declare him the legal lessee of the block without any investigation. This ploy failed, but the Government did agree to a royal commission of inquiry to consider the validity of Jones's claims.<sup>754</sup>

Politicians of the time were aware of the tensions between Jones and Mōkau Māori, and some saw the royal commission as a way of mitigating the situation. Oliver Samuel, the member for New Plymouth, was concerned that resistance to Jones was at breaking point. He feared that any attempt to contrive an inquiry in Jones's favour would be easily detected by Māori and that the outcome could

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749. Document A28, pp 363–364.

750. Document A28, pp 332–333.

751. Document A28, p 358.

752. Document A28, p 375.

753. Document A28, p 375.

754. Document A28, pp 359–360.



be violent.<sup>755</sup> Some of the Māori members of Parliament were concerned that the royal commission had been established for Jones's interests alone. Mōkau Māori, for their part, appear to have put their faith in the commission as an opportunity to set forth their views and to seek resolution from Parliament.<sup>756</sup>

The royal commission was appointed in June 1888. It consisted of G B Davy, registrar-general of Lands and Deeds, Lieutenant-Colonel J M Roberts, and Hamuera Tamahau Mahupuku, an assessor of the Native Land Court.<sup>757</sup> The commission opened on 22 June 1888. Its terms of reference were to inquire into whether Jones had been prevented from fulfilling his land lease by Government action or 'the unwillingness of the Native owners'; or, 'on the other hand, [whether] the said Joshua Jones has not taken reasonable steps to enable advantage to be taken by him of enactment.'<sup>758</sup> The commission's investigations lasted two months, with hearings held in Wellington, Auckland, New Plymouth, Ōtorohanga, and Waitara.<sup>759</sup>

The commission heard from 13 Mōkau Māori witnesses, with the aid of translators. In Thomas's words, '[n]ot a single Maori witness backed Jones' claim of a land lease, vouched for his probity, or professed a desire to see him granted any legal rights over the land.'<sup>760</sup> Mōkau Māori were unanimous in testifying that they did not agree to a 56-year lease of the whole block. The lease was for coal and mineral rights, and it was for a flexible term to be determined by them. Major Messenger, who had witnessed the 1882 negotiations, corroborated the statements of the Mōkau witnesses. He, like local Māori had understood it to be a lease for coal mining only and not for exclusive land rights.<sup>761</sup>

Jones' testimony took a week and he reaffirmed the 56-year exclusive land lease. The only other witness supporting his version of events was William Grace, who had acted as Jones's agent during the 1882 negotiations.

The commission reported back to the Government on 20 August 1888. The report was 44 pages long, but the actual findings were brief, limited to a little over a page. The rest of the report comprised mostly the minutes of evidence. The commission affirmed Jones' account and his right to lease the Mokau Mohakatino 1 block. In doing so, the commission rejected the suggestion that Mōkau Māori did not properly understand the terms of the lease, calling this idea an 'inherent improbability'. The lease, the commission said, 'was understood by the Natives according to its actual purport and effect – viz., as an absolute lease for fifty-six years.'<sup>762</sup>

755. Document A28, pp 359–360.

756. Document A28, p 360.

757. Document A28, p 360.

758. Case of Mr Joshua Jones (papers relative to), AJHR, 1888, G-4, pp 2–3.

759. Document A28, pp 361–362.

760. Document A28, p 362.

761. Document A28, p 362.

762. 'Lease of Certain Lands at Mokau (report of the Royal Commission appointed to inquire into the circumstances of a lease at Mokau, made by the Native owners to Joshua Jones)', AJHR, 1888, G-4C, p 2.

The commission, in explaining its decision, emphasised that they viewed those Māori witnesses who had appeared before it as ‘of unreliable character.’<sup>763</sup> Wetere Te Rerenga and Hone Pumipi Kauparera received special mention. The commission said that the testimony of Wetere and Pumipi contradicted their previous support for Jones when he had applied to the Native Land Court to have the block partitioned in 1887. Wetere, however, explained to the commission that he and Pumipi had supported Jones’ mineral rights only.<sup>764</sup> This was supported by Judge John Wilson, the land court judge who had heard Jones’ partition application. Wilson told the commission he did not believe that Wetere and Pumipi’s evidence in support of the partition provided valid proof of a land lease for Jones. Nevertheless, the commission did not accept Wetere’s account.

The commission also rejected Jones’s claims that the Government, among other parties, had deliberately interfered with his Mōkau interests. The commission ‘[could not] identify any act of the Legislature or of the Government, or any improper action, mistake, or neglect of any officer thereof, as having prevented, or materially hindered, the said Joshua Jones from completing his title.’<sup>765</sup> The Government was absolved of responsibility for Jones’s situation. As Thomas pointed out, this meant that the Crown was exempt from paying Jones any compensation.<sup>766</sup>

The commission concluded that ‘[c]onsidering the exceptional nature and circumstances of the case, the said Joshua Jones is, in our opinion, entitled to any assistance which the Legislature can accord, having regard to the just rights and interests of the Natives.’<sup>767</sup> Other than legislative assistance, the commission did not recommend any specific actions. Instead, it recommended that shape of ‘the specific form of assistance’ should come from ‘Mr Jones himself.’<sup>768</sup> In response, the Crown moved quickly to legally grant Jones the lease for which he had been fighting – against significant Māori opposition – since 1882.

#### 11.6.4 The Mokau-Mohakatino Act 1888

On 30 August 1888, a mere 10 days after the royal commission returned its findings, the Government passed the Mokau-Mohakatino Act 1888.<sup>769</sup> Section 2 of the

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763. ‘Lease of Certain Lands at Mokau (report of the Royal Commission appointed to inquire into the circumstances of a lease at Mokau made by the Native owners to Joshua Jones)’, AJHR, 1888, G-4C, p 2.

764. Document A28, p 363.

765. ‘Lease of Certain Lands at Mokau (report of the Royal Commission appointed to inquire into the circumstances of a lease at Mokau made by the Native owners to Joshua Jones)’, AJHR, 1888, G-4C, p 4.

766. Document A28, p 365.

767. ‘Lease of Certain Lands at Mokau (report of the Royal Commission appointed to inquire into the circumstances of a lease at Mokau made by the Native owners to Joshua Jones)’, AJHR, 1888, G-4C, p 4.

768. ‘Lease of Certain Lands at Mokau (report of the Royal Commission appointed to inquire into the circumstances of a lease at Mokau made by the Native owners to Joshua Jones)’, AJHR, 1888, G-4C, p 4.

769. Document A28, p 369.

Act ordered the Native Land Court to issue a certificate of title forthwith. Section 3 ordered the Native Land Court to proceed with the partition of the block and allocate the interests of the lease's signees to Joshua Jones. Section 3 also explicitly said Jones could continue to gather any of the remaining signatures to complete the lease.

Parliament only took three days to consider the Bill before making it law. It did meet some resistance, particularly from Māori members of Parliament, who succeeded in having the Bill referred to the Native Affairs Committee. As a result some clauses were removed, including one that would have given Jones the power to request partitions or court hearings over any part of the block whenever he liked.<sup>770</sup> Still, these changes were minor. The Act, as passed, remained a bad outcome for Mōkau Māori. They had lost legal control of the block; the land was about to be allocated to Jones against their will and there was nothing they could do about it.

There was no attempt to consult with or gain the consent of the block's Māori owners, even though the Government would have been aware of the accounts given by Mōkau Māori to the royal commission earlier in 1888. The Crown in this inquiry, as noted, conceded that this was a failure of process, in breach of Treaty principles. The Crown also acknowledged that the provision in the Act granting monopoly powers for Jones to lease additional land in Mokau Mohakatino 1 gave 'an extraordinary degree of support for the claims of a settler against the rights of Maori landowners'. The Crown conceded on this basis that the 1888 Act failed to protect the owners' interests in land they wished to retain, further breaching Treaty principles.<sup>771</sup>

In Thomas's view, the Government's passing of the 1888 Act 'exhibited a hardening of its attitude towards local Maori, and arguably showed a new confidence that the protests of the hapu of Te Rohe Potae could be safely dismissed'.<sup>772</sup> As previous chapters have shown, by late 1888, construction of the railway had begun; the region had been further exposed to the Native Land Court; and purchasing officers were preparing to exert pressure on Māori to sell land to the Crown. The Government's long-held aim of opening up the aukati was being realised. The validation of Jones' lease was another means to achieving this; hence, the Crown's concession that it gave Jones 'extraordinary support'.

Jones' forceful and disagreeable personality, and his years of lobbying, provided further motivation for the Government's swift action over Mokau Mohakatino 1. He had made himself a constant irritant to politicians and Crown officials for the better part of a decade, and this was the chance to placate him. Attorney-General Frederick Whitaker spoke to this feeling in Parliament when appealing to the Legislative Council to pass the Act quickly: '[I]t was desirable that they should now finally dispose of this matter, and put Mr Jones in a position in which he could no longer have any complaint . . . Having given him this, he hoped that the

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770. Document A28, p 373.

771. Submission 3.4.296, p 40.

772. Document A28, p 370.

Assembly would have heard the last of Mr Jones of Mokau.<sup>773</sup> George Beetham, the member for Masterton, said it was ‘very unpleasant to see [Jones] . . . year after year’ and urged the premier to settle his ‘vexed question.’<sup>774</sup>

After the Mokau-Mohakatino Act 1888 had confirmed the certificate of title and the survey of the block had been officially registered in November 1888, one obstacle remained for Jones to validate his lease. This involved certification by the trust commissioner (a position created to ensure against fraud in Māori land dealings, generally held by a judge of the Native Land Court) that the land lease was a ‘fraud-free transaction.’<sup>775</sup> In theory, this process could offer some protection for Māori involved in land transactions, but in reality it was rare for the commissioner to decline certification.<sup>776</sup> The Jones lease was duly certified in late 1888, leaving Jones free to seek partition of his interests in Mokau Mohakatino 1, which he did at the Native Land Court hearing in Mōkau in May 1889.<sup>777</sup>

The court heard further protest from owners about the lease, but it was too late. The court partitioned 26,480 acres (out of 56,500 total) of the western area of the block, right up to Mangapohue, as Jones had long sought.<sup>778</sup> This became Mokau Mohakatino 1F and was allocated to the 80 owners who had signed the lease. Jones’s lease to this land was ‘almost immediately’ registered. It never returned to Māori control.

By the end of the hearing, Mokau Mohakatino 1 had been partitioned into nine subdivisions, named 1A to 1J. Jones had the largest partition; the smallest was four acres.<sup>779</sup> Mōkau Māori lost customary control of their land. Remaining owners were given undefined shares to land which, according to Thomas, ‘they owned but could not effectively use, and indeed, in the areas placed under Jones’ control, could not legally use at all.’<sup>780</sup> The share distribution made the owners easy targets for Jones, and he began seeking signatures to the lease for the eastern half of the block. By September 1889 Jones had leased 53,285 of 56,500 acres and controlled almost the whole block.<sup>781</sup>

### 11.6.5 Subsequent inquiries and permanent alienation

Soon after the Mokau-Mohakatino Act 1888 was passed, Joshua Jones left for England, heavily indebted. In 1890 Jones mortgaged the leases (as each partition required its own lease, the number of agreements had multiplied) to his lawyer, John Plimmer. A series of transactions saw the leases eventually end up with the settler Herrman Lewis.<sup>782</sup> Though Jones continued to bemoan his fate to politicians

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773. Mokau-Mohakatino Bill, 30 August 1888, NZPD, vol 63, p 530; doc A28, p 371.

774. Beetham, 28 August 1888, NZPD, vol 63, p 496; doc A28, p 371.

775. Document A28, p 368.

776. Document A28, p 369.

777. Document A28, p 378.

778. Document A28, p 382.

779. Document A28, p 382.

780. Document A28, pp 382–383.

781. Native Lands and Land Tenure, AJHR, 1909, G-11, p 5.

782. ‘Native Lands and Land Tenure’, AJHR, 1909, G-11, p 3.

and the courts in both New Zealand and England, he never reclaimed possession of the rights to lease Mokau Mohakatino 1.

In the first decade of the twentieth century, the Mokau Mohakatino leases were investigated by two different Government-established Māori land commissions (more details on these commissions will be included in later chapters of this report).

The Native Lands Commission, later known as the Stout–Ngata commission, after commissioners Chief Justice Robert Stout and Māori member of Parliament Apirana Ngāta, was established to identify Māori land for European purchase and settlement. In July 1907, the commission found that the owners of Mokau Mohakatino 1, after land taxes, received only £8 net per annum in rent; that the leases could not be altered, ‘as Parliament will not venture to disturb the undoubted right of a European’; and finally, that ‘the tenant cannot be compelled to make any improvements’.<sup>783</sup> The land mostly lay idle.

The Stout–Ngata commission recommended that no further land be purchased in Mōkau.<sup>784</sup> As with a number of leases granted in the late nineteenth century, the Mokau Mohakatino leases had proven ‘not beneficial to the Maori owners nor to the people of the colony’.<sup>785</sup> The commission therefore recommended that Mokau Mohakatino lands not already leased or purchased should be reserved for the owners. In a separate recommendation, Stout and Ngata also recommended that no further Māori land be purchased in the Mōkau area.<sup>786</sup>

A second commission comprising Robert Stout and the chief judge of the Native Land Court, Jackson Palmer, was established at about the same time to look into longstanding Māori complaints over Pākehā control of their lands.<sup>787</sup> The Stout–Palmer commission also investigated the Mokau Mohakatino leases and reported back to the Government in 1908, not long after the Stout–Ngata commission had published its recommendations.<sup>788</sup>

In short, the Stout–Palmer commission found Jones’s leases for the Mokau Mohakatino 1F block to be invalid. This was for two reasons. The first reason was highly technical, but essentially required Jones to have been already in possession of the land in 1882 at the time the lease was first negotiated. This alone, in the commission’s view, was enough to invalidate the lease. The second reason is easier to understand. The commission noted that there were significant inconsistencies between the Māori and English language versions of the original lease. As discussed, the Māori version stated that the owners were entitled to 10 per cent of the proceeds derived from the coal mining operations; in the English language version, the lease said 10 per cent minus expenses. The commission said:

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783. ‘Native Lands in the Rohe-Potae (King Country) District’, AJHR, 1907, G-1B, p 11.

784. Document A28, p 409.

785. ‘Native Lands in the Rohe-Potae (King Country) District’, AJHR, 1907, G-1B, p 11.

786. Document A28, p 409.

787. Document A28, p 410.

788. Document A28, p 410.

The mistake is no slight or trifling one: the difference between 10 per cent before or after expenses have been deducted is most important, and no business man requires the difference to be pointed out. The law necessary to the validity of the deed in this respect has not therefore been complied with.<sup>789</sup>

The Stout–Palmer commission found, further, that the covenant attached to the lease was unfulfilled. Jones was obligated to reside upon and develop the land and had not done so. Nor had he formed a coal company with at least £30,000 in capital, or invested £3,000 or more per annum, as required in the deeds. The commission ruled that the ‘covenant has never been fulfilled, and it is a continuing covenant’, and the ‘lessors can proceed, after the proper and necessary legal steps are taken for the ejection of the present tenant.’<sup>790</sup> The commission also found the leases – signed between 1888 and 1890 – for Mokau Mohakatino 1G, 1H, and 1J invalid, for reasons which included violating the Native Lands Prevention Act 1888 and an 1889 amendment to the same Act.<sup>791</sup>

However, the Stout–Palmer’s commission’s findings were only recommendations and were not legally binding. The commission expressed sympathy for the owners and their position, as opposed to Jones, for whom they did not think ‘any sympathy is required.’<sup>792</sup> However, as Thomas pointed out in his evidence, the commission did not propose that the Government assist the Māori owners to regain control of the land. The holder of the leases from 1908 was Herrman Lewis, who wanted £14,000, and perhaps even more, to be bought out.<sup>793</sup> The commission suggested that the owners sell 10,000 acres of the block to meet Lewis’s price, leaving the remainder for Māori occupation or further leases. Understandably, the owners chose not to do this, being reluctant to part with more land in order to buy out what they had long argued to be an invalid lease.<sup>794</sup>

The commission’s findings placed the owners of Mokau Mohakatino 1 in a difficult situation. Though their legal position was strong, litigation was expensive and they could not afford to take the necessary action to break the lease. Meanwhile, the Government itself attempted to purchase the land. In 1910, the Crown offered the owners £25,247 for the entire block, which measured 50,495 acres after subtracting land to be transferred to the Crown for survey debts.<sup>795</sup> Once again, Mōkau Māori declined to sell, and the Government abandoned its purchase plan later that year.

Mokau Mohakatino 1 was eventually sold to a private coal firm headed by Herrman Lewis in 1911 after a long and disputed alienation process. The sale took place under the complex regime governing the purchase of Māori land in the early twentieth century, which will be examined in detail in later chapters of this report.

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789. ‘Native Lands and Native-Land Tenure’, AJHR, 1909, G-11, p 4.

790. ‘Native Lands and Native-Land Tenure’, AJHR, 1909, G-11, p 4; doc A28, p 411.

791. Document A28, p 412.

792. ‘Native Lands and Native-Land Tenure’, AJHR, 1909, G-11, p 11; doc A28, p 412.

793. Document A28, p 412.

794. Document A28, pp 412–413.

795. Document A28, p 414.

Though the sale was between the Māori owners and a private coal firm, the Government still played a critical role. As Thomas observed, the Native Lands Act 1909 enabled a quorum of owners to be reached with only five ‘present or represented.’<sup>796</sup> A sale could be made if those voting for the sale had a larger aggregate of shares than those voting against.<sup>797</sup> In the case of Mokau Mohakatino 1, the land was alienated by unanimous vote, even though, in Thomas’s estimate, no more than 40 of the estimated 108–200 owners of the Mokau Mohakatino subdivisions were present at any one meeting of owners.

Questions were also raised at the time about the Waikato-Maniapoto Maori Land Board, which approved the sale, and the role of the land board president, W H Bowler. A particular focus was whether the land board satisfied the legal condition that it would not leave owners landless. The role of land boards in the alienation of Māori land will be examined in more detail in later chapters of this report.

In 1911, William Massey, then leader of the opposition, called for an inquiry into the alienation of Mokau Mohakatino 1. While concerned to establish the propriety of the sale, his main complaint was that the sale had been made to a ‘gang of speculators’ and not the Government.<sup>798</sup> The Native Affairs Committee found that the transaction was neither improper nor illegal, and any concerns about the role of Bowler and the Waikato-Maniapoto Maori Land Board in the sale had been ‘entirely disproved.’<sup>799</sup>

### 11.6.6 Treaty analysis and findings

We begin this section by restating the Crown concessions in respect of the Joshua Jones lease.

The Crown conceded that it breached the Treaty of Waitangi in passing the Mokau-Mohakatino Act 1888. In doing so, the Crown ‘failed to accord the Māori owners of Mokau-Mohakatino equality of treatment, and failed to respect their rangatiratanga over their land, and this constituted a breach of the Treaty of Waitangi and its principles.’<sup>800</sup> The Crown further acknowledged that ‘the Mokau-Mohakatino block was alienated first through lease and later through sale largely because the owners did not have alternative options other than expensive litigation.’<sup>801</sup> This was done despite requests of assistance from the owners and two Native Land Commission reports that recommended support for the owners. The 1888 legislation, the Crown conceded, ‘provided an extraordinary degree of support for the claims of a settler against the rights of Māori landowners,’ and constituted a failure to protect their interests. The Crown conceded that ‘this failure to protect the owners’ interests in land they wished to retain breached the Treaty of Waitangi and its principles.’<sup>802</sup>

796. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 688, 692; doc A28, pp 418–419.

797. Document A28, p 419.

798. ‘Mokau-Mohakatino Block’, AJHR, 1911, G-1, p 1; doc A28, p 425.

799. ‘Native Affairs Committee: Mokau-Mohakatino Block’, AJHR, 1911, I-3A, p iii; doc A28, p 425.

800. Submission 3.4.296, p 34.

801. Submission 3.4.296, p 40.

802. Submission 3.4.296, p 40.

The Crown was right to make these concessions. The Crown failed to protect the owners' interests in lands they wanted to retain. It did not allow Māori to retain rangatiratanga over their land and this was a breach of the plain meaning of article 2 of the Treaty. The Crown failed to deliver equality of treatment when it privileged the interests of a settler over the interests and rights of Māori, which was a breach of article 3 of the Treaty. These breaches were a significant and consistent contributor to the alienation of the Mokau Mohakatino 1 block.

Nonetheless, we consider that the Crown's concessions about its role in the history of the Mokau Mohakatino block between 1885 and 1911 do not go far enough. In the case of the Jones lease, the 1888 legislation alone cannot account for the Crown's misconduct: rather, that legislation was part of a broader series of Crown actions and negligence that enabled and exacerbated the negative impacts of the whole Jones lease affair on the owners of Mokau Mohakatino 1.

We note that the Crown made no specific concessions over the Special Powers and Contracts Act 1885. Much like the 1888 legislation, in respect of which the Crown did make concessions of Treaty breach, the 1885 Act also lent Jones a considerable amount of support. Similarly, while the Crown conceded that it did not consult the owners before promoting the 1888 legislation, it made no such concession over the 1885 legislation, which was also passed without consultation.

The Crown's actions in passing the 1885 Act were also significant in the validation of Jones's lease and the eventual alienation of Mokau Mohakatino 1. The Act provided Jones with two major, bespoke, legal exemptions. One was from the Native Land Alienation Restriction Act 1884, which had reintroduced the Crown right of pre-emption over Māori land. The second allowed Jones to pursue a lease of 56 years, above the maximum term of years settlers could lease Māori land.

The 1885 Act expanded the area of land subject to Jones's lease over the whole of the Mokau Mohakatino 1 block. This increased the acreage subject to the lease from 26,480 acres (as allocated by the Native Land Court in 1888 to the owners who had signed the lease) to 56,500 acres.<sup>803</sup> Jones was now allowed to pursue a lease over almost the entire block beyond Mangapohue, right up to Totoro. Jones himself admitted to the 1888 royal commission that he had agreed to the Mangapohue boundary in the original 1882 negotiations.<sup>804</sup> This also meant that Jones could lease land from people who had not signed the original lease. As the Crown acknowledged, the 1885 Act 'interfered with the rights of owners who had not signed the lease. Jones now had exclusive rights to lease land from owners who had not signed the original lease, or even ever negotiated with Jones.'<sup>805</sup>

We consider that the 1885 Act was an important step in the eventual alienation of the land. The additional acreage greatly increased the stakes of the lease for the owners and later intensified their loss to a significant degree.

As it has conceded, the Crown clearly failed to protect the Mokau Mohakatino owners' interests when it passed the Mokau-Mohakatino Act 1888. The Crown

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803. Document A28, p 382.

804. Document A28, p 294.

805. Document 3.4.296, p 23.



conceded that it breached the Treaty when it failed to consult the owners over the legislation and when it gave ‘extraordinary support’ to Joshua Jones in passing the legislation.<sup>806</sup> The Crown failed to give equal treatment to the Mokau Mohakatino owners, instead privileging and legislating for the interests of a settler at a significant cost to those owners. The eventual sale of the Mokau Mohakatino 1 block was similarly marked by Crown failure. As the Crown admitted, it ignored requests for assistance from owners to help rectify the situation as well as two Native Land Commission reports that recommended support. As the Crown acknowledged, the sale came about because the owners were no longer in control of their land, and the only option for them to potentially regain control over the block was expensive litigation.<sup>807</sup> Despite this, there was no clear majority support for the sale, and many owners were surprised when news of the block’s sale reached them. Some owners were left landless as a result of the alienation.

We find that the Crown’s role in the sale of Mokau Mohakatino breached the Treaty. The Crown failed to take the opportunity to rectify the ongoing effects of the 1885 and 1888 Acts after it was clear that the Crown had erred in supporting Jones during the 1880s. The sale was allowed to proceed despite years of requests for support from Mōkau Māori and after two separate Native Land Commissions had found that the original lease was invalid and recommended the land not be sold. The Crown argued that ‘the Mokau-Mohakatino block was alienated first through lease and later through sale largely because the owners did not have alternative options other than expensive litigation.’<sup>808</sup> But there was another option: Crown intervention. The Crown had intervened before by legislating in 1885 and 1888. After the land commissions’ reports in 1907 it had the opportunity and the rationale to do so again. The Crown’s failure to act at this point to prevent the sale of Mokau Mohakatino, when it knew there was clear and significant opposition from the owners, was a further breach of its article 2 duty to protect the owners’ interests in their land.

The Crown’s willingness to privilege the interests of Pākehā over those of Te Rohe Pōtae Māori is a theme that runs through our report. In our view, the saga of the Jones lease is a glaring example. For an individual settler to receive repeated Government backing to overcome the express preferences of the rightful owners is indicative of the pressure placed on Māori by the Crown at this time to give over their lands for Pākehā settlement and Pākehā economic development. The Crown’s response to the issues raised by the lease showed a lack of regard for the rights of Māori landowners. Beyond this, however, the Crown’s actions undermined Māori efforts to control Pākehā activity in the district and benefit from interaction with the settler economy through a mechanism other than outright sale. For these reasons, we regard the Crown’s Treaty breaches in the Jones lease affair as some of the most brazen acts of bad faith identified in this inquiry.

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806. Document 3.4.296, p 40.

807. Document 3.4.296, p 40.

808. Document 3.4.296, p 40.

**11.6.7 Prejudice**

The owners of the Mokau Mohakatino block were severely prejudiced by the Crown's actions in respect of the Joshua Jones lease. They had expected that, by entering into a commercial arrangement with Jones, they would enjoy economic benefits from their land while also retaining control and ownership of that land. Instead, as a result of the Crown's Treaty breaches, they lost ownership of their land entirely. Approximately 56,000 acres were alienated from their ownership, leaving some owners effectively landless as a result.

**11.7 PREJUDICE**

As we detailed in chapter 8, in their 1883 petition,<sup>809</sup> the five tribes had been very clear: they wanted no railway, no roads, and no court, if those things became the means to deprive them of their lands. Wahanui and the other rangatira who signed the petition referred to the consistent failure of the Crown to protect Māori lands. Māori land laws, they said, 'all tend to deprive us of the privileges secured to us by the second and third articles of the Treaty', and any attempt to secure title by going to court tended to result in the loss of land.

In return for opening their land to the railway and settlement as the Crown desired, Māori in this district wanted the Crown to try a new approach, which would free them of the 'evils' of previous land laws. They asked for the Crown to use its lawmaking powers to allow them to determine title to their land themselves, and to make their lands 'absolutely inalienable by sale'. So long as these conditions were met, Wahanui and other signatories indicated, they had 'no desire' to keep their land 'locked up from Europeans', nor to prevent leasing, or construction of roads or other public works. Their desire was 'to keep our lands'.

The five tribes were perfectly entitled under the Treaty to make these requests, and to expect the Crown to carry them to fruition. But that is not what occurred. As discussed in chapter 8, during their negotiations with the Crown, the Crown was willing to go only as far as was necessary to obtain Te Rohe Pōtae leaders' consent for the railway. It was never willing to fully relinquish control over land titles, and it was never willing to give up its own right to buy Māori land.

While Ballance was Native Minister, the Crown made some important concessions regarding the process for determining land titles and the conditions on which land would be alienated.<sup>810</sup> But Ballance's arrangements satisfied neither Māori nor settlers. They represented an attempt to reconcile interests that were fundamentally opposed. Te Rohe Pōtae Māori wanted to retain possession of their land, in accordance with their guaranteed rights under the Treaty; settlers wanted to acquire that land for themselves, and saw no reason why Māori should benefit from a railway that was funded through general taxation.

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809. 'Petition of the Maniapoto, Raukawa, Tuwharetoa and Whanganui Tribes', AJHR, 1883, J-1.

810. 'Notes of a Meeting between the Hon. Mr Ballance and Te Kooti and his People at Kihikihi, on the 3rd February, 1885', AJHR, 1885, G-1, pp 12-24, especially p 24.

From 1887, the Crown chose to disregard the promises that Ballance had made and the conditions that Te Rohe Pōtae Māori had imposed in return for their consent to the railway. From then onwards, the Crown's policy was to acquire large areas of Te Rohe Pōtae land at sufficiently low prices to allow it to onsell at a considerable profit. By these means, the railway could be funded and a portion of the colony's debt problems could be resolved.<sup>811</sup>

To achieve these goals, the Crown established a ruthlessly efficient land purchasing operation. The fundamental precondition was that communal authority be broken down. As discussed in chapter 8, and analysed in detail in chapter 10, the Crown insisted on title being individualised by the Native Land Court in spite of Māori landowners' misgivings. As the *Hauraki* Tribunal commented, individualisation 'fundamentally changed Maori social relationships and relations with land'. In itself, this rendered it more susceptible to alienation.<sup>812</sup>

### 11.7.1 Denial of land rights

But the Crown did not stop with individualisation. It granted itself exclusive purchasing rights within the district, and it did so with the express intention of eliminating private competition so it could control the market and thereby acquire the land that it wanted at prices it could determine. Even without any harmful downstream effects, the laws that granted the Crown exclusive purchasing rights and eliminated private competition were prejudicial in themselves. They denied Māori landowners their communal and individual land rights, preventing them from selling, leasing, mortgaging, or otherwise dealing with land as they pleased – or, indeed, at all. And they denied Māori landowners access to a market in which the value of their lands could be determined – even if, as discussed earlier, that market and land value would still be far less than optimal due to the destruction of communal control.

As the Crown acknowledged, the ability to alienate land is a fundamental right of land ownership.<sup>813</sup> It was inherent in article 2, which provided for Māori communities to retain possession of and authority over land for so long as they wished, but also allowed for sales; and it was inherent in article 3, which provided Māori individuals with the same rights and privileges as British subjects. The ability to alienate land is also a fundamental requirement of a functioning economy. For an extended period, covering most of the time between 1884 and 1910, Māori in this inquiry district were denied the full enjoyment of that right in a way that differed from most European landowners and Māori.

### 11.7.2 Denial of opportunities to earn incomes from land

As discussed earlier, Te Rohe Pōtae Māori were occasionally able to bypass the restrictions, entering timber milling or resource arrangements that did not

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811. The Native Minister, Edwin Mitchelson, discussed the 1887–90 debt in a public meeting in Auckland in 1890: 'The Acting Premier', *New Zealand Herald*, 8 November 1890, p 4.

812. Waitangi Tribunal, *The Hauraki Report*, vol 2, pp 784–785.

813. Submission 3.4.298, p 1.

constitute leases or sales of land and so were not affected by the law.<sup>814</sup> But these arrangements, in Boulton's words, were 'small-scale, scattered and based almost entirely on extraction of natural resources', and could not in themselves provide sufficient income for long-term economic development.<sup>815</sup> In general, the Crown was highly vigilant in enforcing restrictions whenever owners sought to lease or sell land, and was also vigilant in warning Europeans and Māori alike against attempts to bypass the restrictions. Ministers, officials, and land purchase officers all made it their business to emphasise the illegality of any land lease that brought income to Māori landowners.<sup>816</sup>

The immediate effect was to deny Māori access to incomes. At times, this had effects that would seem absurd if they were not also tragic. For a period in the early 1890s, for example, restrictions applied to almost all of the land in the inquiry district, but Parliament had granted funding for purchasing only within the northern and southern target areas. In the significant areas of the district that fell outside the northern target area (see map 11.1), therefore, Māori could not sell, lease, or mortgage their land to anyone at all.<sup>817</sup> Similarly, in 1890, John Ormsby and John Hetet offered to sell the Crown a half-acre section beside the railway station in Ōtorohanga, complete with several buildings including the Temperance Hotel and a butcher shop, but were told that the Crown was only interested in purchasing large, unimproved blocks. As Marr noted, Crown officials showed no interest in the fact that Ormsby and Hetet had no other possible market. If the Crown was not buying, no one could.<sup>818</sup>

It is not possible to quantify the direct economic impacts of the restrictions. It is clear, however, that Te Rohe Pōtae Māori fared much better when restrictions were not in place. During 1891–94, several of the inland Mokau blocks were not subject to restrictions, and economic activity (including sheep farming, mining, flax cutting, and limestone extraction) was significantly greater there than in other parts of the district.<sup>819</sup> And after 1905, when Te Rohe Pōtae Māori could lease land directly to Europeans without the intervention of the Crown or a Māori land board (as the land councils had by then been renamed), the area under lease expanded rapidly.<sup>820</sup> Te Rohe Pōtae Māori landowners also fared better on those occasions when they were able to circumvent the restrictions, such as when Mangawhero owners were able to sell timber or other resources, or enter grazing arrangements.<sup>821</sup>

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814. Document A146, p 231; doc A55, p 91.

815. Document A67, p 306.

816. Document A67, pp 275, 303–304, 306, 317, 339–340; doc A146, pp 126–129; doc A68, pp 133–134, 142. Also see doc S21(b), pp 31–32.

817. Document A67, pp 397–399.

818. Document A55, p 104.

819. Document A146, pp 127, 495–496. Also see doc A67, pp 329–340.

820. Document A146, pp 128–134. Also see doc A67, pp 350–351.

821. Document A146, pp 229–232, 498–499; doc A67, pp 320–322.

### 11.7.3 Destruction of communal authority and development opportunities

Alongside the statutory limits it had imposed on Māori rights, the Crown added a suite of purchasing methods that were designed to break down Māori communities' resistance to land sales. Those methods included leveraging survey debts; bypassing community leaders and meetings to purchase in secret from individuals; targeting individuals who had little connection with the land or were in great need of money or were jealous of other owners; pursuing as much land as possible irrespective of Māori interests or wishes; and using partitioning processes to further break down resistance to sales.

The targeting of individuals was especially corrosive, both of traditional relationships with land and of efforts by Māori leaders to manage land for the benefit of their people. In spiritual terms, individualisation broke centuries-old relationships between people and land. As Husbands and Mitchell explained:

This process of turning something that was real, tangible and – from a Maori perspective in particular – living, into abstract shares whose value could be calculated and traded on paper, was of great importance. . . . [I]t represented a fundamental shift in the relationship between human and nature as something whose value had been hitherto local and specific, defined by history and geography, was transformed into a commodity whose worth was calculated primarily in terms of acres and pounds, shillings and pence.<sup>822</sup>

In 1892, Wilkinson explained that individualisation had 'almost entirely destroyed the influence that the chiefs formerly had over their people in the matter of the disposal of land'. Whereas previously rangatira could negotiate with Crown officials and set land aside for settlement, now each individual could make his own decisions. As Wilkinson put it, 'Jack is now as good as his master.'<sup>823</sup>

In economic terms, the effect of individualised title was that all owners had paper shares in a communal property. No individual or whānau had a plot of land of their own which they could develop, even if they could find the funds. And any effort to manage the land collectively required the agreement of tens or even hundreds of owners, including many who did not live on the land. Each of those individuals could sell his or her shares at any time.<sup>824</sup>

The Crown's practice of targeting individuals, and (initially at least) purchasing in secret, created considerable uncertainty for landowners who wished to retain land. None could know who had sold, and until Wilkinson applied to the court for a partition of the Crown's interests, none could know which land might be lost as a result of sales. The practice of taking land for survey debt had similar effects. Again, none could know when land might be taken, nor which land, until Wilkinson applied for a partition.

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822. Document A79, p 241.

823. 'Reports from Officers in Native Districts', AJHR, 1892, G-3, p5. Also see doc A68, p144.

824. Document A67, pp 217–218.

Under such circumstances, land development was impossible on blocks with more than a few closely related owners. For larger blocks, at any given time neither sellers nor non-sellers could know how many shares the Crown possessed in their land block, nor when the Crown might apply for a partition, nor which land the court would ultimately grant to the Crown. Unless owners could be certain that others would not sell, there was little point in them attempting to develop the land.<sup>825</sup> Owners felt these effects almost continuously from 1892 onwards. Each time Wilkinson applied to have the Crown's portion partitioned out, he inevitably began a new round of purchasing. In all, Wilkinson applied for more than 300 partitions between 1894 and 1901. There was never a point at which non-sellers could be certain the process had ended.<sup>826</sup>

These effects combined with the restrictions to ensure that most Māori land-owners could earn little from their land. As they were being drawn into the cash economy (principally by survey costs), they were simultaneously being denied the means to put their land to productive use and were therefore being drawn into a cycle of poverty. These effects in turn were exacerbated by the Crown's failure to offer financial<sup>827</sup> or technical<sup>828</sup> assistance for Māori farmers, and by its decisions to delay work on the railway (which would otherwise have been a source of jobs) and to delay settlement of the district until it had completed its purchasing programme.<sup>829</sup> All of these decisions reflected the greater priority it gave to land purchasing and settlement goals over Māori interests.

One measure of these effects is the decline in the district's sheep farming ambitions. In 1892, Māori in the district owned 15,643 sheep, and Europeans owned 2,277. That was the year in which the Crown 'broke the ice' on Māori resistance to land sales, and it also marks the high water mark for Māori sheep farming. From that year on, the number of sheep in Māori ownership steadily declined, and the number in European ownership grew correspondingly. By 1901, Māori in the district owned only 2,314 sheep, and Europeans owned 13,424.<sup>830</sup> As Husbands and Mitchell noted: 'The fall in Maori sheep ownership within the district ran more or less parallel with the large scale alienation of individually-owned interests in Maori land to the Crown.'<sup>831</sup> Other economic effects have been discussed in chapter 10.

825. Document A146, p 409; doc A67, p 425.

826. Document A79, p 251.

827. Document A25, p 170; doc A146, p 173.

828. Crown officials were aware of Māori aspirations to develop sheep and dairy farming operations, but made no attempt to offer technical assistance. They regarded such efforts as potential obstacles to their land purchasing operations: 'Reports from Officers in Native Districts', AJHR, 1890, G-2, pp 4-5; 'Reports from Officers in Native Districts', AJHR, 1892, G-3, pp 2-3; doc A67, pp 228-229.

829. Document A68, p 206; submission 3.4.307, pp 17-18.

830. Document A79, pp 512-513; doc A67, p 229.

831. Document A79, p 514.

#### 11.7.4 Fragmentation of land holdings

Economic deprivation was not the only effect of the Crown's individual purchasing partitioning practices. Each new round of partitioning also occupied owners' time and resources. They were dragged into negotiations with Wilkinson over which land would be given up, both for sellers' shares and for survey costs. They may also have been required to attend court and bear the associated costs.<sup>832</sup>

Each round of partitioning also meant that original land blocks were progressively divided into smaller and smaller sections. In the most extreme cases a single block could, over a period of 10–15 years, become well over 100 individual subdivisions, in which Māori and the Crown each held scattered holdings.<sup>833</sup> The result, according to Boulton, was that the district became 'a patchwork of Crown and Maori owned subdivisions', in which 'larger blocks that might have been suitable for large-scale pastoral farming were rapidly broken up by areas of Crown land'.<sup>834</sup>

Individual owners could be left with small numbers of shares in one or more blocks, but no single block that was large enough for them to use and develop. As Husbands and Mitchell explained, they might 'find themselves cut off in a small corner of their former block surrounded by what was in effect an ocean of Crown-owned land'.<sup>835</sup> Nor was there any guarantee that the plot of land they were left with contained their settlements or other sites of spiritual importance.<sup>836</sup> Under such circumstances, and especially if the sites of greatest significance had already been lost, it was easier to join the sellers than to make any attempt to develop or earn an income from the land.<sup>837</sup>

Crown officials were aware of the potential for harm arising from excessive partitioning, but showed no concern for its impact on Māori landowners; rather, their concern was that the creation of ever smaller subdivisions was leaving the Crown with land that could not easily be used.<sup>838</sup> The 1907 Stout–Ngata commission reported that it was not aware of any district where Māori land had been subdivided as much as in the Aotea-Rohe Potae block. It gave the specific examples of Kinohaku East and West, Hauturu East and West, Pirongia, and parts of Rangitoto Tuhua.<sup>839</sup>

We acknowledge that Māori landowners also made applications to subdivide land, and that this contributed to overall land fragmentation in the district. When the Crown applied to partition, non-selling owners frequently subdivided the remaining land among themselves, but owners also sometimes applied to partition

832. Document A79, pp 253–256.

833. Document A73, pp 92–96, 149; doc A79, pp 250, 258–263, 306; doc A146, pp 409, 411; doc A67, pp 424–425.

834. Document A67, pp 37, 424–425.

835. Document A79, pp 259–260.

836. Document A79, pp 259–260; doc A67, pp 37, 289, 356, 424–425, 478; doc A55, pp 56–57; doc A146, pp 405–411.

837. Document A79, pp 259–263, 490–491, 494–501; doc A146, pp 405–417.

838. Document A67, p 356; doc A67(a), vol 2, p 640.

839. 'Native Lands in the Rohe-Potae (King Country) District: An Interim Report', 4 July 1907, AJHR, 1907, G-1B, pp 2–3; doc A67, p 385.

their land even when there was no Crown application. This seems to have occurred as a means of resolving disputes that arose over definition of relative interests.<sup>840</sup>

But even if there was some element of volition, fragmentation was only possible because of the land title system, and it was principally driven by successive rounds of Crown purchasing. Where owners did subdivide land of their own choice, witnesses told us they did so as a means of reducing the uncertainty and risks arising from continued Crown purchasing. With the Crown relentlessly buying individual interests, the only way to protect land from sale and to manage it collectively was to eliminate owners who might be vulnerable to selling.<sup>841</sup>

### 11.7.5 Loss of land

The ultimate effect of the Crown's purchasing programme was that Te Rohe Pōtae Māori alienated a large proportion of their ancestral lands. In the period under consideration, the Crown's purchasing methods were entirely coercive and contrary to the principles of the Treaty. The Crown deliberately and systematically undermined hapū and tribal authority by individualising land titles. It deliberately denied Māori their land rights and economic opportunities. And then it exposed them to a relentless and systematic purchasing programme in which Crown agents exploited debt, targeted vulnerable individuals, and used court processes to pressure Māori landowners into selling. The programme was quite explicitly intended to transfer wealth from Māori to the Crown, and it achieved its desired effect. Under these circumstances, when Māori landowners elected to sell their lands or shares in land, they were not doing so of their own free will. None of the Crown purchases in this district during this period was compliant with the Treaty.

In all, the Crown acquired 639,815 acres during the 1890–1905 calendar years – slightly over one-third of the inquiry district.<sup>842</sup> The amounts varied from block to block and region to region. The Rangitoto Tuhua block, at 461,277 acres, accounted for almost one-quarter of the district's land area. There, the process of subdividing blocks from Aotea-Rohe Potae and awarding titles was not completed until the late 1890s, and purchasing began later. By the end of 1904, the Crown had completed the purchase of just 24,319 acres (though it had acquired shares in other blocks).<sup>843</sup> Elsewhere, purchasing was much further advanced. In the south-west of the district, very little land remained in Māori possession outside of the Mokau Mohakatino block. Purchasing had also been very heavy in the Kinohaku

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840. Document A79, pp 250–269, 411, 494–501; doc A146, pp 411–417. Regarding initial subdivision of the Aotea-Rohe Potae block, see doc A79, pp 186–212. Also see submission 3.4.305, p 81.

841. Document A146, p 409; doc A79, pp 147, 494–496, 500–501.

842. Document A21, p 131 tbl B5. According to Douglas, Innes, and Mitchell, the Crown purchased a total of 639,815.07 acres during the years 1890–1905. The inquiry district totals 1,931,136 acres (excluding extension areas). All of the Crown's purchases during the period 1890–1905 occurred within the original inquiry district. Wherever we mention land sales as a proportion of the inquiry district, we are referring to the original district. In all, the Crown's purchases amounted to 33.13 per cent of the original district during this period: submission 3.4.309(a), p 2; submission 3.4.130(g), pp 2–3; doc A21, pp 7, 34. Also see doc A67, pp 11, 28; doc A95, p 4.

843. Document A21, annex 7, Rangitoto Tuhua blocks.



and Hauturu blocks, and in some parts of the north such as Puketarata, Te Kopua, and Pirongia West (see tables 11.5–11.7). Substantial proportions of other blocks had also been sold, and none of the district's original subdivisions remained untouched.

### 11.7.6 Payment of below market prices

The Crown purchased this land during a period in which there was no land market. By law, the Crown had no competitors, and this, combined with the Crown's purchasing tactics, meant that the Crown effectively fixed the price. Wilkinson acknowledged as much on several occasions, and also acknowledged that the purchasing programme relied on 'want of money' forcing Māori landowners to take any price they were offered. By denying Te Rohe Pōtae Māori access to a functioning land market, the Crown not only breached their rights, but also made it impossible for them to determine the true value of their land.

While it is difficult to determine how much the Crown would have paid if it had faced competition in a functioning and Treaty-compliant land market, we think the evidence is clear that the Crown paid less, on average, than a market value would have been. The 1907 Stout-Ngata commission and numerous contemporary observers believed the district's land to be worth considerably more than even the Crown's highest purchase prices. Crown officials conceded that prices would have to rise if independent valuations were used. The premier, Richard Seddon, admitted in 1905 that the prices paid were less than they would have been in a free market. The increase in prices after 1905 would tend to suggest that in the preceding 15 years the Crown typically paid a quarter to a half of the true value. This conclusion is corroborated by Dr Hearn's lease-based estimates and Parker's evidence about the prices the Crown sought when it on-sold land.

The direct impact of underpayment was that landowners received less for their land or shares than they should have. The downstream effects were much greater. Underpayment meant that more land was taken in payment of survey liens than should have been, and that owners had less capital with which to develop their remaining lands. With higher prices, those in want of money might have had to sell less to meet their needs.

Overall, the Stout-Ngata commission calculated that Te Rohe Pōtae Māori received £145,384 from land sales up to 1900.<sup>844</sup> This might seem like a very substantial sum, even after court (at least £1 per day)<sup>845</sup> and survey costs (£23,728)<sup>846</sup> had been deducted. However, Dr Hearn calculated that during the 1890s more than half of Te Rohe Pōtae Māori individuals who sold shares in land did not receive more than £10, and more than three-quarters did not receive more than £30.<sup>847</sup> To put these amounts in perspective, Wilkinson in 1891 wrote that the £3 10s he was paying some shareholders in Te Kopua 1 'about represents the cost here of a suit

844. Document A93, p 21.

845. Document A79, pp 289–300.

846. Document A79, p 307.

847. Document A146, pp 215–217. Also see doc A28, p 405.

of clothes, or a pair of blankets'. At five shillings per acre, a suit was worth 12 acres of Te Rohe Pōtae Māori land.<sup>848</sup> The *New Zealand Official Yearbook 1893* recorded that a general labourer in Auckland typically earned 5 shillings or more *per day* – the equivalent of an acre of Te Rohe Pōtae Māori land. A lamb was worth 10 shillings, or two acres, and a ton of potatoes was worth 50 shillings, or 10 acres.<sup>849</sup>

The Native Land Commission acknowledged that most of the purchase money had gone towards basic needs or to housing. Some money had been squandered, but in the commission's view this reflected the insurmountable challenges that Te Rohe Pōtae Māori faced in developing land.<sup>850</sup> Dr Hearn's view was that, at the prices paid, very few Te Rohe Pōtae Māori would have been able to accumulate enough capital to invest in farms or other viable economic activities.<sup>851</sup>

### 11.7.7 Conclusion

One of the more remarkable features of the period under review is the pace and scale of change. In 1883, Te Rohe Pōtae had been a Māori territory. Within the aukati, the people of Ngāti Maniapoto, Ngāti Hikairo, Ngāti Raukawa, Ngāti Tūwharetoa, and Whanganui had retained possession of their land and control over their territories. By engaging with the Crown, they hoped to have laws put in place that would ensure they retained their lands, and did not fall victim to the rapacious land speculation that had affected other districts. What in fact occurred was the opposite of what they had intended. Once they had opened the door, the Crown walked through.

The Crown achieved its purchasing goals. It acquired one-third of the district's land and was able to onsell at a considerable profit, which it used to fund the railway and other infrastructure. By altering relationships with land and destroying their resource base, the Crown also broke down the authority of the region's iwi and hapū, and instead asserted its own laws. Māori got none of what they had sought. Wahanui, Taonui, John Ormsby, and others had engaged with the Crown because they saw both threats and opportunities arising from the growing settler population and the assertiveness of its Government. These were the leaders regarded by Europeans as 'progressives' – those who sought to advance Māori interests by engaging with the Crown instead of turning their back on it as the Kingitanga and many others in Te Rohe Pōtae would have preferred.<sup>852</sup>

In their 1897 petition, Eketone and other leaders referred to 'the magnitude of the injustice' visited on Te Rohe Pōtae Māori by the Crown's decision to deny them their land rights. Crown purchasing, they said, was 'quite as bad or worse than purchases by private Companies of which we were at first afraid'. The Crown did not negotiate over price; it did not listen to protests; it took no care to ensure that sellers were not left landless or destitute; it did not even give Te Rohe Pōtae

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848. Wilkinson to Lewis, 27 May 1891 (doc A67(a), vol 1, p 301).

849. Document A79, pp 290–291.

850. Document A67, p 310.

851. Document A146, p 337.

852. Document A67, pp 437, 447.

Māori the advantage of the same land laws as other Māori landowners. Its sole purpose was ‘that we should speedily sell to them our lands for whatever price they please.’<sup>853</sup>

The impacts of the Crown’s actions during this period can be measured only partly in land and in purchase prices. They can also be measured in the wilful destruction of the tino rangatiratanga of Te Rohe Pōtae people in relation to their land and the betrayal of the promises made under Te Ōhākī Tapu so soon after those promises had been made.

### 11.8 SUMMARY OF FINDINGS

We found that the Crown breached the Treaty and its principles when it enacted the laws imposing the 1898–91 restrictions, the 1890–92 restrictions, the 1892–93 restrictions, and the 1894–1910 restrictions, and when it imposed restrictions on selected land blocks under the Native Land Purchases Act 1892, in the following ways:

- By enacting these laws and imposing these restrictions without first consulting or obtaining the consent of Te Rohe Pōtae Māori, the Crown failed to fulfil its duty of active protection and breached the Treaty guarantee of tino rangatiratanga and the principles of autonomy and partnership.
- By enacting these laws and imposing these restrictions in breach of its promises that any sales or leases would occur in an open market, the Crown breached the Treaty guarantee of tino rangatiratanga, the partnership principle, and its obligation to act honourably, fairly, and in good faith. The Crown conceded this breach.<sup>854</sup>
- By enacting these laws and imposing these restrictions in a manner that treated Te Rohe Pōtae Māori differently from other Māori landowners and from Europeans, to their detriment, the Crown breached the principles of equity and equal treatment.
- By enacting these laws and imposing these restrictions for the express purposes of transferring large areas of Māori land into Crown ownership and ensuring that the Crown benefited from rising land prices along the railway, the Crown breached the Treaty guarantee of tino rangatiratanga and its duty of active protection.

We found that none of the Crown’s purchases of Te Rohe Pōtae Māori land during the years 1890 to 1905 were conducted in a manner that was consistent with the Treaty and its principles:

- By purchasing Te Rohe Pōtae Māori land under cover of restrictions on alienation, by using survey debts to leverage sales, by purchasing geographically undefined shares from individuals without regard for community wishes and interests, by targeting individuals who were vulnerable to selling, by

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853. Pepene Eketone and 163 others, petition 217 (doc A73(a), vol 5, pp282–290; doc A146, pp290–291).

854. Submission 3.4.307, pp12, 25.

using partitioning to further leverage sales, by using aggressive tactics such as threats of compulsory acquisition, by failing to take reasonable steps to ensure that Te Rohe Pōtae communities retained land they wished to retain, by purchasing land that had been declared inalienable, by purchasing in spite of community opposition and in spite of warnings that some owners might be left landless, the Crown breached the Treaty guarantee of tino rangatiratanga and its duty of active protection.

- By using these methods to pressure Te Rohe Pōtae Māori to sell land in spite of Te Rohe Pōtae leaders' requests that their land be protected if the district were opened to the railway and to settlement, and in spite of the conditions imposed and promises made as part of Te Ōhākī Tapu, the Crown breached the partnership principle and failed in its obligation to act fairly, honourably, and in good faith.
- By using these methods to pressure Te Rohe Pōtae to sell land for the express purposes of transferring land and wealth to the Crown and settlers, and thereby ensuring that Te Rohe Pōtae Māori did not enjoy the benefit of rising land prices along the railway route, the Crown breached its duty of active protection, the partnership principle, and the principles of equity and equal treatment.

We found that the Crown paid unfair prices for Te Rohe Pōtae Māori land:

- By denying Te Rohe Pōtae Māori the right to negotiate collectively in an open market, by pressuring Māori landowners to sell at prices the Crown determined, and by failing to take reasonable steps to determine a fair market value for Te Rohe Pōtae Māori lands in the absence of a functioning market, the Crown breached the Treaty guarantee of tino rangatiratanga.
- By breaking its promises with respect to the manner in which land prices would be negotiated, the Crown breached the partnership principle and its duty to act honourably, fairly, and in good faith.
- By paying prices that were by its own admission less than private purchasers were prepared to pay, the Crown breached the principle of partnership and the duties of active protection and to act honourably, fairly, and in good faith.

In respect of the Joshua Jones lease, we found that:

- By failing to protect the owners' interests in Mokau Mohakatino lands they wished to retain, the Crown did not allow Māori to retain tino rangatiratanga over their land, in breach of the plain meaning of article 2 of the Treaty.
- By privileging the interests of a settler over the interests and rights of Māori, the Crown breached article 3 of the Treaty.
- By failing to intervene to prevent the sale of Mokau Mohakatino 1, the Crown breached its article 2 duty to protect the owners' interest in their land.
- The owners of the Mokau Mohakatino 1 block were severely prejudiced by the Crown's actions in respect of the Joshua Jones lease.

We found that the Crown's Māori land laws and purchasing practices during 1890–1905, in combination with the land title changes discussed in chapter 10, had profound prejudicial effects on Te Rohe Pōtae Māori communities, including their traditional relationships with land, their communal systems of authority, and their

ability to retain and use resources for communal well-being, both at the time and for future generations. More specifically:

- Māori landowners were unable to exercise their communal and individual rights to manage and use land as they wished. They were severely hampered in their efforts to develop farms and to raise funds by other means such as leasing, entering grazing and resource-use arrangements, and selling some land in an open market. As a result, their ability to participate in new economic opportunities was drastically undermined.
- Lack of economic opportunities, combined with the Crown's coercive tactics, meant that Māori communities struggled to retain their traditional lands. They were pressured or coerced into selling some 640,000 acres, often at prices the owners considered unfair, undermining communities' ability to provide for present or future needs. This amounted to a direct transfer of wealth and resources from Māori communities to the Crown, undermining their ability to provide for their current and future well-being either by traditional means or by taking advantage of new economic opportunities. The lack of a functioning land market denied communities opportunities to obtain fair market prices for the lands they sold. Owners who did retain land were often left with plots that were inaccessible and unusable, further contributing to the cycle of selling.
- Māori communities' traditional relationships with land had already been undermined by changes in land title. As land was sold and remaining holdings became fragmented, those traditional relationships were further undermined, denying communities their rights to sustain important whakapapa ties and to exercise tikanga governing relationships with land and resources.
- The relationships of rangatira to their communities, also already undermined by land title changes, further eroded as land was sold and remaining holdings became fragmented. Rangatira continued to play some roles as community leaders and representatives, but were unable to coordinate land and resource use as they once had, and nor were they able to manage the pace and nature of settlement. They were therefore unable to fulfil their responsibilities to protect community well-being.
- As these economic and social effects were felt, Te Rohe Pōtae Māori communities became increasingly impoverished and demoralised. Having entered a relationship with the Crown in the hope that they could control their own futures, they found they could not. It was the Crown, not Māori, who controlled the settlement of this district.



## CHAPTER 11 APPENDIX I

### THE 1897 PETITION OF THE FIVE TRIBES

In October 1897, Pepene Eketone petitioned the House of Representatives on behalf of himself and 163 others of Ngāti Maniapoto, Ngāti Hikairo, Ngāti Raukawa, Ngāti Tūwharetoa, and Whanganui descent.<sup>1</sup> The petition is an extremely clear explanation of the grievances of Te Rohe Pōtae Māori about the Crown's nineteenth-century land-purchasing practices. It is set out here in full.

Ki Te Tunuaki

Me nga Mema Honore o te Runanganui e noho huihui ana i roto i te Whare Paremata kei Poneke

Tena koutou,

Ko matou nga Kaipitihana ka tuhia iho nei ki raro nga ingoa he tangata no nga iwi me nga hapu o N Maniapoto, N Hikairo, N Raukawa, N Tuwharetoa, me Whanganui e noho ana i runga, e whaipaanga ana hoki ki te whenua e mau na nga rohe i te kupu apiti Tuarua ki te Ture Kooti Whenua Maori 1894. Ko taua whenua nei hoki kei te rahuitia e taua Ture me ona Whakatikatika kia kore matau e whaimana ki te hoko ki te reti ranei ki etehi tangata ke atu engari ki te Kawanatanga anake.

Ko matou hoki ko a koutou Kaipitihana he iwi e whakaatu tonu ana i ia wa i ia wa ki to Koutou Whare Honore, i runga i te ara pitihana me etehi atu huarahi o te ture, i te nui o nga mate e pa ana ki a matou i raro i te tikanga e here nei ki te Kawanatanga anake te hokonga o matou whenua.

E tino whakaaro ana matou ko te ture a te Kawanatanga e arai nei kia kua matou e hoko e reti ranei ki nga pakeha waho, apiti ki te hiahia nui o te Kawanatanga kia tere tonu ta matou hoko atu i o matou whenua mo te utu e pai ana ratou ki te homai[;] kaore ratou e pupuru ana i taua here i runga i te whakaaro tiaki. Kei pau o matou whenua te hokohoko e nga Horo Whenua, engari i runga ke i te whakaaro kia watea ai, ratou te mahi i ta ratou i pai ai mo o matou whenua.

Ko nga hoko a te Kawanatanga e rite tonu ana, e neke atu ana ranei te kino i nga hoko a nga Kamupene i wehingia nei e matou i te tuatahi, na te mea, ki te tupu he raruraru ki waenganui i a matou ko te Kawanatanga i runga i ana hokohoko, kaore he tirohanga atu ma matou, e, ko wai hei kai-titiro i te tika raua ko te he, i te mea kua riro tonu mai ko te Kawanatanga he hoa totohe.

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1. Pepene Eketone and 163 others, petition, 5 October 1897 (doc A73(a), vol 5, pp286–290; doc A67(a), vol 1, pp33–36, 37–48.)

I raro ano hoki i aua hoko a te Kawanatanga kaore matou e whaireo ana ki te whakarite tahi me te apiha a te Kawanatanga i te utu ano te eka o matou whenua e hokona ana[;] kaore hoki e tiakina nga tangata e hoko ana, kei hoko katoa i o ratou whenua, a, ka noho manene, ara, tiaki pera me nga hoko o mua ki nga pakeha waho, me tino whakaatu rawa ki te aroaro o tetehi Tiati e te tangata e hoko ana i tona whenua, he whenua ano tona kei tua atu hei oranga mona, katahi tana hoko ka whakamana. Otiia, ko enei tikanga tupato kei te ngaro katoa i runga i nga whakahaerenga hoko a te Kawanatanga tona tukunga iho, he nui o matou tangata e kore e ora ki te noho i runga i nga toenga whenua e toe ana ki a ratou, a, he tokomaha ano hoki kua kore rawa atu he wahi whenua e toe ana ki a ratou.

Ko tana tikanga here a te Kawanatanga e pa ana ki a matou whenua anake, kaore ki o te pakeha, a, i runga i te whai a to koutou Whare Honore kia kotahi ture mo nga iwi e rua tau atu ki nga whenua, ehara taua tikanga motuhake e mahia nei ki to matou takiwa i te tohu kei te kotahi te ture mo nga iwi e rua.

Ahako ano matou te iwi Maori kaore i te kotahi te ture mo o matou whenua, na te mea,

(1) I raro i te rarangi 117 o te Ture Kooti Whenua Maori 1894 e whaimana ana nga Maori o te Waipounamu ki te reti i o ratou whenua.

(2) I raro i te rarangi 27 o te “Ture Whakatikatika i nga Ture Whenua Maori 1896” e ahei ana nga Maori o waho atu i to matou takiwa, kua rohea nei e te Ture, ki te reti ki te hoko ranei i etahi whenua wehe mutu iho i to 640 eka whenua pai i te 2000 eka whenua tuarua.

I runga i tenei ahua ka ui matou he aha i tika ai kia motuhake rawa te whakahaere mo matou i era atu Maori o te motu nei, i kore ai hoki e tika kia whiwhi tahi matou i nga painga, ahako pewhea te iti e hoatu ana ki o matou hoa Maori i era atu waahi o te motu nei.

He nui nga raruraru e pa ana ki o matou whenua i runga i nga whakawakanga me nga ruritanga, a, ko to matou hiahia kia whakamahia te whenua kia whaihua kia riro ma te whenua ano e utu ona raruraru.

Otiia i te mea kua whaipaa te Kawanatanga i runga i ana hoko ki te nuuinga o nga Poraka whenua o to matou takiwa, a, i te mea hoki e whakamana ana e te Ture ko nga mahi a te Karauna hei matamua mo nga mahi i te aroaro o te Kooti e tino waiho ana taua tikanga hei arai haere i te hiahia o nga tangata e tono ana kia wehea o ratou toenga whenua i roto i nga whenua kua hoko te Kawanatanga, kia wawe to mohio ia tangata ki tona waahi i pa ai, kia ngakaunui ai ki te whakapai i o ratou whenua nga tangata e ahei ana ki te whakapai.

Na runga i enei ahua ka oti nei te whakararangi iho, me te tirohanga hoki ki te takoto noa o nga waahi whenua e toe ana, kaore e homai painga ana ki a matou ki te koroni hoki, koia matou ka inoi atu ki to koutou Runanga Honore kia whakamana mai nga take e whai ake nei:

(1) Kia unuhia te here i runga i nga whenua katoa o to matou takiwa kua oti nei te whakawa, kua mohiotia hoki te nui o te paanga o ia tangata o ia tangata,

(2) Kia whaimana matou ki te reti, ki te hoko ranei i o matou whenua takoto kau ki o matou tangata i pai ai ahako he whenua kua motuhake ki te tangata kotahi, e mau tonu ana ranei ki nga tangata tokomaha atu,



(3) Kia whakaarotia paitia e to koutou Runanga Honore te Pire mea ake nei tukua atu e Henare Kaihau, Mema o te Tai Hauaauru, hei whakatu “Runanga Kaunihera Maori” i raro ano i nga Tikanga o te rarangi 71 – o te Ture Whakapumau Kawanatanga mo Niu Tireni 1852.

A ko a koutou Kaipitihana ka inoi tonu atu

Koia tenei o matou ingoa ka tuhia iho nei ki nga wharangiri e piri mai nei ki tua.

This was signed by Pepene Eketone and 163 others. It was translated as:

Greetings,

We your petitioners whose names are hereunder signed are members of the tribes and hapus of Ngati Maniapoto, Ngati Hikairo, Ngati Raukawa, Ngati Tuwharetoa and Whanganui who are living upon and have a right to the land the boundaries of which are given in the second schedule to the Native Land Court Act 1894.

The said land is reserved by that Act and its Amendments in such a manner as to prevent us from either selling or leasing to any other person than the Government.

We your petitioners are a people who have continually by petition and in other ways pointed out from time to time to your Hon[ourable] House the magnitude of the injustice under which we suffer through the Government alone having the right to purchase our lands.

We are entirely certain that in the matter of the law of the Government which prevents us from selling or leasing our lands to private Europeans, and the intense desire of the Government that we should speedily sell to them our lands for whatever price they please to give, they are not maintaining this restriction with a view to preserve and prevent our lands from all being purchased by land grabbers but for the purpose of enabling them to do whatever they like with our lands. The Govt land purchases are quite as bad or worse than purchases by private Companies of which we were at first afraid. Inasmuch as that in the event of trouble arising between us and the Government in connection with its purchases there is no one to whom we can turn, to decide the rights and wrongs of the matter as the Government itself becomes our antagonist.

Also in these Government land purchases we are given no voice (are not permitted) to arrange & agree together with the Government Officer upon the price to be paid per acre for our lands when purchased, neither is any care taken or provision made to ascertain that persons selling have not sold all the land which they possessed and become destitute, that is to say there is no similar provision to that formerly in force in cases where land was sold to private persons, when a person selling was compelled to declare in the presence of a Judge that he had other lands remaining, sufficient for his occupation and support, before such sale would be given effect to, but all these precautionary measures have been dispensed with in the case of the Government purchases, with the result that many of our people have not enough land left for their support, and many others have no land whatever remaining in their possession.

This restriction by Government obtains over our lands only, not over lands the property of Europeans, and as your Hon[ourable] House desires that there shall be

but one law for both races & their lands, this unique proceeding which is being practised in our district is not a sign of the existence of only one law for the two races.

Even in the case of the Maori race alone there is not one universal law in the matter of our lands. For instance, under Section 117 of the Native Land Court Act 1894 the South Island Maoris are enabled to lease their lands.

Under Section 27 of the Native Land [Laws] Act Amendment Act 1896 it is competent for Maoris outside of our district the boundaries of which have been defined by law, to lease or sell certain lands up to 640 acres of first class land or 2000 acres of second class land.

This then being the position of affairs, we ask: – Why is it right that we should be treated differently from the other Maoris of New Zealand, and why is it not right that we should participate equally in the benefits however small they may be which are accorded to our fellow Maoris in other parts of New Zealand.

Our lands are saddled with many expenses arising from Courts and Surveys and we desire to so employ the land that it may pay its own expenses.

But as the Government has by purchase acquired an interest in the majority of the blocks of land in our district, and as by law the Crown business takes precedence [over] all the other business before the Native Land Court for hearing and as this practice is the means of absolutely preventing the attainment of the desire of the people who apply to have the balance of the land remaining to them cut out of the Government purchases, so that each man may know where his own particular piece is situate that those of them who are in a position to do so may each take heart to improve his own land.

Therefore for the reasons above set out and described, and looking at the fact that the balance of the lands remaining are now lying idle & bringing in no profitable return either to us or to the Colony. We pray you Hon[ourable] House to give effect to our requests set out hereunder:

(1) That the restrictions may be removed from off all our lands in our district, which have passed through the Court, and in which the relative interest of each individual owner has been defined.

(2) That we may be permitted to lease or sell our unoccupied lands to whomsoever we please, whether such lands be the property of one owner or of more than one.

(3) That you Hon[ourable] House will favourably consider the Bill to be presently introduced by Henare Kaihau Member for the Western Maori District providing for the Constitution of a Maori Council under the provisions of section 71 of the Constitution Act of New Zealand 1852.

And your petitioners will ever humbly pray

Pepene Eketone & 163 others

## CHAPTER 11 APPENDIX II

### TABLES

#### **Table 11.4: Crown purchasing in land blocks that the Native Land Court declared inalienable 1890–1904**

This table shows land blocks that the Te Rohe Pōtae inquiry district which the Native Land Court declared inalienable by sale (some could be leased whereas others were inalienable by any means). The table also shows when the Crown completed its first purchase in each block (if at all) and the scale of Crown purchasing in the block during the years 1890–1904.

The table does not include Crown purchases in the Wharepuhunga or Rangitoto Tuhua blocks. Combined, these blocks account for 31% of the inquiry district. As discussed in section 11.4.6, in Wharepuhunga owners had asked for the land to be declared inalienable, but the court may have later lifted the order. In Rangitoto Tuhua, we do not have details of which blocks were declared inalienable.

#### **Table 11.5: Alienation of Māori land in Te Rohe Pōtae inquiry district, by land block, 1890–1905**

The data in this table are drawn from Douglas, Innes, and Mitchell, annex 7, individual block summaries. The land area of the parent block was drawn from GIS data, and sometimes yields different block areas to those in table 11.4. The data about Crown alienations was also drawn from GIS data where that was possible, but in many cases relied on nineteenth century Crown sources, such as Native Land Court records, survey plans, and Crown purchase deeds, which were sometimes inaccurate.<sup>1</sup>

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1. For example, at the time of purchase, the Crown calculated the Taurangi block at 10,000 acres, but according to the GIS system the total block was only 9,852.6 acres. The column giving the percentage remaining in Māori possession by 1905 compares the original block size with the alienation data based on both GIS data and nineteenth century Crown calculations. It is therefore only an approximation. See doc A21, pp 24–26. Table B1 provides data on the extent of the ‘overs’ and ‘unders’ – that is, the amount the Crown overestimated or underestimated when it was purchasing the block: doc A21, pp 115–126.

Table 11.4: Blocks listed in the Native Department's schedule to 31 December 1889

<b>Block</b>	<b>Acres</b>	<b>Declared inalienable</b>	<b>First completed</b>	<b>Crown purchase</b>	<b>Crown purchases 1890–1905 (acres)</b>
Hauturu East 3	635	24 Aug 1889	1901	218	34%
Hikurangi	1,844	15 Feb 1889	n/a	0	0%
Kaingapipi	2,692	5 Nov 1889	1901	1,070	40%
Kinohaku East 6 (Te Ngarara)	561	20 Nov 1888	1901	156	28%
Korakonui	2,000	30 Aug 1888	n/a	0	0%
Mangamahoe	949	8 Jun 1889	1901	283	30%
Mangarapa	2,760	5 Nov 1889	1892	1,894	69%
Mangaora	4,600	4 Feb 1889	1901	854	19%
Mangawhero (Kawhia SD)	25	23 Mar 1889	n/a	0	0%
Marokopa	5,000	15 Feb 1889	1899	2,334	47%
Motukotuku	195	23 Mar 1889	n/a	0	0%
Ngamahanga	69	30 Aug 1888	n/a	0	0%
Orahiri 3 (Te Kopuha)	622	7 Dec 1888	n/a	0 [1]	0%
Parihoru	355	30 Aug 1888	n/a	0	0%
Pirongia West	36,288	12 Feb 1889	1895	24,104	66%
Pukeroa Hangatiki	6,179	5 Nov 1889	1899	1,128	18%
Takotokoraha 1	1,000	7 Dec 1888	1894	927	93%
Tapuwaeohounuku	4,768	15 Feb 1889	n/a	0	0%
Tapuiwahine	551	24 Oct 1888	n/a	0	0%
Tokanui 1	1,366	21 Oct 1889	n/a	0	0%
Tokanui 1A (Te Waiaruhe)	290	21 Oct 1889	n/a	0	0%
Tokanui 1B (Pukaioakaioa)	539	1 Nov 1889	n/a	0	0%
Waikowhitiwhiti	28	7 Dec 1888	n/a	0	0%
Whakairoiro	1,029	30 Aug 1888	1892	258	25%
<i>Subtotal</i>	<i>74,345</i>			<i>33,226</i>	

*Additional blocks identified by Husbands and Mitchell: 1889–1894*

<b>Block</b>	<b>Acres</b>	<b>Declared inalienable</b>	<b>First completed</b>	<b>Crown purchase</b>	<b>Crown purchases 1890–1905 (acres)</b>
Kakepuku 8 (Ngarauiri)	12	13 Jan 1894	n/a	0	0%
Kinohaku East 1 (Ootoika)	1,347	18 Aug 1890	1898	Unknown [2]	
Kinohaku East 1A (Te Uira)	607	18 Aug 1890	n/a	0	0%
Puketarata 2D5	191	29 Mar 1894	1899	48	25%
Puketarata 2D6	591	29 Mar 1894	1898	591	100%
Puketarata 4D	192	27 Mar 1894	1901	35	18%
Puketarata 4F	120	28 Mar 1894	n/a	0	0%
Puketarata 4G	2,617	28 Mar 1894	1898	1,107	42%
Puketarata 5C	318	26 Mar 1894	1898	318	100%
Puketarata 8C	36	26 Mar 1894	1898	36	100%
Puketarata 8D	302	29 Mar 1894	1901	195	65%
Puketarata 13B	50	14 Mar 1894	1901	21	42%
Puketarata 10	144	Dec 1890	n/a	0	0%
Puketarata 19D	80	22 Mar 1894	1897	81	100%
Puketarata 19E	60	22 Mar 1894	n/a	0	0%
Puketarata 19F	650	22 Mar 1894	1897	61	9%
Puketarata 19H	390	22 Mar 1894	1901	61	17%
Puketarata 19I	750	22 Mar 1894	1901	504	67%
Te Kuiti	7,080	25 Nov 1889	1899	20	0.3%
<i>Subtotal</i>	<i>15,537</i>			<i>3078</i>	

*Additional blocks identified by Berghan: 1882–1896*

Maketu (Kawhia)	984	12 Mar 1889	n/a	0	0%
Marokopa Reserve	123	15 Mar 1889	n/a	0	0%
Mohakatino Parininihi 3	500	22 Jun 1882	n/a	0	0%
Mokau Mohakatino 1	56,500	22 Jun 1882	1899	185	0.3%

Block	Acres	Declared inalienable	First completed	Crown purchase	Crown purchases 1890–1905 (acres)
Te Kopua (Whaingaroa)	148	21 Feb 1896	n/a	0	0%
Te Rete	135	21 Mar 1889	n/a	0	0%
Te Pukenui 3	1	9 Jan 1893	n/a	0	0%
<i>Subtotal</i>	58,525			185	
<b>TOTAL</b>	148,407			36,489	

*Sources:*

Lands declared inalienable (Native Department schedule): Native Department, 'Rohe Potae Block: Schedule of Orders made for the period ending 31st Dec 1889' (doc A91, vol 2, pp 315–319). Also see doc A79, pp 423–425, 452; doc A60, pp 420, 430–431, 437, 525, 749, 752, 1288–1289, 1292.

Lands declared inalienable (Husbands and Mitchell): Document A79, pp 194–195, 267–268, 422, 452.

Lands declared inalienable (Berghan): Document A60, pp 304–305, 382, 420, 525, 530, 561, 579–580, 775, 1045

Land areas: Document A60, pp 143, 171, 189, 305, 385, 387, 430, 437, 443, 465, 525, 589, 594, 608, 711, 807, 825, 829–831, 1075, 1085, 1087, 1117, 1172, 1197. The Pirongia West area is from doc A21 (Douglas, Innes, and Mitchell), annex 7, Pirongia West Blocks. Also see doc A67(a), vol 1, pp 129–131. Document A60 was used as the other sources did not provide complete information for these blocks and subdivisions. The areas may therefore differ from the areas in other tables giving Crown purchase areas, which relied on doc A21.

Date of first alienation: Document A95(i), Crown purchases. Parker's evidence from doc A95(i) was checked against doc A21, annex 7, Individual Block Summaries and doc A60, pp 144, 171, 189, 309–310, 338, 431, 440, 447, 525–526, 756–758, 807, 831–833, 1075–1076, 1085–1086, 1199–1200. For most blocks, the sources were in agreement. Where there were differences about first purchase date, doc A95(i) was preferred.

Areas alienated: Document A95(i), Crown purchases. Parker's evidence was checked against doc A21, annex 7, Individual Block Summaries; doc A60, pp 144, 171, 189, 309–310, 338, 431, 440, 447, 525–526, 581, 756–758, 807, 831–833, 1075–1076, 1085–1086, 1199–1200. Where there were differences about area purchased, doc A95(i) was preferred.

*Notes:*

[1] The Crown had purchased almost all of Orahiri 3 by 1907: doc A60, p 616.

[2] The extent of Crown purchasing in Ototoika was not clear from the sources. Parker (doc A95(i)) referred to Crown purchases exceeding 3,000 acres, which is larger than the reserved area.

Table 11.5: Alienation of Māori land in Te Rohe Pōtae inquiry district, by land block, 1890–1905

Parent block	Land area (decimal acres) <sup>1</sup>	Land alienated to the Crown (decimal acres) <sup>2</sup>			Approximate % remaining in Māori ownership by end of 1905 <sup>3</sup>
		1890–1894	1895–1899	1900–1905	
Aorangi	13,352.4	0	4,981.5	61.0	62.2
Hauturu East	56,615.3	0	32,406.8	6,411.6	30.9
Hauturu West	42,072.4	0	29,707.0	1,498.0	25.8
Hurakia	5,185.8	0	0	3257	37.2
Kahakaharoa <sup>4</sup>	615.4	0	600.0	0	2.5
Kahuwera	3,931.6	0	1,385.8	467.5	52.9
Kaingapipi	2,716.5	0	0	1,070.0	60.6
Kakepuku	12,376.1	95.1	1,799.3	452.5	81.0
Kawhia	5,372.8	0	4.2	1,351.2	74.8
Ketemaringi	5,971.0	0	4,610.0	0	22.8
Kinohaku East	52,403.2	0	16,832.3	4,161.0	60.1
<i>Kinohaku West</i>					
<i>See table 11.6.</i>					
Mahoenui <sup>5</sup>	27,853.3	0	16,301.5	1,453.0	21.9
Mangakahikatea	10,935.0	0	9,150.0	1,752.0	0.3
Mangamahoe	934.3	0	0	283.0	69.7
Mangarapa	2,663.0	400	1,192.5	115.0	35.9
Mangaroa	4,560.6	0	0	854.0	81.3
Mangauika	5,472.6	2,586.8	0	432.0	44.8
Maraeroa	41,689.8	0	4,000.0	14,725.2	55.1
Maraetaua	8,594.6	0	0	3,462.0	59.7
Marokopa	5,004.1	0	2,334.0	0	53.4
Maungarangi	701.9	166.7	302.0	0	33.2
Mohakatino Parininihi <sup>16</sup>	62,632.6	34,945.5	13,134.0	0	18.2
Mokau Mohakatino	56,384.2	0	185.0	0	99.7
Ngakokiri	103.7	0	96.0	0	7.4
Orahiri <sup>7</sup>	8,163.6	1.0	2,564.0	1,102.0	55.1
Otorohanga	10,326.1	0	1,330.0	2,872.2	59.3

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Parent block	Land area (decimal acres) <sup>1</sup>	Land alienated to the Crown (decimal acres) <sup>2</sup>			Approximate % remaining in Māori ownership by end of 1905 <sup>3</sup>
		1890–1894	1895–1899	1900–1905	
Ouruwhero	10,103.9	1,761.5	2,518.0	0	57.6
Pehitawa	2,901.4	0	829.0	0	71.4
Pirongia West	36,288.8	0	22,922.8	444.3	35.6
Pokuru	3,200.0	0	282.1	251.0	83.3
Pukenui	13,448.5	0	1,761.8	66.1	86.4
Pukeroa Hangatiki	6,247.5	0	1,228.3	0	80.3
Puketarata <sup>8</sup>	17,900.3	4,672.8	4,750.6	1,828.8	36.7
Pukeuha	2,777.4	0	0	642.0	76.9
Rangitoto Tuhua	<i>See table 11.7</i>				
Rapaura	422.6	0	0	210.8	50.1
Ratatomokia	9,551.3	5626.1	0	4,034.9	0
Tahaia	2,784.4	0	0	522.0	81.3
Taharoa blocks <sup>9</sup>	24,208.4	0	6,358.0	353.0	72.3
Takotokoraha	2,794.6	549.1	378.5	0	66.8
Taorua	10,405.0	1,591.9	5,608.0	1,591.0	15.5
Taurangi blocks <sup>10</sup>	34,508.8	27,792.0	1378.0	5,064.0	1.8
Te Awaroa	8,547.0	0	0	2,060	75.9
Te Karu o te Whenua	24,450.8	0	5,420.3	5,017.0	57.3
Te Kauri (Kawhia)	5,207.8	1,951.1	0	0	62.5
Te Kopua (Pirongia)	9,372.1	2,946.8	3,350.0	0	32.8
Te Kuiti	6,977.6	0	1,902.0	0	72.7
Te Kumi	2,711.4	0	377.5	0	86.1
Te Tiutiu	347.3	0	289.0	0	16.8
Turoto	2,672.2	727.5	0	576.0	51.2
Umukaimata blocks <sup>11</sup>	46,485.9	20,834.2	20,057.4	382.0	11.2
Waiaraia	12,532.6	12,532.6	0	0	0
Waikaukau	4,695	4,695	0		0
Waiwhakaata	11,071.2	1,221.1	3,048.5	0	61.4
Whakairoiro	1,037.3	200.0	0	58.0	75.1
Whangaingatakupu	5,274.3	0	4,908.6	130.0	4.5
Wharepuhunga	133,449.4	37,767	20,805	0	56.1



## Notes:

1. Document A21, annex 7.
2. Document A21, annex 7.
3. Document A21, annex 7.
4. For the 1890–1894 period, Douglas, Innes, and Mitchell recorded the Crown purchasing Kahakaharao A (16.5 acres) in 1889. However, this appears to be an error. The Crown's land purchase officer, George Wilkinson, recorded his first share purchases in the block as having taken place in 1893, and both Parker and Berghan record the Kahakaharao A purchase as having been completed in 1899: doc A21, annex 7, Kahakaharao Blocks; doc A60, pp 178–179; doc A95(i), Crown purchases, line 160.
5. For the 1890–1894 period, the 4,000-acre Mahoenui 6 block was sold to a private purchaser in 1894, before restrictions were imposed on the block under the Native Land Purchases Act 1892. There were no completed Crown purchases in Mahoenui prior to 1897: doc A21, annex 7, Mahoenui, pp 3–4. The Mahoenui alienations include 17,754.5 acres alienated to the Crown during the years 1890 to 1905, and 4,000 acres alienated privately in 1894: doc A21, annex 7, Mahoenui, pp 3–4.
6. During the years 1890–1905, the Crown purchased in Mohakatino Parininihi 1 only. The Mohakatino Parininihi 1 alienations include 48,079.5 acres alienated to the Crown during the years 1890 to 1905, and a 3,178.8-acre private purchase in 1898: doc A21, annex 7, Mohakatino Parininihi 1. The 705.1-acre Mohakatino Parininihi 2 had been sold privately in 1881: doc A21, annex 7, Mohakatino Parininihi 2. The 503.7-acre Mohakatino Parininihi 3 remained entirely in Māori ownership until 1916 when just under half of the block was sold to a private buyer: doc A21, annex 7, Mohakatino Parininihi 3.
7. The Orahiri alienations include 3,667 acres (GIS area) alienated to the Crown during the years 1890 to 1905, and a 2-acre private purchase in 1899: doc A21, annex 7, Orahiri Blocks.
8. The Puketarata alienations include 11,146.7 acres (GIS area) alienated to the Crown during the years 1890 to 1905, and two private purchases: 74.5 acres in 1901 and 99.9 acres in 1905: doc A21, annex 7, Puketarata Blocks.
9. The Puketarata alienations include 11,146.7 acres (GIS area) alienated to the Crown during the years 1890 to 1905, and two private purchases: 74.5 acres in 1901 and 99.9 acres in 1905: doc A21, annex 7, Puketarata Blocks.
10. The land area is the combined area of all Taurangi blocks, as given in doc A21, annex 7, Taurangi, Taurangi 1A, 1B, 2, 3A, 3B, 4, and 5. The areas were: Taurangi, 9,852.6 acres; Taurangi 1A, 5,699.4 acres; Taurangi 1B, 374.1 acres; Taurangi 2, 2,495 acres; Taurangi 3A, 213.4 acres; Taurangi 3B, 5,005.4 acres; Taurangi 4, 997 acres; and Taurangi 5, 9,871.9 acres. For the 1890–1894 period, the Crown appears to have overestimated the area of the Taurangi blocks at the time of purchase. It estimated the Taurangi block to be 10,000 acres at the time of purchase in 1893, but Douglas, Innes, and Mitchell give the block's area as 9,852.6 acres (based on GIS data). Similar discrepancies occur for other blocks: Taurangi 1B (Crown purchase deed 378 acres, GIS 374.1 acres) Taurangi 2 (Crown purchase deed 2,500 acres, GIS 2,495 acres), Taurangi 3B (Crown purchase deed 5,064 acres, GIS 5,005.4 acres), Taurangi 5 (Crown purchase deed 10,000 acres, GIS 9,871.9 acres): doc A21, annex 7, individual block summaries. According to Douglas, Innes, and Mitchell, 620.8 acres remained in Māori possession at the end of 1905, comprising 407.4 acres of Taurangi 1A, and the entire 213.4-acre Taurangi 3A block: doc A21, annex 7, Taurangi 1A, Taurangi 3A.
11. The land area is the combined area of all Umukaimata blocks, as given in doc A21, annex 7, Umukaimata 1A, 1B, 1C, 1D, 2, 3A, 3B, 4, 4A, 5. The areas were: Umukaimata 1A, 2,093.9 acres; Umukaimata 1B, 2 acres; Umukaimata 1C, 1.9 acres; Umukaimata 1D, 7,383.9 acres; Umukaimata 2, 438.3 acres; Umukaimata 3A, 1,871.6 acres; Umukaimata 3B, 2,478.2 acres; Umukaimata 4, 11,107.1 acres; Umukaimata 4A, 4,934.3 acres; Umukaimata 5, 16,174.7 acres. According to Douglas, Innes, and Mitchell, 5,212.3 acres of the original 46,485.9 acres remained in Māori possession at the end of 1905: doc A21, annex 7, Umukaimata 1A, 1B, 1C, 1D, 2, 3A, 3B, 4, 4A, 5.

Table 11.6: Alienation of Kinohaku West land by subdivision, 1890–1905

Subdivision	Land area (decimal acres)	Land alienated to the Crown (decimal acres)			Approximate % remaining in Māori ownership by end of 1905
		1890–1894	1895–1899	1900–1905	
Kinohaku West 1	5,822.8	0	3,277.0	0	43.7
Kinohaku West 3	1,319.2	0	964.0	0	26.9
Kinohaku West 11	6,743.2	0	3,129.0	1,406.0	32.7
Kinohaku West 12	4,277.9	0	3,805.0	116.0	8.3
Kinohaku West 12A	33.3	0	0	0	100
Kinohaku West 12B	84.8	0	0	17.0	79.9
Kinohaku West 12C	578.7	0	0	352.0	39.2
Kinohaku West A	1,450.5	0	0	1,350.0	6.9
Kinohaku West C	1,499.9	0	1,291.0	0	13.9
Kinohaku West D	1,532.6	0	1,532.6	0	0
Kinohaku West E	13,526.3	0	8,162.0	1,390.0	29.4
Kinohaku West F	14,449.5	0	11,323.5	911.3	15.3
Kinohaku West G	22,189.2	0	14,993.0	1,945.0	23.7
Kinohaku West H	28,591.5	0	21,110.0	3,112.0	15.3
Kinohaku West K	35,981.7	0	31,281.0	998.1	10.3
Kinohaku West L	1,310.4	0	520.0	200.0	45.1
Kinohaku West M	2,457.9	0	2,292.0	66.0	4.1
Kinohaku West N	1,350.7	0	1,030.5	0	23.7
Kinohaku West O	1,526.0	0	1,197.0	0	21.6
Kinohaku West P	416.8	0	159.0	0	61.9
Kinohaku West R	512.8	0	512.8	0	0
Kinohaku West S	9,551.3	0	7,249.0	0	24.1
Kinohaku West T	5,804.5	0	3,888.0	0	33
<b>TOTAL</b>	<b>161,011.5</b>	<b>0</b>	<b>117,716.4</b>	<b>11,863.4</b>	<b>19.5</b>

Source: Doc A21, annex 7, block summaries. According to Douglas, Innes, and Mitchell, 31,431.7 acres remained in Māori possession in 1905 out of the original 161,011.5-acre Kinohaku West block.

Table 11.7: Alienation of Rangitoto Tuhua land by subdivision, 1890–1905

Subdivision	Land area (decimal acres)	Land alienated to the Crown (decimal acres)			Approximate % remaining in Māori ownership by end of 1905
		1890–1894	1895–1899	1900–1905	
Rangitoto Tuhua 4	1,784.9	0	0	1,770.0	0.3
Rangitoto Tuhua 10	6,056.7	0	0	6,070.0	0
Rangitoto Tuhua 46	1,002.4	0	0	1,002.0	0
Rangitoto Tuhua 47	3,028.0	0	0	3,028.0	0
Rangitoto Tuhua 48	4,037.6	0	0	4,000.0	0.9
Rangitoto Tuhua 56	1,993.6	0	0	1,988.0	0.3
Rangitoto Tuhua 63	1,527.7	0	0	1,500.0	1.8
Rangitoto Tuhua 65	4,961.4	0	0	4,961.4	0
Other Rangitoto Tuhua blocks	436,885.3	0	0	0	100.0
<b>TOTAL</b>	<b>461,277.6</b>			<b>24,319.4</b>	<b>94.7</b>

Source: Doc A21 (Douglas, Innes, Mitchell), annex 7, Rangitoto Tuhua blocks.



Dated at Wellington this 7th day of September 2018



Deputy Chief Judge Caren Fox, presiding officer



John Baird, member



Dr Aroha Harris, member



Professor Sir Hirini Mead, member



Professor Pou Temara, member



